

CEMVS-OD-A

19 July 2011

MEMORANDUM THRU

LN 7-25-11
~~CEMVS-OD-T (Catalano)~~
~~CEMVS-OD-T (Edwardson)~~
~~CEMVS-OC (Pitrolo)~~
~~CEMVS-RM (Heberer)~~
~~CEMVS-OD (Dell'Orco)~~ *12/1/11* *7/28/11*

FOR CEMVS-OD-A

SUBJECT: Challenge Partnership Agreement

1. Enclosed is a Challenge Partnership Agreement between the U.S. Army Corps of Engineers and the City of Carlyle for the enhancement of a 1.5 mile loop into the existing infrastructure of the Carlyle Lake Multi-User Trail Improvements Project connecting the City of Carlyle with public lands managed by the U.S. Army Corps of Engineers at Carlyle Lake.
2. The project consist of all efforts resulting in the enhancement of a 1.5 mile loop "Kaskaskia River Walk" into the existing Carlyle Lake Multi-Use trail by the installation of interpretive displays, signs, benches, bike racks, along with the construction of a 10'X10' handicapped accessible fishing pier constructed of sheet pile with a concrete surface, guard rails, and a 6'X40' sidewalk to pier and resurfacing an existing 1/10 of a mile City Park Trail that will be a connection route from the Carlyle City Park to the West Spillway.
3. This agreement is in accordance with ER 1130-2-500 dated 27 December 1996, ER 1130-2-550 dated 15 November 1996, and Section II, Part K of the Carlyle Lake Operational Management Plan, updated June 1997. Based on these regulations and plans, USACE is authorized to utilize partners whenever it is feasible, cost effective, mutually beneficial and safe.
4. If you have any questions please feel free to contact Assistant Operations Manager Jackie Taylor at (618) 594-2484.



ROBERT S. WILKINS
Operations Manager

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF CARLYLE

THIS AGREEMENT, entered into this 19 day of Aug 2011, by and between the Department of the Army (hereinafter the "Government"), represented by Louis A. Dell'Orco III, Chief, Operations, Readiness and Regulatory Division, St. Louis District, and the City of Carlyle (hereinafter the "Partner"), represented by Jan Fauke, Mayor, City of Carlyle (hereafter referenced jointly as "Parties") for the enhancement of a 1.5 mile loop into the existing infrastructure of the Carlyle Lake Multi-User Trail Improvements Project connecting the City of Carlyle with public lands managed by the U.S. Army Corps of Engineers at Carlyle Lake.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Carlyle Lake which includes recreational opportunities for the public, and

WHEREAS, the enhancement of the existing 1.5 mile multi-use trail and amenities at West Spillway, East Spillway and General Dean Recreation Area will increase the recreational opportunities for the public, and

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

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make this a safe and accessible environment for all visitors, and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to pay a portion of the cost and provide labor

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," otherwise known as the "Kaskaskia River Walk" project, shall mean all efforts resulting in the enhancement of the paved, 1.5 mile, multi-use trail loop located on the east and west banks of the Kaskaskia River between the Carlyle Lake Dam and the General Dean Bridge. Project enhancements shall be limited to the installation or construction of interpretive displays and signs, benches, bike racks, a 10'X10' handicapped accessible fishing pier constructed of sheet pile with a concrete surface and guard rails and a 6'X40' sidewalk to pier and resurfacing an existing 1/10 of a mile City Park Trail that will be a connection route from the Carlyle City Park to the Project.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to implementation and installation of the Project, estimated in the "Challenge Partnership Financial Work Sheet", identified in Appendix "C".

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 will provide oversight into the development and design of the project. The Government will provide all rock, concrete, railing and labor for the handicapped fishing pier, two spotting scopes for watchable wildlife and labor for installation, two educational interpretive displays and labor for installation and labor for installation of two park benches on the east section of the trail.

c. The Partner will provide all rock, landscape timbers and labor for resurfacing of the City Park Trail, not exceeding four park benches and labor for installation on the west section of the trail, not exceeding four bike racks and not exceeding two interpretive entrance signs at the City Park Trail.

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 completion of obligations provided in Article II.c. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$80,000.00, and the Partner's contribution required under Article II c of this Agreement is projected to be, and shall not exceed \$30,000.00, which shall consist of \$15,000.00 for Materials and Supplies and \$15,000.00 in salaries, which shall consist of labor provided by employees of the City of Carlyle in support of implementation and completion of its obligations under Article II.c. of this Agreement.

b. The Partner shall provide the contribution required for completion of obligations under Article II c of this Agreement in accordance with the following provisions: 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 for Materials and Supplies noted in Appendix C. Prior to the issuance of the solicitation, the Partner shall provide the Government with the full amount of the required funds for Materials and Supplies by delivering a check payable to "FAO, USACE, St. Louis District. 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.

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.

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 there from.

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: Jan Fauke, Mayor
 City of Carlyle
 850 Franklin
 Carlyle, IL 62231

If to the Government: Robert S. Wilkins, Project Manager
 801 Lake Road
 Carlyle, IL 62231

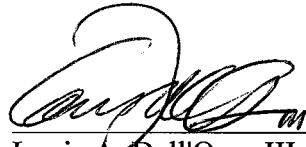
b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

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 Carlyle Lake Project Manager.

Signed and sealed this 19th day in August, 2011



Louis A. Dell'Orco III
Chief, Operations, Readiness
and Regulatory Division



Jan Fauke
Mayor, City of Carlyle

APPENDIX A
Corps of Engineers
Furnished Materials and Services

1. Salaries – Labor for installation of fishing pier, spotting scopes, interpretive displays and park benches. Labor and oversight for interpretive displays	<u>\$15,000.00</u>
2. Materials – Will provide rock, concrete and railing for handicapped fishing pier and spotting scopes. Will provide two educational interpretive displays.	<u>\$35,000.00</u>
TOTAL	<u>\$50,000.00</u>

APPENDIX B
City of Carlyle
Furnished Materials and Services

1. Salaries – Labor for resurfacing City Park Trail, installation of four park benches, four bike racks and two entrance signs.	<u>\$15,000.00</u>
2. Materials – Rock and landscape timbers for City Park Trail, four park benches, four bike racks and two entrance signs.	<u>\$15,000.00</u>
TOTAL	<u>\$30,000.00</u>

Appendix C

Challenge Partnership Financial Work Sheet

Corps Project Name: Carlyle Lake Project

Work Project Title: Carlyle Lake Multi-Use Trail-Kaskaskia River Walk

POC Name: Robert S. Wilkins

Address: 801 Lake Road

City: Carlyle

State: IL

Zip Code: 62231

Telephone: 618-594-2484

Location on Project: Carlyle Lake

Partner Organization 1: City of Carlyle

POC Name: Jan Fauke

Address: 850 Franklin

City: Carlyle

State: IL

Zip Code: 62231

Telephone: 618-594-2468

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: August 1, 2011

Simple description of work to be accomplished through the partnership: Enhancement of a 1.5 mile loop "Kaskaskia River Walk" into the existing Carlyle Lake Multi-Use trail by the installation of interpretive displays, signs, benches, bike racks, along with the construction of a 10'X10' handicapped accessible fishing pier constructed of sheet pile with a concrete surface, guard rails, and a 6'X40' sidewalk to pier and resurfacing an existing 1/10 of a mile City Park Trail that will be a connection route from the West Spillway to the Carlyle City Park.