



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECW-PC

JUN 15 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study

1. Reference: Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works, dated 05 June 2007, Subject: Model Feasibility Cost Sharing Agreement for Studies of Proposed Projects That Will Require Specific Authorization and for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization (enclosure 1).
2. Effective today, the enclosed model feasibility cost sharing agreement (FCSA) (enclosure 2) shall be used for cost shared feasibility studies being undertaken in accordance with Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, for studies of proposed projects that will require specific authorization; for studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a feasibility study. The new model includes: (a) general updates of the language in most articles, similar to those incorporated into the other recently approved models; (b) additional language on determining the value of, and limitations on affording credit for, non-Federal in-kind contributions; and (c) a reduction in the non-Federal sponsor's cost share requirement pursuant to Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662. Selection and use of the optional language is not considered a deviation from the model. If you have already substantially completed negotiations with a non-Federal sponsor using the model FCSA dated March 1997, please contact your HQUSACE Regional Integration Team (RIT) in Washington for guidance on how to proceed.
3. The basis for delegating authority to execute FCSAs, as provided for in this memorandum, is the use of models, whenever it is practical to do so. The use of a model in the development of individual FCSAs should help to streamline study implementation in a way that also achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of study sponsors. While these attributes favor the use of models, it is also recognized that deviations from the model may be appropriate in certain cases. The Project Manager should work collaboratively and expeditiously with the non-Federal sponsor to develop a FCSA using the subject model without deviation or adapt it, as necessary, for the particular study. District offices are encouraged to coordinate early resolution of deviations from the subject model through the vertical team so that studies can be implemented on schedule.

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4. The following procedures should be used for review and approval of FCSAs and FCSA amendments for cost shared feasibility studies of proposed projects that will require specific authorization; for cost shared feasibility studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a feasibility study. The documentation, including, but not necessarily limited to, the Non-Federal Sponsor's Self-Certification of Financial Capability for Agreements, and the Certificate of Legal Review, that is necessary for the MSC to review and approve the agreement in accordance with the following paragraphs, shall be prepared and forwarded for review to the MSC. A copy of all of the necessary documentation shall be placed in the project file prior to approval by the MSC or District Commander.

a. The responsibility for review and approval of a FCSA that does not deviate from the subject model is delegated to the MSC Commander and may be further delegated to the District Commander. Division Counsel concurrence, or District Counsel concurrence if the approval authority is further delegated to the District Commander, that the FCSA does not deviate from the subject model is required prior to approval.

b. The MSC Commander also is delegated the responsibility for review and approval of non-policy and non-substantive deviations from the subject model. This authority may not be further delegated. Division Counsel review of any such deviations and a Division Counsel recommendation to approve such deviations are required prior to approval by the MSC Commander. Where there is a question whether the deviation is policy related or substantive, HQUSACE is available for informal consultation.

c. Feasibility Cost Sharing Agreements with substantive deviations or deviations involving policy issues, unique circumstances, or controversial matters shall be coordinated with the appropriate vertical team (District, MSC, HQUSACE, and, if necessary, the Office of the Assistant Secretary of the Army (Civil Works)). Each vertical team member shall be provided a copy of the proposed FCSA with the deviations indicated, the rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. FCSAs with these types of deviations require approval by HQUSACE in Washington. Early coordination of these proposed deviations with the vertical team is encouraged.

d. Review and approval of any amendment to an existing FCSA to address non-policy and non-substantive changes, such as a revision of total study costs or revision of study tasks and costs due to one of several sponsors electing to terminate its responsibilities under the FCSA, is delegated to the MSC Commander and may not be further delegated. Division Counsel review of any such amendment and a Division Counsel recommendation to approve such amendment is required prior to approval by

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the MSC Commander. Where there is a question whether the changes to the existing FCSA are policy related or substantive, HQUSACE is available for informal consultation.

e. If a FCSA amendment incorporates substantive revisions to an existing FCSA or any revisions to an existing FCSA that involve policy issues, unique circumstances, or controversial matters, the amendment shall be coordinated with the appropriate vertical team (District, MSC, HQUSACE, and, if necessary, the Office of the Assistant Secretary of the Army (Civil Works)). Each vertical team member shall be provided a copy of the proposed amendment, the rationale for the amendment, and the written concurrence of District and Division Counsel via e-mail. These FCSA amendments require approval by HQUSACE in Washington. Early coordination of the proposed amendment with the vertical team is encouraged.

f. The District Commander is authorized to execute each FCSA and FCSA amendment after its approval, including agreements that require MSC or HQUSACE approval. However, the ASA(CW) retains the authority to sign any agreement of his or her choosing.

