

**COOPERATIVE AGREEMENT BETWEEN THE
U. S. ARMY CORPS OF ENGINEERS, PITTSBURGH DISTRICT, AND
THE PENNSYLVANIA CHAPTER OF THE
AMERICAN CHESTNUT FOUNDATION**

This Cooperative Agreement, entered into this 13th day of Sept, 2011, by and between the Department of the Army, represented by the District Commander, U.S. Army Corps of Engineers, Pittsburgh District, (Corps); the Pennsylvania Chapter of the American Chestnut Foundation®, (PA-TACF) hereinafter collectively referred to as Partners.

WHEREAS, the Corps manages lands and waters at Shenango River Lake for various purposes including flood control reduction, natural resource management, environmental stewardship, public recreation, and the understanding of the Corps mission; and,

WHEREAS, the Corps operates for the benefit of the public. To facilitate the public's safe and appropriate use of Corps areas, the Corps provides information and facilities to the public. The public requires information and facilities for the safe and appropriate use of Corps lands. This information is conveyed through a variety of interpretive media such as; programs, exhibits, and displays which rely heavily upon the use of visual materials, photographs, models, interpretive displays, lectures, artifacts and other materials which illustrate the Corps, its mission, and activities in and around Shenango River Lake as well as the archaeological, natural and cultural history of the area; and,

WHEREAS, the Partners will increase sustainability of natural resources and educational opportunities for the public; and,

WHEREAS the PA-TACF are interested in promoting and assisting the Corps in implementing an American Chestnut Re-Introduction program to partner in the long term care and improvements of the facility; and,

WHEREAS, it is mutually beneficial to the Partners to work cooperatively to make the Shenango River Lake American Chestnut Re-Introduction program available to the public; and,

WHEREAS, the PA-TACF, in order to assist the Corps in this project have voluntarily agreed to provide in-house services and donations of knowledge, skills, abilities, and 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 PA-TACF and apply those contributions to the Shenango River Lake American Chestnut Re-Introduction; and,

WHEREAS, the Partners have the full authority and capability to perform as here in after set forth and intend to cooperate in partnership and financing in accordance with the terms of this Agreement; and,

NOW THEREFORE, the Partners agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

- a. The term "Project" shall mean the development of a Shenango River Lake American Chestnut Re-Introduction program, with the following partnership purposes: establish American Chestnut orchard plot(s); develop and maintain a volunteer base; when necessary provide tools for more efficient use of work at the orchard(s); and design and develop educational exhibits. In the beginning stages the goal is to produce a successful American Chestnut orchard that will be maintained and cared for by Corps staff, partner members, and volunteers. Once the initial orchard is proven to be successful, the long term goal is to plant advanced back crossed generations for data and research. Provisions for protection and care of facility lands which support this project are generally described in the Shenango Master Plan Update in accordance with the Forest Cover Act, dated June 1998, and approved by Colonel Stephen B. Massey, Commander, Pittsburgh District, on June 15, 1998.
- b. The term "total project costs" shall mean all costs incurred by the Corps and the Partners directly related to implementation of the project.
- c. The term "advanced back crossed seed" shall mean any initial or further intercross generation within the 2nd or greater backcross generation within the TACF breeding program wherein lines of American chestnut stock are outcrossed once to other species of chestnut carrying genetic resistance to chestnut blight, and successive generations of such outcrosses are then repeatedly backcrossed to American chestnut to recover the desirable characteristics of the American chestnut tree while incorporating blight resistance.
- d. The term "germplasm" shall mean pollen, nuts, scion wood, sprouted seeds, small chestnut plants, rooted cuttings, and all progeny thereof
- e. This Agreement in no way restricts the Corps from participating in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations, and individuals.
- f. All property, facilities and improvements placed on Corps land as well as any work accomplished under this Agreement shall be subject to all rules and regulations governing public use of Corps of Engineers water Resource Development Projects. This includes but is not limited to 36 U.S.C. §327.14 which prohibits the removal of vegetative growth and the cutting or gathering of trees or parts of trees and/or the removal of wood from project lands.

g. The Corps agrees that it will not sell, offer for sale or gift, or otherwise intentionally transfer and /or distribute any advanced backcross germplasm that has been planted or otherwise exists as a result of this Agreement without prior permission from TACF.

h. All research, data, and germplasm collected by the PA-TACF from the advanced back crossed seed will be under the control of PA-TACF, acting as a subsidiary of its parent organization, The American Chestnut Foundation® (TACF).

i. The PA-TACF shall be permitted to install signs of a size and content mutually agreed upon by the parties hereto, identifying those areas of Corps property where an American Chestnut orchard plot has been established and reminding the public of the restrictions of 36 U.S.C. 327.14.j. This project is a mutual undertaking by the Partners to improve the natural environment around Shenango River Lake, raise community awareness, and provide data and research.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Partners shall implement 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 Corps personnel) shall be exclusively within the control of the Government.

b. Development of the initial orchard(s) will occur over a two year period, with 2011 consisting of project planning for the development of the initial orchard(s) in 2012. Up to four test plots will also be planted in 2011 with 10 to 20 chestnut seeds to analyze soil suitability and overall productivity. The project will expand within three to five years to a restoration project using advanced back crossed chestnut seeds only if the initial plantings prove the locations are suitable for further chestnut establishment.

c. The Corps, subject to and using funds appropriated by the Congress of the United States (Congress), shall:

1. Procure all equipment and supplies through micro-purchase and other contracting services to accomplish the work tasks and oversee execution of the work.
2. Coordinate meetings with technical staff from the Partners on the development and planting of American Chestnut orchards in addition to the design and purchase of educational exhibits and materials.
3. Conduct public meetings to engage the public and build a volunteer base.
4. Provide overall project guidance and provide supervision to staff and volunteers maintaining the re-introduction and restoration orchards.

5. Provide or coordinate volunteer help for collecting various genetic lines of chestnut seeds at off-site orchards, used by the Partners for research and development of advanced Chestnut seed crops.

6. Provide the Partners with a copy of the final accounting as required by Article II, 6.

7. Develop management and care plans with Partners and volunteers to support the goal of planting the advanced backcross generations Chestnuts.

d. The PA-TACF shall:

1. Provide in-house services through technical expertise to support the planning and guidance of the research and restoration orchard(s).

2. Provide, through The American Chestnut Foundation Regional Science Coordinator and experienced PA-TACF volunteers, essential guidance throughout the planting, maintenance, backcross and harvest processes.

3. Supply chestnut germplasm for planting the orchard(s) and when available, advanced backcross seeds for future plantings.

4. Provide in-house services for design guidance of educational panels at the re-introduction and restoration sites as well as visitor exhibits. In addition, the Partners will provide materials such as brochures and fact sheets that highlight the work of The American Chestnut Foundation.

e. The Challenge Partnership Financial Work Sheet (Attachment 1) provides the parties' estimated financial responsibilities for this project.

f. The Corps 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 sections 3 and 4 of Article II.

g. No Federal funds may be used to meet the Partners' total project costs under this Agreement.

ARTICLE III - METHOD OF PAYMENT

a. The Corps shall maintain current records of contributions provided by the Partners and a current projection of total project costs. At least quarterly, the Corps shall provide the Partners with a report setting forth all contributions provided to date and the current projection of total project costs, the components of the total project costs, each party's share of total project costs, and the Partners' contribution required in accordance with Article II.6. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$76,180.00, and the Partners' contribution required under Article II.6. of this Agreement is projected to be

\$41,180.00. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partners.

b. Upon completion of the project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partners 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 parties 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 neutral party acceptable to all parties. The parties shall negotiate their share of any costs for the services provided by a neutral party at the time such services may be agreed to. 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 Partners 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, 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 Regulation 600-7, *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army*, 15 November 1983.

ARTICLE VI - RELATIONSHIP OF PARTIES

a. In the exercise of their respective rights and obligations under this Agreement, the Government and the Partners 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, no party shall provide, without the consent of the other parties, 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 Partners shall hold and save the Government free from all damages arising from services it performs or provides during the implementation 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 PA-TACF fails to fulfill their 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 or if the District Commander in his sole discretion determines it is in the best interest of the Government to terminate this Agreement, the Government shall so notify the PA-TACF, 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 Partners elect to terminate this Agreement.

c. In the event that this Agreement is terminated either pursuant to this Article or otherwise, the Corps shall permit the PA-TACF up to 365 days following the date of termination to remove and/or destroy any and all chestnut material provided that all damages to the premises caused by such removal and/or destruction are corrected by the PA-TACF. This right of removal will include access to all chestnut material on the Corps' land that is planted or otherwise exists as a result of this Agreement.

d. In the event that any Party elects to terminate this Agreement pursuant to this Article, all Parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article II of this Agreement.

e. 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.

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

If to the PA-TACF: PA Chapter

American Chestnut Foundation
206 Forest Resources Lab
University Park, Pennsylvania 16803

If to the Government: District Commander
U.S. Army Engineer District Pittsburgh
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222

b. Any Party may change the address to which such communications are to be directed by giving written notice to the other Parties 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

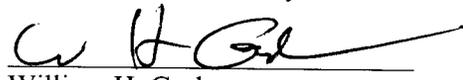
To the extent permitted by the laws governing each Party, the Parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing Party.

ARTICLE XII - GOVERNING LAW

This Agreement shall be interpreted in accordance with applicable Federal and Pennsylvania State law.

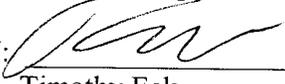
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Commander, Pittsburgh District.

The Department of the Army

BY: 
William H. Graham
Colonel, Corps of Engineers
Commanding

DATE: 9/13/11

Pennsylvania Chapter of the American Chestnut Foundation

BY: 
Timothy Eck
President, PA-TACF

DATE: 8/24/11

CHALLENGE PARTNERSHIP FINANCIAL WORK SHEET

Project Name: Shenango River Lake
Contact Person: Kyle Kraynak, Park Ranger, Shenango River Lake
Address: 2442 Kelly Road, Hermitage, Pennsylvania 16148
Phone: 724-646-1124

Work Project Title: American Chestnut Re-Introduction Project

Location: Various project locations – Campground, Chestnut Swim Beach, Upper & Lower Mahaney Rec. Areas, Former YMCA Campground, Clark Rec. Area

Proposed date of work: Spring 2011-Fall 2012/Longer based on funding and data collection/research

Description of work: Develop a long-term cooperative re-introduction and restoration project to produce seed and trees for research on blight resistant American Chestnut trees.

Partner 1: Pennsylvania Chapter of The American Chestnut Foundation (PA-TACF)
Contact person: Ms. Sara Fitzsimmons, TACF Regional Science Coordinator
Address: 206 Forest Resources Lab, University Park, Pennsylvania 16802
Phone: 814-863-7192

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$7,000	N/A	\$7,000	\$0	\$0	\$14,000
Travel	\$500	N/A	\$2,000	\$0	\$0	\$2,500
Supplies	\$500	\$25,000	\$11,000	\$0	\$0	\$36,500
Equipment Use	\$2,000	\$0	\$1,000	\$0	\$0	\$3,000
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$3,500	\$0	\$0	\$3,500
Volunteer	N/A	N/A	\$16,680	\$0	\$0	\$16,680
In-House Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$10,000	\$25,000	\$41,180	\$0	\$0	\$76,180
Share of Total Cost	13.1%	32.8%	54.1%	0.0%	0.0%	100%

Explanations: The \$7,000 for local Corps salary is based on overhead costs of 1 GS-5 park ranger (\$33.68/hr) and 1 WG-11 maintenance employee (\$61.88). The total is \$95.56/hr for both. This comes out to about 74 hrs of work the local Corps office will provide. The supplies and equipment money is for miscellaneous items the local Corps office will provide. Partner 1 is PA-TACF whose time, travel, knowledge, skills, and abilities all factor into the cost.

ATTACHMENT 1