

**CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE PENNSYLVANIA CHAPTER OF THE
AMERICAN CHESTNUT FOUNDATION**

THIS AGREEMENT, entered into this day of 10th May, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the Chief, Operations Division, U.S. Army Engineer District Baltimore, and the Pennsylvania Chapter of the American Chestnut Foundation (hereinafter the "PATACF" or "Partner"), represented by its President.

WITNESSETH, THAT:

WHEREAS, the Government manages land and waters at the Raystown Lake Project which include environmental stewardship opportunities for the public, and

WHEREAS, the Pennsylvania Chapter of the American Chestnut Foundation (PATACF) will increase sustainability of natural resources and educational opportunities for the public, and

WHEREAS, the PATACF is interested in promoting and assisting the Government in implementing the Raystown Chestnut breeding program, has a cooperative agreement to partner in the long term care and improvements of the project, and

WHEREAS, it is mutually beneficial to the Government and the PATACF to work cooperatively to make the Raystown chestnut breeding program available to the public, and

WHEREAS, the PATACF in order to assist the Government in this program has voluntarily agreed to pay a portion of the costs by providing in-kind services and donations of materials 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 PATACF and apply those contributions to the Raystown chestnut breeding program (hereinafter the "Program"), and

WHEREAS, the Government and the PATACF 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 PATACF agree as follows:

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Program" shall mean the following aspects of the Raystown Lake Breeding Program, for partnership purposes: enhance and maintain the existing orchard and establish additional orchard plots; develop and maintain a volunteer base including the securing of a Student Conservation Association (SCA) member; provide a water well to meet needs for watering and herbicide spraying; provide tools and storage shed used by volunteers to allow for a sustainable volunteer force and more efficient use of work at the orchard; and design and purchase educational exhibits and a kiosk.
- b. The term "total program costs" shall mean all costs incurred by the Government and the PATACF directly related to implementation of the program.
- 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 PATACF, shall implement the Program, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications or change orders by the Government, and performance of any work on the Program begun by the Government (whether the work is performed under contract or by the Government personnel) shall remain exclusively within the control of the Government.
- b. The Government shall provide: overall project guidance and supervision to the SCA member and volunteers maintaining the orchard. Under the DOD agreements for SCA members, the Corps will complete the required work for contract administration. This SCA member will serve as the point of contact for the execution and use of the materials funded by the handshake agreement. Under Corps guidance the SCA member will coordinate the planting, maintenance and harvest season for 2010. The SCA member will coordinate the education of more volunteers to provide long term assistance at the orchard.

The Corps will procure all equipment and supplies through micro-purchase and other contracting services to accomplish work tasks and oversee execution of the work. The Corps will coordinate meetings with technical staff from PATACF on the design and purchase of educational exhibits and a kiosk.

- c. The PATACF shall provide in-kind services through technical expertise from scientists across the Eastern United States to support the planning and guidance of the research and restoration orchard. Specifically, the PATACF Northeast Science Coordinator will provide essential guidance throughout the planting, maintenance, backcross and harvest processes. The PATACF also will supply, when available, advanced backcross seeds for initial and future plantings up to the amount committed to in the handshake agreement. PATACF will provide in-kind services for design guidance of the educational panels at the orchard as well as the visitor center exhibits. The PATACF, when available, will provide material such as brochures and fact sheets that highlight the work of PATACF. Some additional educational materials will be provided through the handshake funds. These will be provided by funding or in-kind services as outlined in the "Challenge Partnership Financial Worksheet," which is hereby attached and incorporated by reference.
- 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 PATACF's share of program costs under this Agreement.

