

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE FINGER LAKES TRAIL CONFERENCE

THIS AGREEMENT, entered into this 31st day of May, 2007 , by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District Buffalo , and the Finger Lakes Trail Conference, (hereinafter the "Partner"), represented by Irene Szabo.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Mt. Morris Dam which includes recreational opportunities for the public, and

WHEREAS, the installation of an accessible trail section will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing this accessible trail, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make this accessible trail available to the public, and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to pay a portion of the cost, 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 in financing and challenge cost-sharing 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 "project" shall mean to improve accessibility of a .4 mile section of the Finger Lakes Trail (Letchworth Branch) immediately upriver from the Visitor Center parking lot by spreading

wood chips to cover protruding tree roots, and to provide signage at the trailhead utilizing Universal Trail Assessment Process symbols and language designed to inform potential users as to trail conditions ahead. Details are outlined in the 2007 Handshake Program Application of August 2006.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to construction of the project.

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.

d. 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.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds appropriated by the Congress of the United States (hereinafter the "Congress"), and using funds provided by the Partner, shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by the Government personnel) shall be exclusively within the control of the Government.

b. The Government shall provide personnel, tractor with bucket, wood chips from the debris removal contractor.

c. The Partner shall provide volunteers, ATV with trailer for transportation of chips, hand tools, and specialized signage..

d. The Government shall perform a final accounting to determine the contributions provided by all parties to this agreement and to determine whether each has met its obligations under paragraphs b and c of this Article.

e. No Federal funds may be used to meet the Partner's total project costs under this Agreement.

ARTICLE III - METHOD OF PAYMENT

a. The Government shall maintain current records of contributions provided by the Partner and a current projection of total project costs. At least quarterly, the Government shall provide the Partner with a report setting forth all contributions provided to date and the current projection of total project costs, of the components of total project costs, of each party's share of total project costs, and of the Partner's contribution required in accordance with Article II.b. of

this Agreement. On the effective date of this Agreement, total project costs are projected to be \$11,500, and the Partner's contribution required under Article II.b. of this Agreement is projected to be \$10,900 . Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partner.

b. The Partner shall provide the contribution required under Article II.b. of this Agreement in accordance with the following provisions: Not less than 30 calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partner of the funds required from the Partner to meet its projected contribution, including its proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction. Prior to the issuance of the solicitation, the Partner shall provide the Government with the full amount of the required funds by delivering a check or documentation that contribution of in-kind services has been made or will be made timely, up to the full value.

c. 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 total project costs, each party's contribution provided thereto, and each party's required share thereof.

1. In the event the final accounting shows that the total contribution provided by the Partner is less than its required share of total project costs, the Partner shall, no later than 90 calendar days after receipt of written notice, make a payment or contribution to the Government of whatever sum is required to meet the Partner's required share of total project costs.

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. If the parties 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 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 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 of Title VI of the Civil Rights Act of 1964, PL 88-352, 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 Regulations 600.7, entitled "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 its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor 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 - INDEMNIFICATION

The Partner shall hold and save the Government free from all damages arising from services it performs or provides for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - TERMINATION OR SUSPENSION

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the District Commander shall terminate this Agreement or suspend future performance under this Agreement unless he/she determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Partner, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Partner elects to terminate this Agreement.

c. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article II of this Agreement.

d. Any termination 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. Any delinquent payment shall be charged interest at a rate, to be

determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE X - 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: Irene Szabo
c/o Finger Lakes Trail Conference
6111 Visitor Center Road
Mt. Morris NY 14510

If to the Government: District Commander
U.S. Army Engineer District
1776 Niagara Street
Buffalo NY

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 XI - 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 Commander, Buffalo District.

The Department of the Army, Lt. Col. John Hurley, Corps of Engineers District Commander

BY:

DATE:

Finger Lakes Trail Conference, Irene Szabo, volunteer in charge of project

BY: 

DATE: 31 MAY 07

DEVELOPMENT PLAN
25-Year Park and Recreation Lease to the Finger Lakes Trail Conference
Mount Morris Dam, New York

This Development Plan by the U.S. Army Corps of Engineers (USACE)-Buffalo District, addresses a 25-year Park and Recreation Lease at the Mount Morris Dam Flood Control Project, Livingston County, New York. This lease includes a 1,768 square foot house (House No. 2), adjacent property to the house, and hiking trails located throughout the Federal lands. The management objective of the leased area is oriented toward day use by the general public. Day use activities include the use of walking and hiking trails, and interpretive and educational demonstrations administered by the Finger Lakes Trail Conference (FLTC). The goal of this lease is to mutually promote the Mount Morris Dam Recreation Area and the FLTC organization, and to educate the public on the natural, recreational, archeological and cultural resources at the project and surrounding areas.

The FLTC will be the primary lessee of House No. 2 at Mount Morris Dam. The lease agreement will permit the FLTC to sublease a portion of the house to other organizations that hold similar interests in parks and recreation. The FLTC must notify the Buffalo District in writing of proposed sublessees, and include a description of the intent, operation and maintenance, and responsibilities of the sublessee. The Buffalo District will notify the FLTC in writing of the approval or disapproval of all proposals. The lessee and all sublessees will be required to follow the management and maintenance responsibilities and special conditions specified in the Development Plan, as set forth by the Buffalo District.

