

**MEMORANDUM OF AGREEMENT BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE NATIONAL PARK SERVICE
P11PG00072**

PREAMBLE

This Memorandum of Agreement establishes a framework for improved collaboration and cooperation between the National Park Service (NPS) and the United States Army Corps of Engineers (USACE). It has been prepared in the knowledge that each agency has capabilities and expertise that could be helpful to the other. By sharing those capabilities and areas of expertise, the agencies will accomplish their respective missions more efficiently and better serve the public interest. Both agencies want and expect this Agreement to be widely utilized by agency personnel, including personnel who may have little knowledge about the extent of the other agency's capabilities or areas of interest. For that reason, it has been crafted not only to set the stage for the obligation of funds under authority of the Economy Act or other applicable authority, but also to impart more information about areas of mutual interest that do not necessarily require the obligation of funds.

ARTICLE I. PURPOSE AND AUTHORITY

a. This Memorandum of Agreement (MOA or Agreement) is entered into by and between the Assistant Secretary of the Army (Civil Works), through the U.S. Army Corps of Engineers (USACE), and the National Park Service (NPS) (collectively, parties) for the purpose of establishing a framework governing the respective responsibilities for the provision of goods and services as described in Article II, below. Any interagency agreement (IA) issued pursuant to this MOA will be entered into pursuant to the Economy Act (31 U.S.C. § 1535) or other applicable authorities between the NPS and USACE effective upon the date of last signature.

b. This Agreement is intended to improve public services and management of natural and cultural resources through harmonious and effective cooperative interagency efforts including, but not limited to, joint research and information sharing; design and construction expertise; emergency and post-disaster operations; conflict management; coordinated ecosystem management, restoration and protection activities; global climate change adaptation; joint curatorial cooperation; interpretation and exhibit expertise; training and education; collaborative permitting and planning for resource protection, recreation, tourism, and visitor use and safety. It encourages improved collaboration and cooperation related to wild and scenic rivers, the National Trails System, floodplain and river management, dredging, coastal engineering structures, asset management, facilities management and recreation management, heritage asset management, abandoned mine lands, efficient and renewable energy technologies, and in mutually sharing expertise in project management, project tracking systems and software, value engineering, design, development, and construction management.

c. The items mentioned in paragraph b., above are discussed more fully in the attachment to this MOA entitled “Areas of Cooperation,” which is incorporated herein by reference. This document outlines the cooperative relationship sought between the agencies and can be changed as mutually agreeable, as set forth in Article XVII herein.

ARTICLE II. MISSION OF EACH ORGANIZATION

a. The National Park Service (NPS) preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

b. The U.S. Army Corps of Engineers (USACE), under the policy oversight of the ASA (CW), provides planning, design, and construction services to civil and military customers, and other agencies, worldwide. USACE develops, manages, protects, and improves the Nation's water resources, including related natural and cultural resources, consistent with the ecosystem management principles, while providing quality public outdoor recreation experiences to serve the needs of present and future generations. USACE uses a project management business process to deliver quality products and services in partnership with the private sector and stakeholders.

c. The Parties acknowledge the significant positive collaboration that already exists between the NPS and the USACE and intend through this MOA, to strengthen and broaden that cooperation.

ARTICLE III. SCOPE

a. Nothing in this Agreement shall be construed to require either party to use the other party or to require either party to provide any goods or services to the other party, except to the extent specifically set forth in an IA issued pursuant to this Agreement. While examples of goods and services are stated in the Areas of Cooperation, it is understood that USACE and NPS may each have expertise of a similar nature, or overlap some services to benefit the other, especially when capacity or proximity are factors.

b. This Agreement establishes a framework for coordination under which project/issue-specific agreements may be developed. Examples may be found in Section V in the attached Areas of Cooperation. Accordingly, NPS regional directors, USACE division and district commanders, and other offices at the Washington and field levels are encouraged to develop supplemental agreements as appropriate. The parties will endeavor to foster relationships at the lowest effective program and office levels, to identify potential conflicts in the plans, programs, and activities in each agency early on in order to manage conflicts whenever possible for constructive outcomes, and to facilitate the collaborative resolution of conflicts that may develop. The parties will endeavor to create opportunities for USACE and NPS to serve each other where expertise is needed by the other agency.

ARTICLE IV. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between USACE and NPS, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement. Additional representatives may also be appointed to serve as points of contact on IAs.

