

CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN  
THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT  
AND  
THE OKLAHOMA ARCHEOLOGICAL SURVEY,  
THE OKLAHOMA ANTHROPOLOGICAL SOCIETY,  
OKLAHOMA STATE UNIVERSITY,  
AND  
THE WICHITA AND AFFILIATED TRIBES OF OKLAHOMA

THIS AGREEMENT, entered into by and between the U.S. Army Corps of Engineers, Tulsa District (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer Tulsa District, and the Oklahoma Archeological Survey, the Oklahoma Anthropological Society, Oklahoma State University, and the Wichita and Affiliated Tribes of Oklahoma (hereinafter the "Partners"), represented by Dr. Richard Drass, Ms. Debra Baker, Dr. Stephen Perkins, and Mr. Gary McAdams, respectively,

WITNESSETH, THAT:

WHEREAS, the Government manages over 17,000 acres at Kaw Lake in Oklahoma, which includes over 240 known archaeological sites, and

WHEREAS, the management, protection, and preservation of these archaeological sites is the responsibility of the Government under the National Historic Preservation Act of 1966 (as amended), and

WHEREAS, one of the archaeological sites at Kaw Lake, the Deer Creek site, is listed on both the National Register of Historic Places and is a Designated National Historic Landmark, and

WHEREAS, the Deer Creek site is a fortified village site believed to have been occupied by the Wichita Tribe during the first half of the 18th century. It has also been called Ferdinandina or Ferdinandino and is closely associated with the French exploration of the southern and central Plains. It is one of only three such (known) sites in the southern Plains, and

WHEREAS, it is unclear as to the current state of preservation and context for the cultural features and deposits at the Deer Creek site as it has not been re-assessed in some 40 years, and

WHEREAS, the Wichita and Affiliated Tribes are the cultural descendants of the inhabitants of the Deer Creek site and have a vital interest in protecting, studying, and preserving the historical record of their people, and

WHEREAS the Partners are interested in assisting the Government with undertaking work to protect, study, and preserve the Deer Creek site, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to undertake this work, and

WHEREAS, the Partners, in order to assist the Government in this project have voluntarily agreed to contribute services such as labor for archaeological field work, research, and use of equipment towards the study of the Deer Creek site, 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 multi-phased, cooperative effort to undertake archaeological work at the Deer Creek site. This work will initially aim to identify subsurface features at the site and then assess the degree to which the site may have been impacted by natural processes, land management activities, and pool operations. If necessary in the near future, resolution of adverse effects -- as required under Section 106 of the National Historic Preservation Act -- could be accomplished through consultation, development of a Memorandum of Agreement (MOA), and completion of associated mitigation activities.

Identification of subsurface features would be accomplished primarily through the use of appropriate geophysical techniques. Surface survey with limited shovel testing would likely be utilized as a complimentary technique. Ultimately, the effort would produce a map of potential subsurface features and artifact concentrations from which a Research Design could be developed. The Research Design would then guide further investigation, or ultimately, mitigation, activities at the site. The plans for work at the site will be fluid and will be modified as information is gathered and appropriate parties are consulted throughout the process.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partners directly related to completion 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.

## 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 volunteer labor provided by the partners, shall expeditiously complete 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 labor, supplies, and materials (or administer necessary contracts) for vegetation clearing to allow access for site assessment and research. Handshake Funds may be utilized to contract for vegetation clearing services, and/or to provide equipment and materials necessary for the geophysical and archaeological investigations. The funds may also be used to pay for analyses of recovered materials as appropriate, including radiocarbon or AMS or other dating techniques, specialized artifact analysis, residue analysis, etc. Curation materials for artifacts and associated documentation would also be acquired with Handshake Funds. In addition, the Government will provide Project oversight and undertake the appropriate coordination and consultation to ensure compliance with relevant historic preservation and environmental laws.

c. The Partners shall provide services in the form of volunteer labor to perform the archaeological field work and research at the Deer Creek site for the Project. It is anticipated that the Oklahoma Archeological survey will provide and operate geophysical equipment (e.g. gradiometer, magnetometer, or ground penetrating radar) for site investigations. The Oklahoma Archeological Survey and Oklahoma Anthropological Society would also provide use of other necessary supplies and equipment for investigations including excavation at the site beyond what may be purchased by the Government. The Partners will provide a report at the end of the Project documenting the results of the Project and recommendations for future work and preservation of the site. It is initially estimated that the value of the services (labor, research, equipment use, consultation, etc) provided by the Partners will be approximately \$98,500.00. Due to the uncertain nature of what work will be required for the Project, especially after initial investigations are completed, these totals are only able to be estimated and will change as the Project proceeds. As decisions are made on what work will be required to accomplish the project goals, the totals of each Partner's contributions will be adjusted and documented.

## ARTICLE III - 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 IV - 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 V - 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 VI - 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 VII - INDEMNIFICATION

The Partner shall hold and save the Government free from all damages arising from services it performs or provides for the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE VIII - 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.

