



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

CECW-PC

MAY 23 2006

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Approval of Model Design Agreement and Delegation of Approval and Execution Authority for Design Agreements

1. Reference: Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works, dated 12 April 2006, Subject as above (SAB) (enclosure 1).
2. Effective today, the enclosed model design agreement (DA) (enclosure 2) shall be used for all Preconstruction Engineering and Design (PED) activities funded by General Investigations (GI) or Mississippi River and Tributaries (MR&T) appropriations and all Engineering and Design (E&D) activities funded by either Construction, General (CG), MR&T, or Operation and Maintenance, General (O&M) appropriations, except for the following:
 - a. PED and E&D for an inland waterway project; a dam safety assurance, seepage correction, or static instability correction project; a major rehabilitation project; or a deficiency correction at a Federally operated project.
 - b. A project or separable element for which the non-Federally financed portion of pre-Project Cooperation Agreement (PCA) engineering and design costs alone would exceed the total non-Federal cash share for the project or element; the non-Federal share of the project or element is reduced under ability to pay rules; or pre-PCA engineering and design costs are less than \$100,000.
 - c. PED initially funded prior to FY 1997 or E&D initially funded prior to FY 1998.
 - d. Continuing Authority Programs (Sections 14, 103, 107, 111, 145, 204, 205, 206, 208, and 1135), Critical Restoration Project Programs (Sections 514, 542, 544, etc.), and Environmental Infrastructure Programs (Sections 108, 130, 132, 154, 219, 304, 313, 340, 510, 531, 552, 566, 569, 570, 571, 592, 593, 594, 595, etc.).
3. The model agreement includes optional language to address several variations. 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 Design Agreement, dated November 2001, please contact your HQUSACE Regional Integration Team (RIT) for guidance.

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4. The basis for delegating authority to execute DAs, 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 DAs should help to streamline project implementation in a way that also achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of project sponsors. While these attributes favor the use of a model, 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 DA using the subject model without deviation or adapt it, as necessary, for the particular project. District offices are encouraged to coordinate early resolution of deviations from the subject model through the vertical team so that projects can be implemented on schedule.

5. The following procedures should be used for review and approval of a DA or DA amendment. In those cases where there are no deviations from the subject model, implementation of these procedures eliminates submission of a formal agreement package to Washington for review and approval. However in all cases, the documentation, including, but not necessarily limited to, sponsor's letter of intent to proceed with design, Federal – non-Federal funds allocation table, Certificate of Legal Review, and DA Checklist, that is necessary for the Major Subordinate Command (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 DA 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 DA 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. Design Agreements with substantive deviations or deviations involving policy issues, unique circumstances, or controversial matters shall be forwarded for MSC review and then transmitted to the appropriate HQUSACE RIT, with MSC recommendations, for review and

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approval by HQUSACE. The MSC should submit the proposed deviations, a rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. Early coordination of these proposed deviations with the appropriate HQUSACE RIT is encouraged.

d. Review and approval of any amendment to an existing DA to address non-policy and non-substantive changes, such as a revision to the project description, 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 are required prior to approval by the MSC Commander. Where there is a question whether the changes to the existing DA are policy related or substantive, HQUSACE is available for informal consultation.

e. If an amendment incorporates substantive revisions to an existing DA or any revisions to an existing DA that involve policy issues, unique circumstances, or controversial matters, the amendment shall be forwarded for MSC review and then transmitted to the appropriate HQUSACE RIT, with MSC recommendations, for review and approval by HQUSACE. The MSC should submit the proposed amendment and the written concurrence of District and Division Counsel via e-mail. Early coordination of the proposed amendment with the appropriate HQUSACE RIT is encouraged.

f. The District Commander is authorized to execute each DA and DA 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.

6. The following procedures should be used for execution of DAs and DA amendments. After approval of the DA or DA 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 DA or DA amendment, the Certificate of Authority, and the Certification Regarding Lobbying to ensure that the DA or DA 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 DA or DA amendment. The DA or DA amendment shall be dated with the date the District Commander executes the agreement. The district shall retain two copies of the executed DA or DA amendment and the remaining copies should be provided to the non-Federal sponsor. An electronic copy of the executed DA or DA amendment, with all appropriate signatures, should be provided to the MSC and the appropriate HQUSACE RIT within 14 days after execution.

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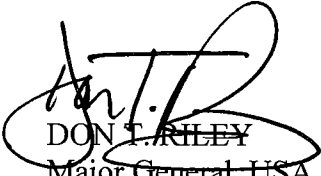
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7. The districts and the MSC shall advise HQUSACE of any signing ceremonies requested by the non-Federal sponsor, and in particular whether the presence of the ASA(CW) is requested. A signing ceremony should not be scheduled until the DA has been approved.

8. Although the new model 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 model, 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:

2 Encls
as



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

APR 12 2006

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

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This responds to Mr. Waters' memorandum dated March 1, 2006, requesting approval of the subject model design agreement and delegation of authority to execute and approve individual design agreements.

The model agreement is approved, subject to modifications that have been made and agreed to by our respective staffs. 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 March 1, 2006.

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 from reviewing other 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.

Claudia Tomblom

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