

**CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY, MISSOURI DEPARTMENT
OF CONSERVATION AND
CLAY COUNTY**

THIS AGREEMENT, is entered into this 24 day of June 2013 by and between the Department of the Army (hereinafter the "Government"), represented by the Chief, Operations Division, Kansas City District, Missouri Department of Conservation (hereinafter the "Partner 1") represented by the Fisheries Regional Supervisor and Clay County Department of Parks, Recreation, and Historic Sites (hereinafter the "Partner 2") represented by the Presiding Commissioner.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Smithville Lake, which includes water quality, water control, and fish and wildlife conservation; and

WHEREAS, the development and construction of aquatic habitat and shoreline protection structures in significantly degraded areas at Smithville Lake will improve water quality and fish and wildlife conservation for the public; and

WHEREAS, Partner 1 and Partner 2 are interested in promoting and assisting the Government in providing the aquatic habitat and shoreline protection structures; and

WHEREAS, it is mutually beneficial to the Government and Partner 1 and Partner 2 to work cooperatively to make these aquatic habitat and shoreline protection structures available to the public; and

WHEREAS, Partner 1 and Partner 2, in order to assist the Government in this Project, has voluntarily agreed to make contributions toward the development and construction of the Smithville Lake aquatic habitat and shoreline protection structures; and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, Public Law 102-580, (October 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 Partner 1 and Partner 2 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, Partner 1 and Partner 2 agree as follows:

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For the purpose of this Agreement:

a. The term “Project” shall mean the Smithville Aquatic Habitat/Shoreline Protection Program that involves the development of rip rap shoreline protection structures, large oak tree brush piles, and shoreline hinge-cut tree wildlife habitat structures as described in Appendix A, “Challenge Partnership Agreement Financial Work Sheet.” *See also* Appendix B, Project Map, for a depiction of structure locations.

b. The term “total project costs” shall mean all costs incurred by the Government and Partner 1 and Partner 2 directly related to the development and 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, and using contributions provided by the Partners, shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. Performance of all work on the Project, whether the work is performed under contract or by Government personnel, shall be exclusively within the control of the Government.

b. The Government shall provide materials and services to assist in the design and construction of the Project as shown in Appendix A of this Agreement.

c. Partner 1 and Partner 2 shall provide materials, labor, and equipment to assist in the construction of the Project as shown in Appendix A of this Agreement.

The Government shall perform a final accounting to determine the contributions provided by the 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 Partner 1’s or Partner 2’s share of the total project costs under this Agreement.

ARTICLE III – METHOD OF PAYMENT AND FINAL ACCOUNTING

- a. The Government shall maintain current records of contributions provided by Partner 1 and Partner 2 and a current projection of total project costs. Each party's contribution towards this Project, as outlined in Article II and Appendix A, shall be the responsibility of the respective party. A copy of all receipts showing payments associated with the Project shall be provided to the Government to determine total project costs. On the effective date of this Agreement, total project costs are projected to be \$120,744.36 and Partner 1's contribution required under Article II.c. is projected to be \$37,391.36 worth of In-Kind Labor, and Partner 2's contribution required under Article II.c. is projected to be \$41,619.20 worth of labor, supplies, and equipment as set out in Appendix A. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and Partner 1 and Partner 2.
- b. The Partners shall provide the contributions required under Article II.c. of this Agreement in accordance with the following provisions: Not less than 90 calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partners of the funds or in-kind services and materials required from the Partners to meet their projected contributions, including their proportionate shares of the Government's financial obligations incurred prior to the commencement of the period of construction if funds are due. 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 "FAO, USAED, Kansas City District, to the Government's *REPRESENTATIVE*. The Government shall draw from the funds provided by the Partners such sums as the Government deems necessary to cover: (a) the Partners' proportionate shares of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partners' proportionate shares 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 Partners must provide additional funds, services, or materials to meet their obligations, the Government shall notify the Partners of the additional requirements or their cash equivalents. Within 60 calendar days thereafter, each Partner shall provide the Government with a check for the full amount of the additional required funds or provide the services and materials set forth in this agreement.
- 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 any Partner is less than its required share of total project costs, that 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 any Partner exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to that 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 Partner 1 and Partner 2 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, Public Law 88-352, and the Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 195 of Title 32, Code of Federal Regulations, as well as Army Regulation 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 THE PARTIES

