Various Partnership Agreement Definitions

This information is provided solely to help you gain a general understanding of various non-contract arrangements to accept work or funds or to provide work or funds. Be sure to coordinate fully with your Office of Counsel any "real life" situations.

Partnership Arrangements Involving the Transfer of Funds, Materials, or Services to the Corps

1. **Challenge Partnerships** – Public Law 102-580, and Section 225 of the Water Resources Development Act of 1992 authorizes the Secretary of the Army to enter into partnership agreements with non-federal public and private entities to provide for operation and/or management and development of recreation facilities and natural resources at water resource development projects, where such facilities are being maintained at full federal expense. This program allows the Corps to accept funds, materials, and services in the above circumstances; it does not permit the Corps to reimburse for services. 33 U.S.C. 2328, ER 1130-2-500 and EP 1130-2-500 set forth the parameters of challenge partnerships. Note that these are NOT cooperative agreements as described by the Federal Grant and Cooperative Agreement Act, and therefore are not subject to the FGCAA or the DoD regulations governing the use of FGCAA cooperative agreements. The contributed resources are combined with regular project resources to accomplish work within current authorities and contained in the annual or five-year plan in the approved operational management plan. Work is generally accomplished during one fiscal year.

2. **Cooperating Associations** – Cooperative agreements can be entered with a tax-exempt non-profit organization that volunteers services to the Corps. Cooperating associations are tax-exempt, non-profit organizations that financially support and volunteer services to Corps civil works projects. Cooperating associations are used to accomplish such broad goals as natural resources management, interpretation, and visitor service activities at civil works water resource projects, fee-owned lands, and other areas for which the Corps has administrative and management responsibilities. This authority is spelled out in ER 1130-2-500, Chapter 9.

Note: These cooperative agreements are not the same type of cooperative agreements as covered under the Federal Grant and Cooperative Agreement Act and used by other federal agencies.

3. **Volunteer Agreements** – The Corps is authorized to accept the services of volunteers to carry out any activity except policy-making or law enforcement. This authority is spelled out in ER 1130-2-500, Chapter 10, "Volunteer Program" and provides guidance for the program. These agreements allow the Corps to accept the services of volunteers and to provide for their incidental expenses. They are used when free labor is the sole item of value transferred from a partner(s) to the Corps.

4. **Contributions Program** – This program authorizes the acceptance of contributions from groups and individuals geared toward environmental protection and restoration and recreation. Contributions must be within current authorities, consistent within the Corps mission, and for work items contained in an approved annual 5-year operational management plan. There is no agreement or contract in this program. Contributions to provide for operation and management of recreation facilities and protection and restoration of natural resources at civil works water

resource projects can be accepted and used, as provided by PL 102-580, Water Resources Development Act, 1992 (106 Stat. 4838), and 33 USC 2328, Sec. 203. See ER 1130-2-500, Chapter 11 for guidance.

Memorandums of Understanding/Agreement

These "agreements to agree" or umbrella agreements are often used interchangeably, although they probably should not be. MOUs and MOAs are used to coordinate the Corps' authorized activities with another entity. HQ USACE tends to utilize MOUs for simple common-cause "agreements to agree," and MOAs to establish common legal terms that will be read into Support for Others reimbursable orders documents that are developed a little later.

MOUs often state common goals and nothing more. Thus, MOUs do not contemplate funds transfers and should usually include language that states something similar to: "This is not a funds obligating document; by signing this agreement the parties are not bound to take any action or fund any initiative." They may be used to run a program a certain way so that it functions better with the program of a sister agency, for example.

MOAs, on the other hand, often establish common legal terms that will be read into every reimbursable order that follows. MOAs do not obligate any funds of themselves but they establish the terms for future service and cite one of the appropriate authorities to do so. Note that neither MOUs nor MOAs can to be used independently to obligate or receive funds or services beyond those separately authorized, and that any MOA or MOU with outside entities should be made in accordance with independent Corps policies and authorizations.

Cooperative Agreements and Grants. The Federal Grant and Cooperative Agreement Act of 1977 (FGCAA) sets forth requirements to use cooperative agreements and grants to transfer funds to non-federal entities. However, use of cooperative agreements must be specifically authorized, and the FGCAA does **not** provide such authority. There is no general authority for the Corps to use cooperative agreements. An exception is section 213 of WRDA 2000, which authorizes the use of cooperative agreements for services relating to natural resources conservation or recreation management that involve programs fulfilling educational or training purposes, such as the work of the Student Conservation Association. These agreements are not subject to the FGCAA but are subject to the DoD regulations governing cooperative agreements.

The Economy Act – The Economy Act of 1932, as amended, 31 U.S.C. 1535, authorizes an agency to place orders for goods and services with another federal agency (or a major organizational unit of an agency). It can be used when: 1) funds are available, 2) the head of the ordering agency determines that it is in the best interest of the government, and, 3) the head of the ordering agency decides that ordered goods or services cannot be provided as conveniently or cheaply by contract with commercial enterprise. These must be shown by a Determination and Findings (D&F) document, prepared by the ordering agency. The performing agency must be able to provide the goods or services in-house or by contract, and parties should verify under Part 8 of the FAR that the responsibility for this good or service is not assigned to another agency of the federal government. Authority for the ordering agency to do the work in question must be independently authorized. It should be noted that funds made available to the performing

agency, but not yet obligated by the performing agency, are de-obligated and returned to the ordering agency at the end of their period of availability.

The Economy Act cannot be used for partnerships with non-federal entities, and is only used with federal agencies when another more specific transfer authority is not available. (Some agencies have their own transfer authorities that do not include de-obligation requirements and D&Fs, such as Section 632 of the Foreign Assistance Act, which the Corps may accept under the Chief's Economy Act (see below)). Also, when entering into an Economy Act agreement with a non-DoD entity, the Corps must enter into an agreement by which the ordering agency agrees to pay all costs.

Real Estate Outgrants

1. **Lease** - This document conveys possessory interest, usually exclusive. It is granted for a specific period of time and for a specific consideration. It contains authorized uses and restrictions on use. This is used when partner needs exclusive use or property interest for financing or funding raising reasons or a possibility exists for damage to property or possibility of legal claims

2. **License** - This document is evidence of permission granted and the obligations, responsibilities and liabilities imposed. It authorizes an act that would otherwise be considered a trespass. Rent may or may not be required in a license. It is revocable at will, not assignable, does not require competition, and the use of federal property is not exclusive. This document is used when the duration of the use is short term (1-5 years), but longer that a special event, and there is a need to document obligations, responsibilities and liabilities associated with real property use.

Special Event Agreement

The special event permit provides written permission of the district commander for any conduct or action which otherwise would constitute a violation of Corps regulations. Special conditions should be developed with protecting the resources and promoting safe and healthful recreation as main factors of consideration. The special event permit is often used to allow non-profit partners to conduct activities on project lands. Permit fees will NOT be charged for a permit authorized for non-profit organizations. The presence of any, or all, of the following criteria constitutes a special event:

1) Inviting the public.

2) Charging an entrance or participation fee.

3) Major coordination with project staff, as determined by the operations manager.

The special event permit regulation is expected to be finalized this FY.