5. The following procedures should be used for execution of FCSAs and FCSA amendments for cost shared feasibility studies of proposed projects that will require specific authorization; for cost shared feasibility studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a feasibility study. After approval of the FCSA or FCSA amendment by the appropriate authority, the district should prepare a minimum of four final originals for signature by the non-Federal sponsor. After signature by the non-Federal sponsor, the District Counsel shall review the non-Federal signatures on the FCSA or FCSA amendment, the Certificate of Authority, and the Certification Regarding Lobbying to ensure that the FCSA or FCSA amendment has been signed and dated by the non-Federal sponsor in all the appropriate locations. After completion of such review and a recommendation to proceed with signature by the District Counsel, the District Commander shall execute the FCSA or FCSA amendment. The FCSA or FCSA amendment shall be dated with the date the District Commander executes the agreement. The district shall retain two copies of the executed FCSA or FCSA amendment and the remaining copies should be provided to the non-Federal sponsor. An electronic copy of the executed FCSA or FCSA amendment, with all appropriate signatures, should be provided to the MSC and the appropriate HQUSACE RIT within 14 days after execution.

6. The other model for cost shared feasibility studies for use on Continuing Authority Program and other program authorities that do not require additional authorization to implement a project and its accompanying implementation memo will be provided in separate correspondence as it is approved.

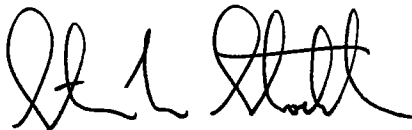
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7. The districts and the MSC shall advise HQUSACE of any signing ceremonies requested by the non-Federal sponsor, and in particular whether the presence of the ASA(CW) is requested. A signing ceremony should not be scheduled until the FCSA has been approved.

8. Although the new model agreement has been designed to provide the districts and non-Federal sponsors maximum flexibility in negotiating these agreements, there may be additional opportunities to improve upon the models, in particular where a provision is repeatedly requested or needed by non-Federal sponsors. The districts and MSC shall provide this information to HQUSACE so that consideration can be given to revising the model or providing pre-approved deviations.

FOR THE COMMANDER:


for DON T. RILEY
Major General, USA
Director of Civil Works

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JUN 05 2007

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Model Feasibility Cost Sharing Agreement for Studies of Proposed Projects That Will Require Specific Authorization and for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization

This responds to Mr. Waters' memorandum dated May 4, 2007, requesting approval of the subject model agreement and delegation of authority to approve and execute individual agreements.

The model agreement is approved. Approval and execution of individual agreements and amendments thereto (within the parameters specified below) are delegated to the Headquarters of the Army Corps of Engineers. Re-delegation of these authorities to the Major Subordinate Commanders or the District Commanders is approved, in accordance with the draft implementation memorandum enclosed with Mr. Waters' memorandum of May 4, 2007.

Proposed deviations involving policy issues, unique circumstances, or controversial matters should be forwarded to Corps Headquarters for resolution. You should consult with my office in those cases where a policy has not yet been established, or if existing policy is unclear, or if there is any uncertainty about unique or controversial issues. The Major Subordinate Command may approve non-policy and non-substantive deviations. Corps Headquarters is encouraged to pre-approve selected variations from the model that, based on experience gained in negotiating individual agreements, are deemed appropriate. This office remains available to sign agreements and participate in signing ceremonies, depending upon the wishes of the non-Federal sponsor, or in those cases where this office so desires.

A handwritten signature in black ink that reads "John Paul Woodley, Jr." in a cursive script.

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)