ARTICLE V. INTERAGENCY AGREEMENTS

a. In response to requests from one party (the "Ordering Agency") for the other party's (the "Servicing Agency") goods and services, the parties will develop mutually agreed upon written IAs that detail the specific tasks to be completed. When the USACE is the Ordering Agency, IAs must be on either Engineer Form 4914-R or a similar document containing the same information as Department of Defense Form 1144. When NPS is the Ordering Agency, IAs will be on the current Department of Interior IAA form. Regardless of specific format, IAs must include at least the following elements:

- (1) A detailed scope of work statement;
- (2) A reference to this MOA that substantially says the following: "This IA is subject to the terms and conditions of the Memorandum of Agreement, No. P11PG00072, between the NPS and USACE, dated April 26, 2011, attached hereto and incorporated by this reference, and in the event of a conflict between the MOA and this IA, the MOA shall control."
- (3) Reference to the Applicable Laws as defined in Article IX, herein, any pertinent agency guidance;
- (4) Schedules;
- (5) Funding arrangements;
- (6) The Ordering and Servicing Agencies' respective lines of accounting, to include the appropriation department code, the appropriation fiscal year, the appropriation symbol, the date upon which cited funds expire, and the appropriation limitation associated with the order;
- (7) Identification of individual project managers;
- (8) Identification of existing contracts to be used (if known);
- (9) Types and frequencies of reports;

(10) Identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software, and intellectual property, and contract audits;

(11) Procedures for amending or modifying the IA;

(12) Such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods or services; and

(13) An Economy Act determination for each action supported by a Determinations and Findings, as outlined in FAR 17.503, and, for non-Economy Act Agreements, a justification for the Agreement signed by the program office.

b. Goods or services shall be provided under an IA only after an appropriate IA has been signed by a representative of each party authorized to execute that IA. When NPS is the Ordering Agency, a warranted contracting officer from NPS must sign the IA. When USACE is the Ordering Agency, a warranted contracting officer from USACE must sign the IA.

ARTICLE VI. RESPONSIBILITIES OF THE PARTIES

a. Responsibilities of the Servicing Agency under each IA.

(1) The Servicing Agency shall provide the Ordering Agency with goods or services in accordance with the purpose, terms, and conditions of this Agreement and with specific requirements set forth in IAs and implementing arrangements.

(2) The Servicing Agency shall ensure that only authorized Servicing Agency representatives sign IAs.

(3) The Servicing Agency may provide goods or services either by contract or in-house effort.

(4) The Servicing Agency shall provide detailed periodic progress, financial, and other reports as outlined in the IA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

(5) The Servicing Agency shall inform the Ordering Agency of all contracts entered into under each IA prior to the execution of the contract when practicable or otherwise as soon as practicable after execution.

b. Responsibilities of the Ordering Agency under each IA.

(1) For each Economy Act IA entered into under this Agreement, the Ordering Agency shall complete an Economy Act Determination and Finding (“D&F”) as required by FAR 17.5. The D&F shall be supplied to the servicing agency with each order.

(2) The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this Agreement and shall certify, at the time of signature of the IA, the availability of funds necessary to accomplish that IA.

(3) The Ordering Agency shall ensure that only authorized Ordering Agency representatives sign IAs.

(4) The Ordering Agency shall develop draft IAs to include scope of work statements.

(5) The Ordering Agency shall obtain for the Servicing Agency all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from State and local agencies, as necessary during the execution of each IA.

ARTICLE VII. FUNDING

a. Subject to the availability of funds and as set forth in Article XI.a., the Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under an IA. The Ordering Agency will reimburse the Servicing Agency for the goods or services provided except in instances where the parties establish in advance, and in writing, a different payment. The Servicing Agency shall use the Intragovernmental Payment and Collection system (IPAC) to bill the Ordering Agency monthly for costs incurred, using Standard Form (SF) 1081, Voucher for Transfers between Appropriations and/or Funds. The Ordering Agency shall reimburse the Servicing Agency within 30 days of receipt of an SF 1081. Each billing shall include sufficient detail to support the costs (such as labor, materials or contracted work) incurred to date.

b. If the Servicing Agency forecasts its actual costs under an IA to exceed the amount of funds available under that IA, it shall promptly notify the Ordering Agency of the amount of additional funds necessary to complete the work under that IA supported by justification for cost overrun. The Ordering Agency shall either provide the additional funds to the Servicing Agency, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that IA.

c. Within 90 days of completing the work under an IA, the Servicing Agency shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Servicing Agency shall return to the Ordering Agency any funds advanced in excess of the actual costs as then known. Such an accounting shall in no way limit the Ordering Agency's duty [in accordance with Article XI] to pay for any costs appropriately charged to the Ordering Agency which may become known after the final accounting.

ARTICLE VIII. SMALL BUSINESS CREDIT

Any contract actions executed by the Servicing Agency on behalf of the Ordering Agency will allocate the socio-economic credit to the Ordering Agency at the lowest FIPS 95-2 Agency/Bureau component as identified by the Ordering Agency. If the code is not provided, the Servicing Agency will allocate the credit to the highest Ordering Agency FIPS 95-2 Code.

ARTICLE IX. APPLICABLE LAWS

This Agreement and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States, including without limitation:

- a. The Economy Act, as it may be revised or amended, and case law interpreting or applying the Economy Act;
- b. Federal Acquisition Regulation (FAR) Subpart 17.5, as it may be revised, supplemented or amended;
- c. Office of Management and Budget's (OMB) Business Rules for Intragovernmental Transactions, 2006, as it may be revised, supplemented or amended;
- d. OMB /Office of Federal Procurement Policy's Interagency Acquisitions, June 16, 2008, as it may be revised, supplemented or amended; and
- e. NPS and USACE directives, policies, guidance and procedures pertaining to Interagency Agreements governed by FAR Subpart 17.5, as they may be revised, supplemented or amended.

Unless otherwise required by law, all contract work undertaken by USACE shall be governed by USACE policies and procedures and all contract work undertaken by NPS shall be governed by NPS policies and procedures.

ARTICLE X. CONTRACT CLAIMS AND DISPUTES

a. All claims and disputes by contractors arising under or relating to contracts awarded by the Servicing Agency shall be resolved in accordance with Federal law and the terms of the individual contract. The Servicing Agency shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613), which specifies the pertinent claim and appeal procedures and the cognizant board of contract appeals. For contracts awarded by USACE, the Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. For contracts awarded by NPS, the Civilian Board of Contract Appeals (CBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or CBCA, the contractor may bring an action directly to the United States Court of Federal Claims.

b. The Servicing Agency shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The Servicing Agency shall notify the Ordering Agency of any such litigation and afford the Ordering Agency with an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations. No settlement shall be authorized by the Servicing agency unless and until the Ordering Agency has agreed and obligated the funds.

ARTICLE XI. AGREEMENT TERMINATION, DISPUTES, AND PROTESTS

a. If a contract or order awarded pursuant to this Agreement is terminated or cancelled or a dispute or protest arises from specifications, solicitation, award, performance or termination of a contract, appropriate action will be taken in accordance with the terms of the contract and applicable laws and regulations. If liability of any kind is imposed on the United States relating to the Servicing Agency’s provision of goods or services under this MOA, the Servicing Agency will accept accountability for its actions—including, but not limited to, providing full information, reporting, details, and/or testimony regarding its conduct and actions to the relevant Executive Branch entities and Congress—but the Ordering Agency shall be responsible as the program proponent for all costs associated with termination, disputes, protests, and related costs, including settlement costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming, or other means. Should the Ordering Agency have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming, or other means, it remains responsible for seeking additional funds from Congress for such purpose, although nothing in this Agreement shall be construed to imply that Congress will appropriate funds sufficient to meet such a liability. The Servicing Agency shall consult with the Ordering Agency before agreeing to a settlement or payments to ensure that the Servicing Agency has adequate time in which to raise or address any fiscal or budgetary concerns arising from the proposed payment or settlement.

b. Notwithstanding the above, this Agreement does not confer any liability upon the Ordering Agency for claims payable by the Servicing Agency under the Federal Tort Claims Act. Nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party, and no third party is intended to be a beneficiary of this Agreement.

ARTICLE XII. DISPUTE RESOLUTION.

The parties agree that, in the event of a dispute between the parties, the NPS and USACE shall use their best efforts to resolve that dispute in an informal fashion at the lowest effective level through consultation and communication, or other forms of non-binding alternative dispute resolution. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it through their appropriate organizational channels to the Office of Management and Budget for resolution.

ARTICLE XIII. REVIEW OF AGREEMENT

The parties agree to review jointly the terms and conditions of this Memorandum of Agreement at least annually. Appropriate changes will be made by modification to this Agreement executed in accordance with ARTICLE XVII.

ARTICLE XIV. PUBLIC INFORMATION

a. Justification and explanation of NPS programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of NPS. USACE may provide, upon request, any assistance necessary to support NPS' justification or explanations. In general, NPS is responsible for all public information relevant to NPS programs or projects. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The NPS or USACE shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAs under this Agreement.

b. Justification and explanation of USACE programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of USACE. NPS may provide, upon request, any assistance necessary to support USACE justification or explanations. In general, USACE is responsible for all public information relevant to USACE programs or projects. NPS may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. USACE or the NPS shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAs under this Agreement.