a. In the exercise of their respective rights and obligations under this Agreement, the Government and Partner 1 and Partner 2 each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

b. In exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor or third party with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor or third party 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

Partner 1 and Partner 2 shall hold and save the Government free from all damages arising from services Partner 1 or Partner 2 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. The Government agrees that the Project shall be properly maintained and shall be held open for free public recreational use. Since the project should therefore be protected under the Missouri Recreational Use statute, the Government does not anticipate that any claims will be filed related to the operation, maintenance, repair, replacement, and rehabilitation of the Project. The Government shall, however, vigorously defend any such claim against the Government and shall endeavor to do so without involving, joining, or impleading the Partners. The Government further agrees that it shall not agree to any settlement of any such tort claim or lawsuit without prior consultation with the Partners.

ARTICLE IX – TERMINATION OR SUSPENSION

a. If at any time Partner 1 or Partner 2 fails to fulfill its obligations under this Agreement, the Government shall terminate this Agreement or suspend future performance under this Agreement unless it 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 Partner 1 and Partner 2, and 60 calendar days thereafter any party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event any of the parties 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 Partner 1 or Partner 2 elects to terminate this Agreement.

c. In the event that a 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 III 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.

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 first class, registered, or certified mail as follows:

If to the Partner 1:

Missouri Department of Conservation
P.O. Box 180
Jefferson City, MO 65109-0180
ATTN: Chris Vitello

If to the Partner 2:

Clay County Department of Parks, Recreation & Historic Sites
17201 Paradesian St
Smithville, MO 64089
ATTN: James Fisher

If to the Government:

U.S. Army Corps of Engineers
16311 DD Highway North
Smithville, MO 64089
ATTN: Derek Dorsey

b. A 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Chief, Operations Division, Kansas City District.

The Department of Army-

BY: Stuart Cook
Stuart Cook Chief, Operations Division
Kansas City District Corps of Engineers

DATE: 7/10/13

Missouri Department of Conservation-

BY: Chris Vitello
Chris Vitello, Fisheries Division Chief

DATE: 6-12-2013

APPROVED AS TO FORM ONLY

James P. ...
GENERAL COUNSEL

Clay County Department of Parks, Recreation & Historic Sites

BY: Pamela Mason
Pamela Mason, Presiding Commissioner

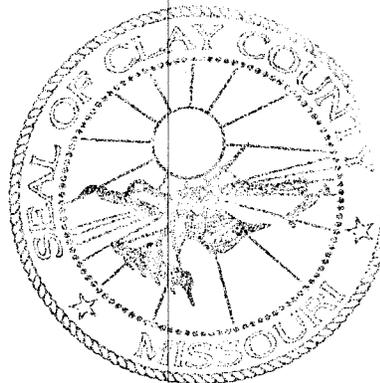
DATE: June 24, 2013

BY: Don Norris
Don Norris, Legal Counsel
Approved as to form

DATE: 6-24-13

BY: Sheri Chapman
Sheri Chapman, County Clerk

DATE: _____



APPENDIX A
CHALLENGE COST-SHARING FINANCIAL WORK SHEET

Project Name: Smithville Lake Project

Contact person: Derek Dorsey
Address: U.S. Army Corps of Engineers
P.O. Box 428
Smithville, MO. 64089

