

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
WEST VIRGINIA DIVISION OF NATURAL RESOURCES

THIS CHALLENGE PARTNERSHIP AGREEMENT (Agreement), made and entered into this 25th day of October, 2022, by and between the U.S. Army Corps of Engineers (hereinafter referred to as the Government), represented by Adam J. Czekanski, the District Commander, U.S. Army Corps of Engineers, Pittsburgh District and the State of West Virginia, Department of Commerce, Division of Natural Resources, (hereinafter referred to as the Partner), represented by Brett W. McMillion, Director.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at or near the Opekiska Lock and Dam Facility situate on the Monongahela River in Clinton District, Monongalia County West Virginia, which said Facility is authorized for recreational uses; and

WHEREAS, the implementation of a carry-down watercraft access point and parking area at Opekiska Lock and Dam Facility situate on the Monongahela River will increase the recreational opportunities for the public; and

WHEREAS, the Partner is interested in assisting the Government in providing the said carry-down watercraft and parking area access point at the Opekiska Lock and Dam Facility situate on the Monongahela River; and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make the said carry-down watercraft and parking area access point available to the public; and

WHEREAS, the Partner, in order to assist the Government in this project, has voluntarily agreed to donate labor, materials, supplies, and services for the design, construction, and maintenance for the said carry-down watercraft access point and parking area; and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, PL 102-580, (Oct 31, 1992), authorizes the Secretary of the Army to accept contributions 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 as described in 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 "Project" shall mean the design, construction, and maintenance of a carry-down watercraft access point and parking area situate at the mouth of Whiteday Creek, on the east bank of the Monongahela River upstream of Opekiska Lock and Dam, in Clinton District, Monongalia County, West Virginia.

b. "Project Area" means the area of the Project for the carry-down watercraft access point and parking area, also known and referred to by the Partner as the Opekiska Dam Public Access Site (PAS).

c. Term. – This Agreement shall be for a period of twenty-five (25) years from the date set out hereinabove. This Agreement may be renewed by the said parties agreeing to the same in writing for successive term(s).

d. The carry-down watercraft access point shall consist of a gravel-filled cellular confinement launch ramp and a vehicular barrier preventing vehicular access to the launch site and a ten-space parking area.

e. 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.

f. All donated property, facilities and improvements placed on Government land as well as any work accomplished under this agreement shall become the property of the Government.

g. No use of the Government's land under this Agreement shall be deemed as creating any ownership interest by the Partner in the Government's said land.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Partner shall expeditiously design and construct the carry-down watercraft access point, applying those procedures generally applied to Federal projects, pursuant to Federal laws, regulations, and policies. The modifications and performance of all work on the Project shall be exclusively within the control of the Government.

b. The Government shall provide the Partner with access to that land necessary for the design, construction, and maintenance of the carry-down watercraft access point and parking area.

c. The Partner shall provide the necessary gravel, cellular confinement, vehicular barrier, and labor for the Project.

d. The type of vehicular barrier must be agreed to by the parties hereto prior to the initiation of construction.

e. To determine the contributions provided by all the parties hereto and to determine whether each party has met its obligations under subparagraphs (b) and (c) of this Article the Government shall perform an annual accounting.

f. No Federal funds may be used to meet the Partner's total Project costs under this agreement.

g. The parties hereto agree to meet as needed and at least once a year during the month of April, to discuss the Project's site conditions and any other Project concerns.

h. The Partner agrees to keep and maintain the Project area in a safe and usable condition free from all unreasonably dangerous conditions.

i. The Partner agrees to provide law enforcement for the Project area.

j. The Partner agrees that camping is prohibited at the Project area.

k. Partner agrees to perform maintenance and/or repairs to the Project area as requested by the Government, including maintenance necessary for the upkeep of any water safety signage posted by the Government. The Partner agrees to perform said maintenance and/or repairs within 10 days of receiving notice from the Government. The Partner may request from the Government additional time to complete said maintenance and/or repairs.

l. The Partner agrees that the Government, in its sole discretion, may, at any time, close, prohibit, or otherwise restrict access to the Project area.