ARTICLE XV. PRINCIPAL REPRESENTATIVES

For guidance as to how to use this IA in Interagency Acquisitions, please contact the following:

FOR USACE:
Don Kisicki
Interagency and International Services Directorate
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20301
(202) 761-8880

FOR NPS:
Colina A Rivetts
Contracting Officer
National Park Service
P.O. Box 25287, MS WCP
Denver, CO 80225
(303) 969-2407

For other questions about this MOA, please contact:

FOR USACE:
Don Kisicki
Interagency and International Services Directorate
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20301
(202) 761-8880

FOR NPS:
Bernard C. Fagan
Chief, Office of Policy
National Park Service
1201 Eye Street, NW, 12th Floor
Washington, DC 20005
202-354-3951

ARTICLE XVI. MISCELLANEOUS

a. Other Relationships or Obligations. This Agreement establishes a national framework for cooperation between NPS and USACE. It shall replace and supersede any general agreements or expired project-specific agreements, and shall be used as the national and regional vehicle for future acquisitions. However, this Agreement shall not affect any unexpired, ongoing project-specific agreements or obligations between the NPS and USACE. Moreover, this agreement shall not prevent the Parties from establishing more specific MOAs for certain areas. If a party is unsure whether this Agreement, in whole or in part, or a pre-existing agreement should be controlling in a given circumstance, the party should contact its designated representative, listed under Article XV.

b. Survival. The provisions of this Agreement that require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement provided the IA was executed prior to the expiration of this Agreement.

c. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XVII. AMENDMENT, MODIFICATION, AND TERMINATION

This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this Agreement by providing written notice to the other party. The termination shall be effective upon the sixtieth (60) calendar day following notice, unless a later date is set forth. In the event of termination, in all circumstances the Ordering Agency shall continue to be responsible for all costs incurred by the Servicing Agency under this Agreement, and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVIII. EFFECTIVE DATE

This Agreement shall become effective when signed by both the National Park Service and the Department of the Army on behalf of USACE. The Agreement will be in effect for five (5) years from the date of the final signature.

Department of the Interior

Department of the Army

Heidi M. Ernst

St L Stockton

Heidi M. Ernst
Chief of Contracting
National Park Service

Steven L. Stockton
Director of Civil Works
U.S. Army Corps of Engineers

26 April 2011

26 APR 2011

Date

Date

Jonathan B. Jarvis
Jonathan B. Jarvis
Director
National Park Service

Jo-Ellen Darcy
Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

April 26, 2011

April 26, 2011
Date

Date

AREAS OF COOPERATION
Attachment to the
MEMORANDUM OF AGREEMENT (P11PG00072)
between the
NATIONAL PARK SERVICE
and the
U.S. ARMY CORPS OF ENGINEERS

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I. Mission of Each Organization

A. The National Park Service (NPS) preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

B. The U.S. Army Corps of Engineers (USACE) provides planning, design, cultural resources management, and construction services to civil and military customers, and other agencies, worldwide. USACE develops, manages, protects, and improves the Nation's water resources, including related natural and cultural resources, consistent with the ecosystem management principles. In addition, USACE provides quality public outdoor recreation experiences to serve the needs of present and future generations. USACE uses a project management business process to deliver quality products and services in partnership with the private sector and stakeholders.

II. Existing Responsibilities

A. The NPS and USACE each have responsibilities for complying with and/or carrying out legal requirements, policies, and programs established by or under such statutes as the National Environmental Policy Act, Clean Water Act, Clean Air Act, Federal Water Pollution Control Act, Wilderness Act, Endangered Species Act, National Historic Preservation Act, Archaeological Resources Protection Act, Wild and Scenic Rivers Act, National Trails System Act, Native American Graves Protection and Repatriation Act, 36 CFR Part 79: Curation of Federally-owned and Administered Archeological Collections, and other applicable Executive orders, public laws and Federal regulations. Both agencies recognize that the policies, programs, plans, and activities used to carry out their respective responsibilities may have an effect on the policies and programs of the other agency.

B. Each agency retains its full responsibility and authority to execute and accomplish its programs and carry out its jurisdictional responsibilities. The identification of areas of mutual interest or concern will not predetermine certain types of work or projects or that any level of work will be required from either agency.