A. Management and Maintenance Responsibilities:

The FLTC will use the house primarily for office space. The office will be open approximately 3-4 days per week and staff 1-5 persons per day depending on staff and volunteer availability. Additional days of operation may be included to offer special events and educational demonstrations. Office hours will comply with park hours and may extend to late afternoon and early evening hours based on project needs. Maintenance responsibilities of the FLTC include interior and exterior cosmetic work such as painting, renovating and redecorating for aesthetics including but not limited to light fixtures, doors, floors and windows. All renovations, redecorating and construction activities proposed by the FLTC must be presented in writing, coordinated, and approved in writing by the Park Manager and/or New York-Pennsylvania Operation & Maintenance Office (NY-PA O&M)-Buffalo District prior to the commencement of work. Structural changes and additions, construction activities, and renovations will be authorized by the NY-PA O&M Office. The Buffalo District will be responsible for structural, mechanical, electrical and plumbing repairs including the septic system, complying with building code standards, and lawn maintenance. The Park Manager will authorize interior and exterior cosmetic work including painting, installing shelving units, changing light fixtures and other aesthetic maintenance.

Trail maintenance will be the responsibility of the FLTC. Maintenance will include cutting back shrubs, creating safe walkways and posting signs directing trail users to connecting scenic trails. Trail maintenance will be conducted during daylight hours only. Sign verbiage, materials used, and posting location will be coordinated with the Mount Morris Dam Park Manager and approved by the NY-PA O&M Office.

Utilities at House No. 2 include water, electric and oil heating. The Buffalo District estimates that the water and electricity used at the house by the FLTC will be a minimal expense. Therefore, separate metering of the house for water and electric will not be necessary and the Buffalo District will be responsible for the water and electric bills. The FLTC will be responsible for the heating bill, including scheduling oil deliveries, and the telephone bills, including connection fees. The FLTC is responsible for making direct payments to the company providing and delivering heating oil and to the telephone company for telephone service.

B. Public Access:

The Mount Morris Dam Recreation Area, dam, and House No. 2 are publicly accessible via a main entranceway. A driveway currently exists from the public road to the house. Volunteers of the FLTC will be permitted to park in the driveway. Parking for visitors to the FLTC will be provided in the public parking lot located westward of the Mount Morris Dam Visitor Center.

C. Reimbursements:

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth. The FLTC will reimburse the Buffalo District through in-kind services which are being provided by the Lessee as specified in this Development Plan in the occupancy of the leased premises.

D. Special Conditions:

1. Prohibitions.

- a. Possession or consumption of alcohol on park and recreation grounds.
- b. Littering or dumping.
- c. Camping.
- d. Campfires.
- e. Defacing or destroying of park property, facilities, furnishings or equipment.
- f. Defacing, destroying, transplanting, cutting or collecting of trees, plants, flowers or roots for purposes other than maintaining trails.
- g. Excavation of park's terrain or soil for purposes other than maintaining trails.
- h. Unauthorized use of pesticides, herbicides, insecticides, fungicides, foggers or other chemicals.
- i. Releasing of wild or domestic animals.
- j. Hunting, trapping, harassing, taking, collecting or disturbing wildlife.
- k. Use of motor vehicles off-road.
- l. Use or possession of fireworks or explosives.

- m. Unauthorized solicitations or vending of merchandise.
- n. Illegal activities not specified above.

2. Special Rules.

- a. The park and recreation facilities shall be open during posted hours only.
- b. Use of the house is for office space only and shall not provide living quarters or housing for any persons.
- c. Employees of the Buffalo District are the only persons permitted to guide tours and access the dam and operating tower unassisted.
- d. All pets must be on a leash not over six feet in length and must remain under the owner's immediate control at all times.
- e. FLTC shall follow rules and regulations specified in Title 36.

3. Other Conditions:

USACE agrees to:

- a. Maintain building code standards.
- b. Maintain structural, mechanical, electrical, heating, and plumbing to include the septic system.
- c. Maintain siding and roof.
- d. Provide lawn care.
- e. Provide pest management.
- f. Provide electric and water.
- g. Provide the pre-existing security system in the house.
- h. Provide snow removal for the public access road, parking lots, and applicable driveways including the driveway of House No. 2.

FLTC agrees to:

- a. Upkeep the interior and exterior of House No. 2. This includes but is not limited to painting, redecorating and repairing including items that may be destroyed or defaced during the course of the lease agreement.
- b. Maintain the grounds immediately surrounding the leased property for aesthetic purposes.
- c. Maintain the trails in the lease agreement.
- d. Provide and pay for heating oil.
- e. Schedule and pay for the telephone service including initial hook up.
- f. Clear snow from the walkway to the house and all entrance ways.
- g. Maintain handicap accessible entrance ways.
- h. Properly store chemicals, paint materials, and other combustible materials in fire proof cabinets in compliance with the Buffalo District's Environmental Review Guide to Operations (ERGO) and coordinate with the Park Manager.

- i. Store and manage hazardous materials in accordance with local, state, and federal laws and regulations and in compliance with the Buffalo District's Environmental Review Guide to Operations (ERGO) and coordinate with the Park Manager.
- j. Plan for and provide a safe work environment. Comply with the Buffalo District Safety Manual - Regulation No. 385-1-1 and EM 385-1-1.
- k. Notify the Park Manager regarding additional days and hours of operation.
- l. Notify the Park Manager and NY-PA O&M Office in writing regarding proposed sublease agreements.
- m. Notify the Park Manager in writing regarding proposed redecorating plans.
- n. Notify the Park Manager and NY-PA O&M Office in writing regarding proposed construction plans.
- o. Notify the Park Manager and NY-PA O&M Office in writing regarding proposed functions and educational demonstrations that may be held at the facility including fund-raiser events.
- p. Do not proceed with any actions until written verification and consent by the NY-PA O&M Office and its designee.
- q. Evacuate the premises in the event of a flood emergency.