Phone: 816-389-3947

Work Project Title: Smithville Aquatic Habitat/Shoreline Protection Program

Location: Smithville Lake, Clay County, Missouri (39.395678, -94.555635). Smithville Lake is a 7,190-acre U.S. Army Corps of Engineer (USACE) reservoir located just north of Kansas City, Missouri. Smithville Lake was completed in 1982 and currently attracts thousands of water enthusiasts, including thousands of anglers, each year. The lake's primary purpose is for flood control and, as a result often experiences large water level fluctuations. Like many reservoirs across the county, fish habitat in the lake has significantly diminished since the reservoir was constructed. Repeated and long-term water level fluctuations have largely limited success. More than 4,000 acres of standing timber left intact when the lake was built to provide fish habitat have since degraded and provide only limited habitat for fish. The lack of suitable fish habitat is limiting the lake's potential to serve as a productive and diverse fishery.

Proposed Dates of work: Jan 2013-Aug 2013

Description of Work: The Project includes the armoring of 2500-ft of shoreline with 4,965 tons of rock rip-rap to protect against erosion and provide increased water quality and habitat. As well, approximately 100 large hardwood brush piles consisting of 5-10 trees per pile and hinge-cut trees along approximately 7 miles of shoreline will provide diverse habitat structure to the shoreline.

Partner 1 will provide labor, equipment, and fuel for the construction of the brush piles and hinge cuttings. Partner 2 will provide labor, equipment and fuel for shoreline stabilization projects. The volunteer group will consist of approximately 40 fishermen that are active in improving the habitat and fishery of Smithville Lake. The volunteer group will be organized by Partner 1 and they will provide approximately 950 hours of volunteer labor valued at \$21.79/hr.

The Government shall provide materials and services for the design and construction of the Project. Services shall include the design of the aquatic habitat/shoreline protection structures, and designation of the structure locations. The government shall also provide materials for construction, to include, approximately 5000 tons of rip rap delivered to the construction site. The Government shall retain final approval authority over all design and construction activities.

Partners:

Clay County

Contact Person: James Fisher

Address: Clay County

17201 Paradesian St

Smithville, MO 64089

Phone: 816-407-3401

Missouri Department of Conservation

Contact Person: Scott Ryan

Address: Missouri Department of Conservation

701 James McCarthy Drive

St. Joseph, MO 64507-2194

Phone: 816-271-3100

	US Army Corps of Engineers	Missouri Dept. of Conservation	Clay County Parks	Total
Salaries	\$8,109	\$10,107.84	\$2,428.80	\$20,645.64
Travel				
Materials and Supplies	\$30,000		\$30,000	\$60,000
*Equipment Use	\$3,624.80	\$6,583.52	\$9,190.40	\$19,398.72
Cash/Funds				
Personal Property				
**Volunteers		\$20,700		
Contingencies				
Total	\$41,733.80	\$37,391.36	\$41,619.20	\$120,744.36

The U.S. Army Corps of Engineers will be providing 2 skid loaders with attachments and operators for approximately 40 hours each. The skid loader cost is \$45.31/hr and operator at \$47.10/hr. A USACE Park Manager will provide oversight on the entire project at \$72.35 for approximately 60 hours.

The Missouri Department of Conservation will be providing 7 chainsaws with operators for approximately 40 hours. The chain saw cost is \$12.18/hr and the operator cost is \$29.00/hr. MDC will also provide 2 dump barges with 4 operators for approximately 16 hours. The dump barge cost is \$99.16/hr and the operator at \$31.06/hr.

Clay County Parks will be providing a front end loader and operator for approximately 40 hours. The front end loader cost is \$139.14/hr and operator at \$20.90/hr. CCP will also be providing 2 skid loaders with operators for approximately 40 hours. The skid loader cost is \$45.31/hr and the operator at \$19.91/hr.

*Equipment cost will be calculated according to the Construction Equipment Ownership and Operating Expense Schedule Region V.

** The Missouri Department of Conservation will be organizing approximately 40 local avid fishermen to assist with the various portions of the overall project.