III. Overview and Purpose

A. There are many opportunities for Federal agencies such as the NPS and USACE to cooperate in carrying out their respective responsibilities in the management of lands, water, and facilities under their respective jurisdictions. Opportunities also exist for the agencies to provide each other with needed technical expertise. Cooperative activities and technical assistance efforts could help: (1) improve environmental stewardship, natural and cultural resources management and protection; (2) improve public and visitor services; (3) enhance research and data collection capabilities; (4) provide a better understanding of each agency's goals, objectives, and programs; (5) improve stewardship and interpretation of heritage assets, and (6) avoid, resolve, and manage conflicts.

B. The purpose of this document is to:

1) Serve as an attachment for the Memoranda of Agreement (MOA), Number P11PG00072, between NPS and USACE to illustrate systemic issues and challenges that can be addressed with a spirit of cooperation.

2) Provide examples and possible funded projects under the Economy Act and other appropriate authorities. Not all cooperation efforts or projects envisioned by the agreement will require funding. A number of work and discussion areas of mutual interest to both agencies have been identified below in Section V: Areas of Cooperation.

3) Improve public services and management of natural and cultural resources through harmonious and effective cooperative interagency efforts. When appropriate, interagency efforts may include joint research; coordinated ecosystem management, restoration and protection activities; joint curation partnerships; interpretation; collaborative permitting and planning for resource protection, recreation and visitor use and safety.

4) Establish the policy framework for formal and informal coordination and communications between officials at each level of NPS and USACE.

5) Encourage the use of USACE water resources and water-related design and construction expertise, and construction inspection services on NPS projects, and mutually share expertise in project management, project tracking systems and software, design, development and construction management.

6) Share the knowledge and expertise of each agency in the areas of natural and cultural resources; recreation; wild and scenic rivers management; environmental restoration; national scenic, historic, and recreation trails; transportation planning; interpretation; and facility design and construction.

7) Establish a policy of coordination under which project/issue-specific agreements may be developed at all levels. NPS regional directors and USACE division and district commanders, and other offices at the Washington and field levels are encouraged to develop partnerships and supplemental agreements as appropriate.

8) Foster relationships at the lowest effective program and office levels, and the early identification of potential conflicts in the plans, programs, and activities in each agency in order to manage conflicts whenever possible for constructive outcomes, and to facilitate the collaborative resolution of conflicts that may develop.

IV. Communication, Coordination, and Consultation

In order to foster the sharing of information and to facilitate contact between the two agencies, it should be the goal of field offices of USACE and park units and programs of NPS to establish a working relationship through the direct contact of field staff, as appropriate. NPS and USACE should provide each other with a list of points of contact responsible for program areas and other areas of mutual interest. These points of contact should function as liaisons on items of mutual interest and communicate on opportunities to meet. Early communication should improve public services and resources management consistent with the above mission statements, for both agencies through increased efficiency and management of potential or long standing conflicts. Coordination should occur for planning, permitting, programs, and other management actions of mutual interest. Frequent informal consultation should occur at all levels and early in the planning and environmental assessment processes to ensure that concerns about potential impacts are raised before the scope of a proposed project or action has been finalized (whether internally or externally).

A. **Washington Office Coordination.** To fulfill two important goals and objectives of the agreement between NPS and USACE, the two agencies should: (1) provide a forum to address systemic issues in a spirit of cooperation at the national level, (2) share knowledge and expertise on policies, practices, and management philosophies on a recurring basis, and (3) examine opportunities and best practices to manage conflict.

B. **Field Office Coordination.** Frequent informal consultation on matters of mutual interest should be encouraged at all levels, but especially between NPS park units and USACE field offices. Consultation should be initiated by either party when circumstances suggest that such consultation should be in the public interest or help further the goals of each organization. NPS park units, Denver Service Center, Natural Resource Program Center, regional offices, and USACE centers of expertise and districts should be the primary offices through which field coordination takes place. Each party should be responsible for ensuring that appropriate offices of its organization are involved whenever appropriate. On matters of mutual interest, NPS regional directors should determine which of their respective offices should be the focal point for coordination, including referral to other park units.

C. Conflict Management. The agencies agree that, in the event of a conflict or dispute between the agencies, NPS and USACE should use their best efforts with manager support to resolve that dispute first at the lowest effective organizational level in an informal fashion through consultation and communication, or other forms of mutually acceptable non-binding alternative conflict or dispute resolution. In that regard, managers and employees should be routinely encouraged to attempt to settle any dispute or controversy arising out of their respective responsibilities through collaboration, consultation and negotiation in good faith and in a spirit of cooperation. Appropriate conflict management resources should be used to resolve complex issues or those that need to be addressed at higher levels.

V. Areas of Cooperation and Mutual Interest

Areas for possible collaboration are listed below. The items listed are not intended to be all inclusive. As the partnership develops, it is likely that other areas of cooperation and mutual interest may be identified at all levels by the parties.

A. Information Sharing. Both agencies collect and store data of mutual interest including topics such as stream gauging, visitation (including economic impacts), facilities data and information on cultural resources and landscapes. Sharing of this information may be appropriate in some cases, providing that such collection and storage of those data does not inhibit or violate either agency's applicable statutory or regulatory responsibilities to maintain security or confidentiality. Various sharing mechanisms and ways to make data more understandable and accessible to agency staff should be explored. For example, collaborative research, evaluation or other data gathering for the purpose of enhancing understanding of the visitor safety problems and for improving intervention strategies to prevent or mitigate injury and illness may be conducted. Other examples of data sources include research designs, thematic studies, conference reports, formal agreement documents, NPS cultural resources centers and regional interagency assistance programs, USACE historic properties and NAGPRA data bases, Cooperative Ecosystem Studies Units (CESU), and the Defense Environmental Network and Information Exchange (DENIX) data base forum.

B. Training and Education. NPS and USACE each have many excellent training programs. These training opportunities should be shared to encourage education and training of employees. In addition, interagency developmental assignments should be encouraged where practicable and beneficial to the agencies.

C. Design and Construction Expertise. Both agencies should explore opportunities to share best management practices and expertise in design and construction activities. As appropriate, joint teams should be developed and integrated to solve problems and present best solutions. For example, in certain formally designated historic districts with multiple ownerships it may be appropriate for lead responsibilities regarding engineering issues to be undertaken by USACE while lead responsibilities for cultural resources preservation are undertaken by NPS. In other cases, it may be appropriate for the USACE to lead both engineering and cultural resource actions. Generally, the expertise of each agency should be taken into account for the program, project, or activity involved

and agency efforts should be and integrated into a single seamless design approach.

D. Value Engineering and Value-based Decision-making. Both agencies have value analysis/engineering programs that evaluate planning, design, construction and other administrative programs and projects. The agreement offers the opportunity to share value analysis methodologies, to train and share value study facilitators, and to enrich value study teams with expertise and independent perspectives from the other agency. For example, a value study on NPS housing project would benefit from a USACE expert on armed services housing sitting on the team. Similarly, an Army project involving historic assets would benefit from a NPS historical architect participating on a value study. The USACE has in-house architectural historians and architects who can also do this work. The over-arching goal is to improve value-based decision-making and to ensure value for the taxpayer's investment, while meeting the statutory and regulatory requirements for VE.

Controlling authorities include (but are not limited to) the Office of Federal Procurement Policy Act, as amended by Public Law 104-106 (OFPPA, 41 USC 432), dated February 10, 1996, requires each executive agency to establish and maintain a Value Engineering program. The implementation directive of the Public Law is the President's Office of Management and Budget (OMB) Circular No. A-131, dated May 21, 1993, requires federal departments and agencies to use Value Engineering (VE) as a management tool to reduce program and acquisition costs on all federal projects/programs over \$1 million total costs. (Note: Although the \$1 million total cost is applicable to USACE, NPS has adopted a \$500,000 cost threshold.)

E. Interpretation and Media Expertise. USACE and NPS should work together when appropriate, to incorporate NPS and USACE expertise in the creation of interpretive and educational media for the public. The interdisciplinary teams of project managers, planners, designers, filmmakers, curators, cartographers, conservators, and writers at the NPS's Harpers Ferry Center for Media Services should be considered when the USACE has a need for interpretive and educational media that it cannot produce in-house. The extensive experience of the Center's staff, supplemented by its nationwide network of media contractors, can bring diverse perspectives to the task of creating interpretive and educational media to reach and inform the public.

F. Emergency and Post-Disaster Operations. The use of USACE construction capabilities should be considered, as appropriate, when NPS needs to restore park and visitor services to pre-storm conditions or is in need of emergency storm or other disaster assistance.

G. Global Climate Change Adaptation. Responding to the effects of climate change on the Nation's riverbanks, lakes, and coastal areas, (e.g. lake level drop or sea level rise) may draw upon the special capabilities of USACE and NPS to address and interpret these changes to the American public. New approaches to natural disaster emergency preparation and recovery strategies should be explored for coastal storms, hurricanes, and tornadoes, as well as stream siltation based on potentially more frequent and intense wild land fires.

H. Conflict Management. Both agencies should foster best management practices to promote open and frequent communications to constructively manage conflict at the earliest opportunity, and at the lowest appropriate working levels. It may be beneficial for individual project agreements to contain specific language on roles and responsibilities of both agencies to resolve conflicts, and identify particular resources as appropriate, that could be used in the event of deeper conflicts.

I. USACE Regulatory Program. The USACE is responsible for administering a Regulatory Program to protect the Nation's aquatic resources, including wetlands, under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. These statutes apply to work and/or discharges of dredge or fill materials in waters of the United States, including wetlands, on Federal and private lands. The USACE's permit regulations are found at 33 CFR Parts 320-332. The agencies are encouraged to collaborate to develop regional and local processes, protocols, or procedures to facilitate effective and efficient coordination of activities that may affect natural and cultural resources managed by the NPS and aquatic resources regulated by USACE. This may include the development of procedures for coordination with NPS units when proposed activities requiring a general or individual permit have the potential to directly or indirectly affect NPS resources. Additionally, the agencies may collaborate on the development and use of general CWA permits, and coordinate to utilize each other's respective expertise when identifying and evaluating impacts to natural and cultural resources, including historic properties. The agencies should also work together to develop strategies to avoid and minimize impacts, and mitigate for unavoidable impacts, to these resources.

J. NPS Authorities Under the Wild and Scenic Rivers Act. NPS has statutory management and regulatory responsibilities under the Wild and Scenic Rivers Act (WSRA) on NPS and partnership wild and scenic rivers, and wild and scenic rivers managed by states or tribes under Section 2(a)(ii) of the WSRA. In addition, NPS has coordination and consultation responsibilities for over 3,400 river segments listed in the National Rivers Inventory. WSRA Section 7 requires NPS to make a determination regarding direct and adverse effects and/or unreasonable diminishment of resource values prior to the permitting, funding, or other assistance in the construction of a water resources project on wild and scenic rivers and their tributaries, and rivers above and below wild and scenic rivers. NPS and USACE should continue to collaborate on national, and when appropriate, regional procedures for improving communication and evaluating/authorizing activities where NPS has management and/or regulatory WSRA responsibilities and USACE has management and/or regulatory authority under Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. NPS and USACE should work together to explore, develop and provide training at both the executive and field office levels for NPS WSRA and USACE Rivers and Harbors Act and Clean Water Act responsibilities.

K. Joint Responsibilities for Components of the National Trails System. Although USACE does not have administrative responsibilities for any of the national scenic and historic trails established under authority of the National Trails System Act (16 USC

1241-51), it does have management jurisdiction for hundreds of miles of waterways associated with certain trails (e.g. Trail of Tears NHT, Lewis and Clark NHT, etc.). In addition, USACE manages dozens of national recreation trails also recognized under this authority. In 2006, NPS and USACE (along with four other agencies) co-signed *The National Trails System Memorandum of Understanding*. Coordination for National Trails System activities largely occurs within the Federal Interagency Council on Trails. Both agencies should participate in that Council to foster appropriate coordination.

L. Floodplain and River Management. NPS and USACE should share expertise in the management of floodplain and river resources when appropriate, including the restoration of river and floodplain habitats and the identification and management of heritage assets for which both agencies have mutual interests and/or cooperative responsibilities.

M. Dredging. The NPS is required by law, regulations, and policies to conserve park resources and values. USACE has the responsibility for evaluating and authorizing proposals to conduct dredging activities in the “waters of the United States,” including many wetlands. Some Congressionally-authorized USACE projects take place in or near NPS units. To avoid and minimize potential conflicts, the NPS and USACE districts should work together to enhance their cooperation during the National Environmental Policy Act process, the USACE section 10 and section 404 evaluation process, NHPA Section 106 Compliance review, and the NPS processes for authorizing these activities internally. The agencies should consider increased collaboration for USACE performing its’ navigation mission in accordance with NPS special use permits or plans acceptable to the NPS and consistent with park purposes.

N. Coastal Engineering Structures. The two agencies should work together to explore possible USACE assistance with an inventory of coastal engineering structures on park lands. Many of these coastal engineering projects were completed by USACE. The NPS could then use the data and records to establish past and ongoing levels of coastal engineering activity in the National Park System. Some of those structures may meet criteria for eligibility for designation to the National Register of Historic Places.

