



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

JAN 31 2017

CECW-CO-N

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS, AND CHIEFS, OPERATIONS DIVISIONS

SUBJECT: Partner-Funded Personnel

1. Purpose. This memo provides an updated Challenge Partnership Agreement template for acceptance of long-term Partner-funded services and explains the use of the program at all U.S. Army Corps of Engineers Civil Works projects.

2. References.

a. 33 U.S.C 2328, Section 225 of WRDA 1992, Challenge Cost-Sharing Program for the Management of Recreational Facilities.

b. 33 U.S.C 569(c), Services of Volunteers.

c. ER/EP 1130-2-500, Chapter 12, Project Operations – Partners and Support, Challenge Partnership Program.

d. Implementation Guidance for Section 1047(d) Services of Volunteers, of WRRDA 2014.

3. Background.

a. Paragraph 6.h.(1) of Implementation Guidance for Section 1047(d) Services of Volunteers, of WRRDA 2014 allows the Corps to accept the services of hosted workers, defined as "individuals from the private sector or state and local government agencies, whose employers are facilitating the donation of their employees' services to the Corps while still keeping them on their payroll, provided the services they render are truly voluntary. For an individual's services to be truly voluntary, the individuals must be allowed to independently choose whether they want to volunteer."

b. Subsequent to the Implementation Guidance, HQUSACE Counsel and the Army Office of General Counsel further determined that the authority provided under 33 U.S.C 569(c) does not allow for ongoing, long-term services paid by another entity. The hosted worker program is only intended for situations where an entity may have a program/policy that allows their workers to spend a limited number of work hours per week/month volunteering at various places or has "volunteer days" for their employees. In these situations, the person is not being paid specifically to do the volunteer work,

SUBJECT: Partner-Funded Personnel

but rather for their normal job. The employer is essentially giving their staff paid time off to volunteer.

c. HQUSACE Counsel has determined that the acceptance of Partner-funded personnel services on an ongoing long-term or indefinite basis at Civil Works projects is authorized by 33 U.S.C. 2328, Challenge Cost-Sharing Program for the Management of Recreational Facilities. This authority allows the Corps to accept contributions of services from non-federal public and private entities that have entered into a challenge partnership agreement, which may include a Partner paying for their personnel's labor to perform services for the benefit of the Corps, at no cost to the Corps.

4. Policy.

a. The legal status of the Partner-funded personnel providing services to the Corps under the authority of 33 U.S.C. 2328 differs from that of short-term hosted workers providing service under the authority of 33 U.S.C. 569(c).

(1) Long-term Partner-funded personnel do not receive protections under the Federal Employees Compensation Act (5 U.S.C. Chapter 81) and the Tort Claims Act (28 U.S.C. Chapter 171) that hosted workers receive pursuant to section 569(c).

(2) Long-term Partner-funded personnel are not authorized to receive reimbursements from the Government for incidental expenses that hosted workers may receive pursuant to section 569(c).

(3) The Partner-funded individuals offering the services will be considered employees of the partner organization that is funding them. Any pay, benefits or liability protection must be 100% provided by the Partner organization.

b. Partner-funded personnel services may only be accepted from adults, ages 18 or older.

c. Background checks for Partner-funded personnel are required according to the same guidelines provided under the Corps Volunteer Program. Services from persons who have been convicted of a violent crime, sexual crime, arson, crime with a weapon, sale or intent to distribute illegal drugs, or are an organized crime figure will not be accepted.

d. Partner-funded personnel may be authorized by the Government to operate, for official use, government-owned or leased vehicles, vessels, machinery or other specialized equipment if deemed appropriate and beneficial.

e. Partner-funded personnel may be authorized to sell permits and collect fees from the public at campgrounds, day-use facilities, visitor centers, administration offices and other locations where fee collection is normally performed as a government function.

SUBJECT: Partner-Funded Personnel

f. A signed Challenge Partnership Agreement between the Corps and the partner organization is required to accept the services of Partner-funded personnel. The agreement includes two addendums: a 'Partner-Funded Personnel Information Sheet', and a 'Partner-Funded Personnel Status Recognition Statement'.

(1) A new challenge partnership agreement template that differs from that which is provided in EP 1130-2-500, Appendix U is enclosed with this memo. This revised template and addendums will only be used for acceptance of services from long-term Partner-funded personnel. These documents were developed specifically for this situation due to provisions in the Appendix U model that are inapplicable to Partner-funded personnel, and omissions of necessary provisions in Appendix U to address the legal status of the individuals providing the services.

