

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE TRUSTEES OF RESERVATIONS

THIS AGREEMENT, entered into this 4th day of March, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District New England, and The Trustees of Reservations, (hereinafter the "Partner"), represented by the Western Region Operations Manager.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Tully Lake in Royalston, Massachusetts which includes recreational opportunities for the public, and

WHEREAS, the construction of a wheelchair accessible trail to the Lower Doane's Falls overlook 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 improving an existing parking lot and 900 feet of trail to provide wheelchair and emergency vehicle access to the lower Doane's Falls overlook. The

existing foot path will be widened to 10 feet, graded, and finished with a hard gravel surface suitable for wheelchair travel in accordance with federal outdoor accessibility guidelines. The improved path will also provide vehicular access to emergency responders. Improvements will also be made to each end of the path. On one end the existing roadside parking will be improved to fit 6 vehicles with better drainage, surface, barrier, and information kiosk. The other end will provide a rest area at the waterfall overlook with safety barrier, benches, and an interpretive sign.

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 design and develop specifications for the project, execute contract for tree removal, procure materials and supplies, act as project manager, and oversee volunteers.

c. The Partner shall contribute to the design and specifications for the project, contribute to the content of the information kiosk and signs, provide one employee with backhoe/loader, and provide a 6-person SCA Trail Crew for 10 work days.

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 **\$47,900**, and the Partner's contribution required under Article II.b. of this Agreement is projected to be **\$26,800**. 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 payable to "FAO, USAED, NAE" to the Government's project manager. 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 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 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 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: The Trustees of Reservations
 193 High Street
 Holyoke, MA 01040

If to the Government: U.S. Army Corps of Engineers
 Tully Lake Park Office
 2 Athol-Richmond Road
 Royalston, MA 01368

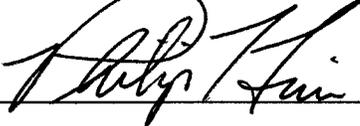
b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

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, New England District.

The Department of the Army

BY: 

NAME: Philip T. Feir

TITLE: Commander, New England District

DATE: 18 March 2010

The Trustees of Reservations

BY: 

NAME: Jocelyn Forbush

TITLE: Central, Pioneer Valley, and Berkshires Regional Director

DATE: March 4th, 2010

Project Description

The project is located at Tully Lake in Royalston, Massachusetts and identified in the project OMP 5-year plan. It improves an existing parking lot and 900 feet of trail to provide wheelchair and emergency vehicle access to the lower Doane's Falls overlook. Currently there is no such access to this popular waterfall. The existing foot path will be widened to 10 feet, graded, and finished with a hard gravel surface suitable for wheelchair travel in accordance with federal outdoor accessibility guidelines. The improved path will also provide vehicular access to emergency responders. Improvements will also be made to each end of the path. On one end the existing roadside parking will be improved to fit 6 vehicles with better drainage, surface, barrier, and information kiosk. The other end will provide a rest area at the waterfall overlook with safety barrier, benches, and an interpretive sign.

Sustainability. The project will improve sustainability of the trail and associated parking area because it will have better drainage, gentle grades, and hard impact surface, able to withstand heavy foot traffic, rain and frost. The design of the path will minimize impacts to cultural resources, such as stone walls, and to natural resources, such as vernal pools. Once completed the project should last indefinitely with only minor maintenance of the gravel surface and periodic sign replacement.

Partnership Value. This project will build upon our current partnership with the nation's oldest conservation organization, The Trustees of Reservations (TTOR). This non-profit organization owns several properties in the vicinity of Tully Lake, including Doane's Falls, and they lease and operate our campground. While they own Doane's Falls, the lower waterfall overlook is accessed through Corps land along a hiking trail. TTOR will provide 2 weeks of a 6-person SCA Trail Crew, plus they will provide an employee and backhoe for 2 weeks, for a total contribution of about \$26,800 or about 56% of total cost.