O. Asset Management. NPS and USACE should work together to exchange information such as metrics, inventory components, plan development and methodology, data standards, best practices, and lessons learned in implementing and sustaining asset management programs, in accordance with Executive Order 13327, “Federal Real Property Asset Management.”

P. Facilities Management and Recreation Management. NPS and USACE staffs should explore collaboration on the following items: (1) sharing recreation and use trends information including economic analyses, diversity studies, and associated training efforts; (2) sharing and using the other agency’s training programs related to recreation, wild and scenic river management, and natural and cultural resources management; and (3) sharing relevant research information and discussing national initiatives related to park and recreation facilities management and recreation management.

Q. Heritage Asset Management. USACE and NPS each have responsibilities for cultural resources and tribal programs. NPS and USACE each have many excellent training programs. The two agencies have already worked closely together in the development and implementation of such offerings as, “Historic Structures Maintenance and Repair.” NPS and USACE should consider the potential for partnering in the development of additional training for heritage asset specialists, managers, and staff to foster innovation in management and to heighten an awareness of stewardship responsibilities at all organizational levels.

R. Visitor Safety. NPS and USACE should identify opportunities to share data, tools and other resources to: (1) enhance visitor safety and prevent injuries among park visitors; (2) share information about newly identified or recreational hazards; (3) share best practices for both assessing and mitigating hazards; and (4) strategize solutions for addressing common safety problems, including partnering on specific safety initiatives.

S. Abandoned Mine Lands (AML). NPS and USACE should seek opportunities to collaborate on the mitigation of, and address public safety and health issues on, NPS AML sites. In providing assistance to NPS, USACE efforts could include, but would not necessarily be limited to, the following areas:

- technical assistance on restoration and hazard mitigation work at NPS AML sites;
- contracting expertise and support;
- public safety and awareness program support;
- support in developing remediation costs and other project budget estimates;
- monetary or in-kind support for the mitigation of high priority AML projects.

T. Efficient and Renewable Energy Technologies. Both agencies should promote and accelerate the use of energy-efficient and renewable energy technologies and sustainable practices in our national parks, facilities, and offices. These efforts must be consistent with NPS policy and park protection goals and should be made visible to the public.

The national parks are ideal places to showcase the Federal Government's commitment to both promoting energy-efficient and renewable energy technologies and practices, and reducing the environmental impacts associated with pollution and global climate change. Furthermore, the concept of educating the public about energy use conforms nicely with the overall National Park Service mission of protecting our nation's natural and cultural resources and interpreting the significance of those resources for all Americans. Likewise, USACE is well-positioned to demonstrate for the American public and private industry the opportunities that currently exist to accelerate the transition to a sustainable energy future.

According to Executive Order 13423: “Strengthening Federal Environmental, Energy, and Transportation Management” signed on January 24, 2007, Federal agencies are required to “conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.” In addition, Executive Order 13514: “Federal Leadership in Environmental,

Energy, and Economic Performance" signed on October 5, 2009, instructs Federal agencies to establish an integrated strategy towards sustainability in the Federal Government and to make reduction of greenhouse gas emissions a priority.

The USACE – NPS partnership will help both agencies fulfill the ideas expressed in the "Rethinking the National Parks for the 21st Century" report, the actions called for by the President in the January 24, 2007 Executive Order, and more broadly the provisions in the Energy Policy Act of 2005.

To fulfill the purpose of this partnership USACE and NPS will work together to:

- Identify opportunities to expedite the deployment and promotion of efficient and renewal energy technologies in our national parks, projects/facilities, and offices;
- Prioritize key deployment and promotional opportunities based on the greatest impact for reducing energy use and ability to utilize and promote renewable energy technologies in national parks areas, projects/facilities, and offices; and
- Recognizing USACE limitations stated in the Joint Ethics Regulations and any NPS limitations, develop new and expand existing partnerships with the academic, non-profit, and private sectors as appropriate to help deploy and promote the use of energy efficiency and renewable energy technologies in national parks, projects/facilities, and offices.
- NPS and USACE will work to identify ways to reduce energy/water consumption of historic structures consistent with maintaining their historic character and integrity.

U. Tourism. Both agencies have MOU signatory relationships with the Western States Tourism Policy Council and the Southeast Tourism Policy Council respectively. On that basis, NPS and USACE will continue efforts to support tourism partnerships with state, local, and tribal destination marketing organizations. These tourism partnerships will assist in extending the respective communications capabilities of the agencies. Such extended outreach enables joint messages of conservation, healthy recreation, wise use and safe use to be extended to a larger audience of potential visitors.

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