## ARTICLE IX - 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, electronic mail, or mailed either by first-class, registered, or certified mail, as follows:

If to the Partners:      Dr. Robert Brooks  
                                    Oklahoma Archeological Survey  
                                    111 E. Chesapeake  
                                    Norman, OK 73019  
                                    [rbrooks@ou.edu](mailto:rbrooks@ou.edu)  
                                    405-325-7211

                                    Mr. Gary McAdams  
                                    Wichita and Affiliated Tribes of Oklahoma  
                                    PO Box 729  
                                    Anadarko, OK 73005  
                                    [gary.mcadams@wichtatribe.com](mailto:gary.mcadams@wichtatribe.com)  
                                    405-247-2425

                                    Ms. Debra Baker  
                                    Oklahoma Anthropological Society

c/o/ Museum of the Great Plains, 601 NW Ferris Ave.  
Lawton, OK 73507  
[debrab@museumgreatplains.org](mailto:debrab@museumgreatplains.org)  
580-678-1416

Dr. Stephen Perkins  
Oklahoma State University  
410 Murray Hall  
Stillwater, OK 74078  
[stephen.perkins@okstate.edu](mailto:stephen.perkins@okstate.edu)  
405-744-6123

If to the Government: Michelle C. Horn  
U.S. Army Corps of Engineers, Tulsa District  
1645 S. 101<sup>st</sup> E Ave.  
Tulsa, OK 74128  
[michelle.c.horn@usace.army.mil](mailto:michelle.c.horn@usace.army.mil)  
918-669-7642

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.

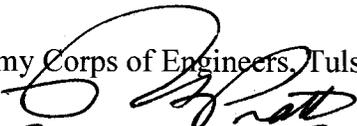
#### ARTICLE X - CONFIDENTIALITY

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 District Commander, Tulsa District.

The U.S. Army Corps of Engineers, Tulsa District

BY:

  
RICHARD A. PRATT

TITLE:

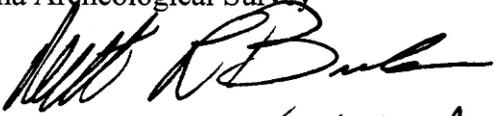
COLONEL, U.S. ARMY  
DISTRICT COMMANDER

DATE:

15 JUL 14

*(signature pages continued)*

Oklahoma Archeological Survey

BY: 

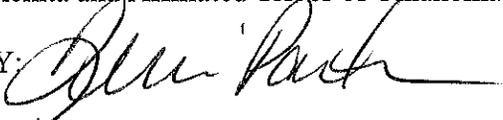
TITLE: *Director / State Archaeologist*

DATE: *6/18/14*

*(signature pages continued)*

Wichita and Affiliated Tribes of Oklahoma

BY:



TITLE: **PRESIDENT**

DATE: **07/31/2014**

*(signature pages continued)*

Oklahoma Anthropological Society

BY: *Debra S Baker*

TITLE: President, Oklahoma Anthropological Society

DATE: June 17, 2014

*(signature pages continued)*

Oklahoma State University

BY: 

**Dr. Stephen M. Perkins**

TITLE: **Associate Professor of Anthropology, Department of Sociology**

DATE: **7/11/14**

## Challenge Partnership Financial Work Sheet

Corps Project Name: Kaw Reservoir, Tulsa District

Work Project Title: Deer Creek Site Geophysical and Archaeological Investigations

POC Name: Michelle Horn

Address: 1645 S 101<sup>st</sup> E Ave

City: Tulsa

State: OK Zip Code: 74128

Telephone: 918 - 669 - 7642

Location on Project: District Office

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Partner Organization 1: Oklahoma Archeological Survey

POC Name: Dr. Robert Brooks

Address: 111 E. Chesapeake

City: Norman

State: OK Zip Code: 73019

Telephone: 405 - 325 - 7211

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Partner Organization 2: Wichita and Affiliated Tribes of Oklahoma

POC Name: Mr. Gary Mcadams

Address: P.O. Box 729

City: Anadarko

State: OK Zip Code: 73005

Telephone: 405 - 247 - 2425

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Partner Organization 3: Oklahoma Anthropological Society

POC Name: Debra Baker

Address: c/o Museum of the Great Plains, 601 NW Ferris Ave. City: Lawton State: OK Zip Code: 73507

Telephone: 580 - 678 - 1416

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Partner Organization 4: Oklahoma State University

POC Name: Dr. Stephen Perkins

Address: 410 Murray Hall

City: Stillwater

State: OK Zip Code: 74078

Telephone: 405 - 744 - 6123

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Proposed start date of work: Spring 2014

The proposed project would consist of a multi-phased effort to identify subsurface features at the site and then to assess the degree to which the site may have been impacted by natural processes, land management activities, and pool operations. If necessary in the near future, resolution of adverse effects -- as required under Section 106 of the National Historic Preservation Act -- could be accomplished through development of a Memorandum of Agreement (MOA) and associated mitigation activities.

Identification of subsurface features would be accomplished primarily through the use of appropriate geophysical techniques, such as gradiometer or magnetometer. Surface survey with limited shovel testing would likely be utilized as a complimentary technique. Ultimately, the effort would produce a map of potential subsurface features and artifact concentrations with which a Research Design could be developed. The Research Design would then guide further investigation, or ultimately, mitigation, activities at the site.

	Local Corps Office	Handshake Funds	OAS	Wichita Tribe	OK Anth Soc	OSU	
Salaries	\$50,000	N/A	\$20,000	\$0	\$0	\$10,000	
Travel	\$3,000	N/A	\$5,000	\$0	\$0	\$3,500	
Materials and Supplies	\$0	\$10,000	\$0	\$0	\$0	\$0	
Equipment Use	\$0	\$0	\$10,000	\$0	\$5,000	\$0	
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	\$10,000	\$5,000	\$20,000	\$10,000	
In-Kind Services	N/A	N/A	\$0	\$0	\$0	\$0	
Other (explain below)	\$0	\$15,000	\$0	\$0	\$0	\$0	
<b>Total</b>	<b>\$53,000</b>	<b>\$25,000</b>	<b>\$45,000</b>	<b>\$5,000</b>	<b>\$25,000</b>	<b>\$23,500</b>	<b>\$176,500</b>
<b>Share of Total Cost</b>	30.03%	14.16%	25.50%	2.83%	14.16%	13.31%	100.00%