ARTICLE III - METHOD OF PAYMENT

a. The Government shall maintain current records of contributions provided by the Partner and of the Partner's contributions required in accordance with Article II. of this Agreement.

b. On the effective date of this Agreement, the material and labor costs for the design, construction and installation of the Project are projected to be \$5,000. This amount is an estimate subject to adjustment and is not to be construed as the total financial responsibility of the Partner. The parties hereto acknowledge that the Partner will incur additional annual maintenance costs of an unknown amount for the upkeep of the Project area.

c. The Partner shall provide all contributions necessary for all construction activities required under Article II.c. of this Agreement no less than sixty 60 calendar days after the proposed start date of work and shall provide all contributions necessary for Project maintenance, under Article II.h. of this Agreement, on an as needed basis.

d. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partner with the results of the final accounting. The final accounting shall establish the total project costs and each party's contribution provided thereto.

ARTICLE IV - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement. If the parties hereto cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties hereto shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties hereto from performance pursuant to this Agreement.

ARTICLE V - FEDERAL AND STATE LAWS

In exercise of their respective rights and obligations under this Agreement, the Government and the Partner agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 Title VI of the Civil Rights Act of 1964, and the Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army.

ARTICLE VI - RELATIONSHIP OF PARTIES

a. 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.

b. In the exercise of their respective rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor or other third party with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor or third party either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE VII - 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 VIII – TERMINATION, SUSPENSION OR CANCELLATION

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the District Commander may terminate this Agreement or suspend future performance under this Agreement.

b. In the event that either party elects to terminate this Agreement pursuant to this Article, *both parties shall conclude their activities under this Agreement.*

c. Either party hereto shall have the right to terminate or cancel this Agreement without further obligation, upon giving sixty (60) days written notice to the other party, however any termination or cancellation of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE IX - 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 by telegram, or mailed either by first-class, registered, or certified mail, as follows:

If to the Partner: West Virginia Division of Natural Resources
Attn: Director
Office of Land and Streams
324 Fourth Avenue, Room 200
South Charleston, WV 25303

If to the Government: U.S. Army Corps of Engineers
Attn: Commander, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222

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

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.


ARTICLE X - CONFIDENTIALITY


To the extent permitted by the laws governing each party, the parties hereto 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 Adam J. Czekanski, Commander, Pittsburgh District.

U.S. Army Corps of Engineers

West Virginia
Division of Natural Resources

BY: 
Colonel Adam J. Czekanski
Commander, Pittsburgh District
U.S. Army Corps of Engineers
Pittsburgh District

BY: 
Brett McMillion
Director
West Virginia
Division of Natural Resources

DATE: 10/25/2022

DATE: 8/29/2022

Approved as to form prior to acknowledgment thereof

this 23rd day of August, 2022.

Patrick Morrissey, Attorney General

By: 

Challenge Partnership Financial Work Sheet

Corps Project Name: Opekiska Locks and Dam

Work Project Title: Opekiska Carry-Down Watercraft Access Point

POC Name: Christopher Schuster

Address: 1000 Liberty Avenue

City: Pittsburgh

State: PA Zip Code: 15222

Telephone: 412-395-7592

Location of Project: Upstream of Opekiska Lock and Dam, on the east bank

Partner Organization 1: West Virginia Division of Natural Resources (WVDNR)

POC Name: David I. Wellman, Jr.

Address: 1110 Railroad Street

City: Farmington

State: WV Zip Code: 26571

Telephone: 304-825-6787

Proposed start date of work: TBD upon execution of this agreement

Simple description of work to be accomplished through the partnership: The Corps will provide access to fee land so that the Partner may design, construct, and maintain a carry-down watercraft access point, located at the mouth of Whiteday Creek, on the east bank of the Monongahela River upstream of Opekiska Lock and Dam, Fairmont, WV. The carry-down watercraft access point shall consist of a gravel-filled cellular confinement launch ramp and a vehicular barrier preventing vehicular access to the launch site.

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$0	N/A	\$2,000	\$0	\$0	\$2,000
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	N/A	\$3,000	\$0	\$0	\$3,000
Equipment Use	\$0	N/A	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer	N/A	N/A	\$0	\$0	\$0	\$0
In-Kind Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain below)	\$0	N/A	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$5,000	\$0	\$0	\$5,000
Share of Total Cost	0.0%	0.0%	100.0%	0.0%	0.0%	100%

Explanations: