

**CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
NATURAL BIODIVERSITY
AND
THE FRIENDS OF RAYSTOWN LAKE
AND
HUNTINGDON COUNTY VISITORS BUREAU**

THIS AGREEMENT, entered into this day of 26 February, 2013, by and between the Department of the Army (hereinafter the "Government"), represented by Robert S. Pace, Chief, Operations Division, U.S. Army Engineer District Baltimore, and Natural Biodiversity, The Friends of Raystown Lake, and The Huntingdon County Visitors Bureau, (hereinafter the "Partners"), represented by Kristina Strosnider (Executive Director, Natural Biodiversity), Julie Kopp (President, The Friends of Raystown Lake), and Matt Price (Executive Director, Huntingdon County Visitors Bureau).

WITNESSETH, THAT:

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

WHEREAS, the rehabilitation of the naturalized wildlife and bird watering project at the Visitors Center of the Raystown Lake Project will increase the recreational opportunities and provide for environmental sustainability for the public, and

WHEREAS the Partners are interested in promoting and assisting the Government in providing the naturalized area, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to establish this naturalized area available to the public while providing for environmental stewardship and sustainability, and

WHEREAS, the Partners, in order to assist the Government in this project have 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 Partners and apply those contributions to the Project, and

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Project" shall mean:
 - The removal and replacement of three (3) artificial ponds which encompass approximately 1,811 ft² to include all elements required for operation.
 - The design and implementation of a rain garden.
 - The treatment of invasive species and subsequent native plantings in 14,065 ft² surrounding the pond area.

All work will be accomplished in the renovation of the naturalized area immediately adjacent to the Visitors Center in the Seven Points Recreation Area of the Raystown Lake Project, as generally described in the Raystown Lake Project Handshake Application, dated and selected for approval on 27 November 2012.

- b. The term "total project costs" shall mean all costs incurred by the Government and the Partners 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 Partners, 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 the following as listed below:
 - **The Raystown Lake Project (Partnership Value: \$12,000):**
 - (1) Raystown Lake Project Staff will provide oversight and coordination among partners throughout the scope of the project. This includes staff time to oversee volunteer activities and work necessary to complete contract

specifications for the implementation of new pond features, pumps, and plumbing (\$5,000).

- (2) Raystown Lake Project will provide labor funding for the procurement of contractor services (\$1,500).
- (3) Raystown Lake Project equipment and operators (back-hoe and skid steer) will be provided to implement the design of the rain garden (\$2,500).
- (4) Raystown Lake Project will provide for select materials related to the construction of the rain garden (\$3,000)

- **Handshake (Partnership Value: \$30,000):**

- (1) The Handshake Program will provide the funding for all aspects of implementing a 3 tier pond structure plus waterfall and stream. This will include liner, plumbing, pumps, stone, and contractor labor (\$27,500).
- (2) The Handshake Program will provide the funding for native plants and the professional design of the rain garden area to ensure maximum rainwater capture and groundwater recharge (\$2,500).

c. The Partners shall provide the following as listed below:

- **Natural Biodiversity (Partnership Value: \$10,000):**

- (1) The Executive Director will provide expertise in rain water capture and assistance in procurement of a native plant selection to improve both habitat value and visual aesthetics of the Raystown Lake Visitor's Center (\$2,500).
- (2) The organization will work to secure donations and services to assist Raystown Staff in the construction of the rain garden portion of this project (\$1,000, Donations/Plants, \$6,500 volunteer/expertise services).

- **The Friends of Raystown Lake (Partnership Value: \$3,500):**

- (1) The Friends of Raystown Lake will support this project through a financial contribution toward invasive species treatment in the birding and pond area (\$1,000).
- (2) The Friends of Raystown Lake will provide volunteers to remove non-native vegetation and completely remove the existing pond structures (\$2,500).

- **The Huntingdon County Visitors Bureau (Partnership Value: \$1,500):**

- (1) The Huntingdon County Visitors Bureau will support this project through a financial contribution toward the procurement of native aquatic plants (\$500).
- (2) Additionally, they will provide volunteers to remove non-native vegetation and assist in the complete removal of the existing pond structures while continuing to provide educational tours of the facility (\$1000).

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 Partners' total project costs under this Agreement.

ARTICLE III - METHOD OF PAYMENT

- a. The Government shall maintain current records of contributions provided by the Partners and a current projection of total project costs. At least quarterly, the Government shall provide the Partners 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 Partners' 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 \$57,000, and the Partners' contributions required under Article II.c. of this Agreement are projected to total \$15,000. 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. Each Partner shall provide the contribution required under Article II.c. of this Agreement in accordance with the following provisions: Not less than 60 calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partners of the funds required (if any) from the Partners 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 Partners shall provide the Government with the full amount of the required funds by delivering a check payable to "USAED Baltimore" to the Raystown Lake Project Office. 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 Partners of the additional funds required. Within 60 calendar days thereafter, the Partners 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 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.
 - 1. In the event the final accounting shows that the total contribution provided by the Partners 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 each 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 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, 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

Each 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 Partners fail 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, the Government shall so notify the Partners, 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 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: Natural Biodiversity
 Kristina Strosnider
 P.O. Box 84
 Ebensburg, PA 15931

 The Friends of Raystown Lake
 Julie Kopp
 P.O. Box 87
 Hesston, PA 16647
 Phone: 814-658-0116

 Huntingdon County Visitors Bureau
 Matt Price
 6993 Seven Points Road
 Hesston, PA 16647
 Phone: 814-658-0060

If to the Government: Raystown Lake Project
 Jude Harrington
 6145 Seven Points Road
 Hesston, PA 16647
 Fax: 814-658-3313
 Phone: 814-658-3405

- 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, Baltimore District or his/her designee.

The Department of the Army

BY: Robert S. Pace

TITLE: Chief, Operations Division, Baltimore District

SIGNATURE: Robert S. Pace DATE: 26 Feb 2013

Natural Biodiversity

BY: Kristina Strosnider

TITLE: Executive Director, Natural Biodiversity

SIGNATURE: Kristina Strosnider DATE: 4/2/2013

The Friends of Raystown Lake

BY: Julie Kopp

TITLE: President, Friends of Raystown Lake

SIGNATURE: Julie Kopp DATE: 3-14-13

Huntingdon County Visitors Bureau

BY: Matt Price

TITLE: Executive Director, Huntingdon County Visitors Bureau

SIGNATURE: Matt Price DATE: 7 March 2013

Challenge Partnership Financial Work Sheet

Corps Project Name: Raystown Lake Project
 Work Project Title: The Raystown Lake Naturalized Wildlife & Bird Watering Rehabilitation Project
 POC Name: Jude Harrington
 Address: 6145 Seven Points Road City: Hesston State: PA Zip Code: 16647
 Telephone: 814-658-6808
 Location on Project: Raystown Lake Visitors Center

Partner Organization 1: Natural Biodiversity
 POC Name: Kristina Strosnider
 Address: P.O. Box 84 City: Ebensburg State: PA Zip Code: 15931
 Telephone: 814-650-7556

Partner Organization 2: The Friends of Raystown Lake
 POC Name: Julie Kopp
 Address: P.O. Box 87 City: Hesston State: PA Zip Code: 16647
 Telephone: 814-658-0116

Partner Organization 3: Huntingdon County Visitors Bureau
 POC Name: Matt Price
 Address: 6993 Seven Points Road City: Hesston State: PA Zip Code: 16647
 Telephone: 814-658-0060

Proposed start date of work: March 2013

Simple description of work to be accomplished through the partnership: The proposed project to renovate and revitalize the pond and birding area will incorporate the Corps principles and missions of sustainability, environmental stewardship, recreation, and environmental education. Complete removal and new construction of the existing ponds, design and implementation of a rain garden, treatment of invasive species, and native plantings will transform the existing area into an environmentally sound, sustainable, and aesthetically pleasing landscape feature for the visiting public while serving as a critical educational (interpretive) extension of the Visitor Center exhibits. In the Others Section (explain below): \$2500 under the Local Corps Office is for Contracting Office Labor. \$2500 under Handshake Funds is for professional design services.

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$5,000	N/A	\$2,500	\$0	\$0	\$7,500
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$3,000	\$27,500	\$0	\$0	\$0	\$30,500
Equipment Use	\$1,500	\$0	\$0	\$0	\$0	\$1,500
Funds Contributed	N/A	N/A	\$0	\$1,000	\$500	\$1,500
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer	N/A	N/A	\$0	\$2,500	\$1,000	\$3,500
In-Kind Services	N/A	N/A	\$7,500	\$0	\$0	\$7,500
Other (explain below)	\$2,500	\$2,500	\$0	\$0	\$0	\$5,000
Total	\$12,000	\$30,000	\$10,000	\$3,500	\$1,500	\$57,000
Share of Total Cost	21.1%	52.6%	17.5%	6.1%	2.6%	100%

KRS
4/11/13 *Julie Kopp*
3-14-13