Recreation Benefit. Doane's Falls is a natural wonder, drawing thousands of people annually. Due to the steepness of the gorge, access for persons with disabilities is limited to the uppermost waterfall. This project would open the lower falls overlook for the first time to visitors of all abilities, including those confined to wheelchairs. The trail is not only used to access the lower falls, it is also part of the larger trail system, providing hikers a path along the entire waterfall and around the entire lake. It also links to the larger 22-mile Tully Trail and the spur trail to scenic Coddling's Meadow. The project is about two tenths of a mile from the Tully Lake Campground, providing campers of all ages an interesting nearby destination. In addition to hikers and campers, the trail also provides access to sightseers, geocachers, birders and naturalists.

Environmental Stewardship Value. The project will enhance public awareness of environmental stewardship by providing access to visitors of all abilities to this scenic and historic area and by providing interpretive signs that connect visitors with their surroundings. The project is in close proximity not only to the waterfall, but also to several vernal pools and to the historic remains of the old mill at Doane's Falls. The project lies within the treasured Tully River Valley within the larger North Quabbin Bioserve and is designated by the state's BioMap as "Supporting Natural Landscape".

Innovativeness. This project is unique because there are very few accessible trails in the area, and this one accesses one of the most visited waterfalls in central Massachusetts. The project benefits not only a segment of visitors who never before had access to the waterfall overlook but also public safety because emergency responders will be able to reach the lower falls by vehicle, allowing quicker access with life-saving equipment and shorter time to extricate.

Challenge Partnership Financial Work Sheet

Corps Project Name: Tully Lake
 Work Project Title: Wheelchair Access To Waterfall Overlook
 POC Name: Jeffrey Mangum
 Address: 2 Athol-Richmond Road City: Royalston State: MA Zip Code: 1368
 Telephone: 9783188282
 Location on Project: Adjacent To Doane Hill Road, East Of The Tully River

Partner Organization 1: The Trustees of Reservations
 POC Name: Walker Korby
 Address: 100 Main Street City: Athol State: MA Zip Code: 1331
 Telephone: 9782489455

Partner Organization 2:
 POC Name:
 Address: City: State: Zip Code:
 Telephone:

Partner Organization 3:
 POC Name:
 Address: City: State: Zip Code:
 Telephone:

Proposed start date of work: Apr-10
 Simple description of work to be accomplished through the partnership: Improve existing trail to provide wheelchair and emergency vehicle access to the lower waterfall overlook.
Double click on spreadsheet to access data entry fields:

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$9,200	N/A	\$4,000	\$0	\$0	\$13,200
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$9,400	\$0	\$0	\$0	\$9,400
Equipment Use	\$0	\$0	\$4,800	\$0	\$0	\$4,800
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	\$18,000	\$0	\$0	\$18,000
In-Kind Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$2,500	\$0	\$0	\$0	\$2,500
Total	\$9,200	\$11,900	\$26,800	\$0	\$0	\$47,900
Share of Total Cost	19.2%	24.8%	55.9%	0.0%	0.0%	100%

Explanations: "Other" will be used to contract tree removal (estimated \$2500). Further cost breakdown provided below.

Local Corps Office	
Salaries	
Park Manager (40 hr)	\$3,600
Park Ranger (80 hr)	\$5,600
Travel	\$0
Materials and Supplies	\$0
Equipment Use	\$0
Other (explain below)	\$0
Total	\$9,200
Share of Total Cost	19.2%

Handshake Funds	
Materials and Supplies	
Crushed Gravel (100 yd)	\$1,500
Graded Base (100 yd)	\$2,000
Stone Dust (20 yd)	\$500
Culverts, 6" (4) & 12" (2)	\$500
Barrier at Parking Lot	\$1,500
Information Kiosk (1)	\$1,500
Interpretive Sign (1)	\$300
Benches (2)	\$600
Barrier at Overlook	\$500
Miscellaneous M&S	\$500
Equipment Use	\$0
Other (explain below)	
Tree Removal Contract	\$2,500
Total	\$11,900
Share of Total Cost	24.8%

Partner 1	
Salaries	
Superintendent (80 hr)	\$4,000
Travel	\$0
Materials and Supplies	\$0
Equipment Use	
Backhoe (80 hr)	\$4,800
Funds Contributed	\$0
Personal Property	\$0
Volunteer	
SCA Trail Crew (2 wk)	\$18,000
In-Kind Services	\$0
Other (explain below)	\$0
Total	\$26,800
Share of Total Cost	55.9%

GRAND TOTAL **\$47,900**