ARTICLE III – METHOD OF PAYMENT

- a. The Government shall maintain current records of contributions provided by the PATACF and a current projection of total project costs. At least quarterly, the Government shall provide PATACF 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 the total project costs, and of the PATACF's contributions required in accordance with Article II.c. of this agreement. On the effective date of the Agreement, total program costs are projected to be \$70,188, and the PATACF contribution required under Article II.c. of this Agreement is projected to be \$37,188 of in-kind services and donated material. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the PATACF.
- b. The PATACF shall provide the contribution required under Article II.c. of this Agreement in accordance with the following provisions: At the time of the execution of this agreement, it is anticipated that the Partner will make its contributions under this agreement in the form of in kind services. However, in the event it becomes necessary for the Partner to make a contributions of funds to meet its obligation, the Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, BALTIMORE" to the Government at the address identified in Article X of this Agreement. The Government shall draw from the funds provided by the Partner such sums as the Government deems necessary to

cover: (a) the Partner's proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partner's proportionate share of the Government's contractual and in-house financial obligations as they are incurred during the period of construction. In the event the Government determines that the Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required. Within 60 calendar days thereafter, the Partner shall provide the Government with a check for the full amount of the additional required funds.

- c. Upon completion of the Program 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 to the Government of whatever sum is required to meet the Partner's required share of total project costs.
 2. In the event the final accounting shows that the total contribution provided by the Partner exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partner no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Partner, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE IV – DISPUTE RESOLUTION

As a condition precedent to any of the parties bringing any suit for breach of this Agreement, the party must first notify the other party or parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the affected 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. The parties in dispute shall each divide all costs paid to the third party equally for any and all costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall excuse neither the Government nor the PATACF 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 PATACF 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 PATACF each act in an independent capacity, and none are to be considered the officer, agent, or employee of the other.
- b. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights any of the other parties may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party or parties 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 there from.

ARTICLE VIII – INDEMNIFICATION

The PATACF shall hold and save the Government free from all damages arising from services it performs or provides during the implementation of the Program, 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 Program 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 Program.
- b. If the Government fails to receive annual appropriations in amounts sufficient to meet Program expenditures for the then-current or upcoming fiscal year, the Government shall so notify the PATACF, 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 elect to terminate this Agreement.

- c. In the event that any party elects to terminate this Agreement pursuant to this Article, all parties shall conclude their activities relating to the Program 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 PATACF: PA Chapter
The American Chestnut Foundation
206 Forest Resources Lab
University Park, PA 16802

If to the Government: Raystown Lake Project
U.S. Army Corps of Engineers
6145 Seven Points Road
Hesston, PA 16647

- 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 Baltimore District.

The Department of the Army

BY: Marie Burns
TITLE: Chief, Operations Division, Baltimore District

SIGNATURE: *Marie Burns* DATE: 5/18/2010

Pennsylvania Chapter of the American Chestnut Foundation

BY: R. Alex Day
TITLE: President, PATACF

SIGNATURE: *R. Alex Day* DATE: 5/10/2010

Challenge Partnership Financial Work Sheet

Corps Project Name: Raystown Lake Project
 Work Project Title: American Chestnut Restoration Orchard
 POC Name: Jeffrey Krause, Wildlife Biologist
 Address: 6145 Seven Points Rd. City: Hesston State: PA Zip Code: 16647
 Telephone: 814-658-6813 Fax: 814-658-3313 Email: jeff.krause@usace.army.mil
 Location on Project: Located Approximately 8 Miles South of The Raystown Lake Visitor Center Near Entriiken, Pa.

Partner Organization 1: American Chestnut Foundation (ACF)
 POC Name: Sara Fitzsimmons
 Address: 206 Forest Resources Lab City: University Park State: PA Zip Code: 16647
 Telephone: 814-863-7192

Proposed start date of work: 15-May-2010

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$6,000	N/A	\$0	\$0	\$0	\$6,000
Travel	\$0	N/A	\$1,500	\$0	\$0	\$1,500
Materials and Supplies	\$0	\$26,000	\$11,500	\$0	\$0	\$37,500
Equipment Use	\$1,000	\$0	\$0	\$0	\$0	\$1,000
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$2,000	\$0	\$0	\$2,000
Volunteer	N/A	N/A	\$15,188	\$0	\$0	\$15,188
In-Kind Services	N/A	N/A	\$7,000	\$0	\$0	\$7,000
Other (explain below)		\$0	\$0	\$0	\$0	\$0
Total	\$7,000	\$26,000	\$37,188	\$0	\$0	\$70,188
Share of Total Cost	10.0%	37.0%	53.0%	0.0%	0.0%	100%

Explanation: The Handshake Funds include funding a Student Conservation Association member to ramp up the first year project.