(2) District Commanders are responsible for the approval/execution of challenge partnership agreements within their district. Approval may be delegated to the Chief of Operations or Operations Project Managers in accordance with policy provided in ER 1130-2-500, Chapter 12.

(3) Challenge partnership agreements executed pursuant to this guidance must otherwise satisfy all requirements of 33 U.S.C. 2328 and ER/EP 1130-2-500 (e.g., the Corps must be maintaining applicable projects at complete Federal expense).

5. My point of contact for this policy memo is Ms. Heather Burke, National Partnership Program Manager. She may be reached at 503-808-4313 or heather.d.burke@usace.army.mil.

Encls



SUSAN S. WHITTINGTON
Acting Chief, Operations and Regulatory Division
Directorate of Civil Works

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT PARTNER]

(This is an EXAMPLE agreement. Modify as appropriate.)

THIS AGREEMENT, entered into this day of _____,
20____, by and between the Department of the Army (hereinafter the "Government"),
represented by the District Commander, U.S. Army Corps of Engineers
_____ District, and _____, (hereinafter the "Partner"),
represented by _____.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at *[Insert Corps project name here]* which includes recreational opportunities for the public, and

WHEREAS, the provision of *[List type of service here. i.e. education and interpretation, visitor information, environmental stewardship, facility improvement, trail maintenance, etc.]* services at *[Insert project site area]* on *[Insert Corps project name here]* will enhance the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing *[List type of service(s) here]* services, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make *[List type of service(s) here.]* services available to the public, and

WHEREAS, the Partner, in order to assist the Government in this project has offered to provide certain *[List type of service(s) here.]* services at no cost to the Government, and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, as amended (33 U.S.C. 2328) authorizes the Secretary of the Army to accept contributions of funds, materials, and services from the Partner and apply those contributions to the Project, and

WHEREAS, the Government and the Partner have the full authority and capability to perform as hereinafter set forth and intend to cooperate in accordance with the terms of this agreement;

NOW THEREFORE, the Government and the Partner agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

a. The term "[List type of service here.] services" shall mean the staffing of ___ individuals for an aggregate total of ___ hours per week for ___ month(s) at the [Insert project site area] on [Insert Corps project name here], as generally described in the [Specify the approved Master Plan or OMP], dated _____, 20___, and approved by _____ on _____, 20___.

b. The term "Partner-funded personnel" shall mean the non-Government employees, age 18 and older, listed in Addendum A to this Agreement whose salaries and benefits are 100% funded by the Partner.

c. This agreement in no way restricts the Government from participating in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations, and individuals.

ARTICLE II - PARTNER PROVIDED SERVICES

a. The Partner shall provide ___ Partner-funded personnel to staff the [List location here.] for a total of ___ hours per week for ___ month(s).

b. The Partner shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the provision of [List services here.] services at [Insert Corps project name here].

ARTICLE III – FUNDING AND STATUS OF PARTNER-FUNDED PERSONNEL

a. This Agreement is not intended to document nor provide for the exchange of funds between the parties. Each party is responsible for all costs of its personnel, including but not limited to pay and benefits, support, and travel. Decisions, agreements, and/or disputes regarding the pay and benefits of Partner-funded personnel are entirely the responsibility of the Partner and the Partner-funded personnel.

b. Partner-funded personnel are not considered federal government employees nor do they qualify as volunteers under 33 U.S.C. 569c. Accordingly, Partner-funded personnel are not eligible to receive the liability protection or work injury compensation benefits provided respectively under chapter 171 of Title 28 and chapter 81 of Title 5 of the United States Code. Additionally, the Government cannot provide for the incidental expenses of Partner-funded personnel as authorized for volunteers under 33 U.S.C. 569c. All Partner-funded personnel shall be required to sign a written statement recognizing their status and the limitations thereof. (Addendum B)

c. At the Government's sole discretion, Partner-funded personnel may be subject to background checks and requests for information regarding their general physical and mental fitness to perform assigned tasks. Background checks are required according to the same guidelines provided under the Corps Volunteer Program. Services from persons who have been convicted of a violent crime, sexual crime, arson, crime with a weapon, sale or intent to distribute illegal drugs, or are an organized crime figure will not be accepted. The Government may refuse to accept the services of any Partner-funded personnel who fail to meet the Government's security standards and/or who are unable to perform assigned tasks to the Government's satisfaction.

d. Partner-funded personnel may be authorized by the Government to operate, for official use, government-owned or leased vehicles, vessels, machinery or other specialized equipment if deemed appropriate and beneficial. Partner-funded personnel must have the proper training, license, and/or experience in accordance with Corps operator permit policies, before operating a government-owned or leased vehicle, vessel, or equipment. The Partner organization is liable for damages to government property if the Partner-funded personnel's negligence or willful misconduct is the proximate cause of the loss, damage or destruction of the government property.

e. Partner-funded personnel may be authorized to sell permits and collect fees from the public at campgrounds, day-use facilities, visitor centers, administration offices and other locations where fee collection is normally performed as a government function. The Government will ensure the Partner-funded personnel signs a statement on Addendum B that states the person accepts the risk and liability of handling government funds. The Government will also ensure that Partner-funded personnel are properly trained and provided a security awareness briefing prior to assignment of fee collection responsibilities in accordance with ER/EP 1130-2-550 Chapter 9.

ARTICLE IV - FEDERAL LAWS

In carrying out its obligations under this Agreement, the Partner shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

ARTICLE V - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Partner each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VI - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE VII - AMENDMENT, MODIFICATION AND TERMINATION

This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either Party may unilaterally terminate this Agreement by providing at least 30 days written notice to the other Party.

ARTICLE VIII - NOTICES

a. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Partner:

[TITLE]
[ADDRESS]

If to the Government:

District Engineer
_____ District
[ADDRESS]

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE IX - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander,
_____ District.

The Department of the Army

[PARTNER]

BY:

BY:

TITLE:

TITLE:

DATE:

DATE:

Addendum A
Partner-Funded Personnel Information Sheet

Project Name: [List district or division office, lake or river project.]

Corps Point of Contact: [List Corps personnel who will be supervising or coordinating work of Partner-funded personnel.]

Address: [List Corps office or project address.]

Phone: [List Corps point of contact phone.]

Partner: [List name of Partner organization providing personnel.]

Partner Point of Contact: [List Partner-funded personnel's supervisor.]

Partner Address: [List Partner organization address.]

Partner Phone: [List Partner-funded personnel supervisor's phone.]

Partner-Funded Personnel Name(s): [List name of personnel performing services for the Corps.]

Partner-Funded Personnel Phone(s): [List phone numbers of personnel performing services for the Corps.]

Proposed Dates of Work: _____

Work Schedule: _____ hours/week

Description of Services to be Performed: (Service description should include details such as use of government vehicle, use of personal equipment and/or vehicle, fee collection duties, skills required (note certifications if necessary), level of physical activity required, etc.)

Addendum B
Partner-Funded Personnel Status Recognition Statement

I *[INSERT FULL NAME OF THE INDIVIDUAL]* agree and understand that by providing my services to the U.S. Army Corps of Engineers (herein after “the Government”) as contemplated under the Challenge Partnership Agreement between the Government and *[INSERT NAME OF THE PARTNER]* (hereinafter “Partner”), executed on *[INSERT AGREEMENT EXECUTION DATE]*:

- I do not qualify as a federal government employee or a federal volunteer;
- I am ineligible for the liability protection and work injury compensation benefits provided respectively under chapter 171 of Title 28 and chapter 81 of Title 5 of the United States Code;
- I am not authorized to receive reimbursements from the Government for incidental expenses as provided for volunteers under 33 U.S.C. 569c;
- My pay and benefits are the sole responsibility of the Partner;
- I must resolve all issues, disputes, or claims involving my pay and/or benefits directly with the Partner;
- By signing this statement, I agree to hold and save the Government free from all damages arising from any issues, disputes, or claims related to my pay and/or benefits;
- Upon request from the Government, I may be subject to background checks, requests for information relating to my general physical and mental fitness to perform assigned task, and other security/safety related requirements; and
- *[INCLUDE THIS STATEMENT IF PERFORMING FEE COLLECTIONS DUTIES, OTHERWISE DELETE]* I acknowledge that I accept the risk and liability of handling government funds and accountable property. I may purchase a bond from a federally-approved bonding institution at my own expense, understanding that a bond is not a grant of relief, nor does the Government relinquish its rights against me or the bond in a non-negligent loss case. I have read and understand Corps policy EC 1130-2-550, Chapter 9, and will follow the procedures to maintain funds security.
- Regardless of any employment agreement that I may have with the Partner, the Government, at its sole discretion, may refuse to accept my services and

mandate that I not return to the *[INSERT NAME OF SERVICE LOCATION]* in my Partner-funded personnel capacity.

Signature

Date

Printed Name