

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY,
THE KENTUCKY DEPARTMENT OF FISH AND WILDLIFE RESOURCES
AND
FRIENDS OF BARREN RIVER LAKE

THIS AGREEMENT, entered into this day of 21st, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the Barren River Lake Project Manager, U.S. Army Engineer District Louisville (CELRL-OP), (hereinafter the "Partner"), represented by the Kentucky Department of Fish and Wildlife Resources (KYDFWR) and the Friends of Barren River Lake (FoBRL) 501 C (3) organization.

WITNESSETH, THAT:

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

WHEREAS, the restoration of warm season native grasses at the Barren River Lake Army Corps of Engineers Main office and Dam will increase the value of recreational opportunities through interpretation on the restoration of native plant communities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in this restoration project, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to conduct the restoration and provide interpretative signs for the public, and

WHEREAS, the Partner, in order to assist the Government in this project has 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 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" is categorized as environmental stewardship through implementation of natural resource restoration. The objective is to restore manageable areas of the project to native warm season grasses for wildlife value, environmental education, and natural resource enhancement. This project has several stages in which sixty acres of native warm season grasses will be planted at the Quarry Road Recreational Area, the spillway area in three fields, behind the BRL office and on the face of the dam, as generally described in the *Barren River Lake Handshake Grant Proposal 2009 Native Warm Season Grass Restoration Partnership, dated October 10, 2008 and approved December 2, 2008*

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner 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 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 shall provide \$15,800.

Native grass seed	\$ 2,000.00
Fertilizing	\$ 500.00
Liming	\$ 500.00
Soil Testing	\$ 200.00
Field Work (in house labor)	\$ 2,600.00

***Approximate costs from time of proposal application, costs are subject to vary.*

c. The Partner(s) shall provide \$8,800.

Item	Cost	
RX fire program*	General Maintenance	KDFWR*
Herbicide sprayer*	General Maintenance	KDFWR*
Diesel 3/4 Truck*	General Maintenance	KDFWR*
Traux Seed Drill*	General Maintenance	KDFWR*
20' Batwing mower*	General Maintenance	KDFWR*
Leveling disk*	General Maintenance	KDFWR*
Offset Disk*	General Maintenance	KDFWR*
Gooseneck trailer*	General Maintenance	KDFWR*
100 HP tractor*	General Maintenance	KDFWR*
Kubota RTV900*	General Maintenance	KDFWR*
Herbicides	\$ 500.00	KDFWR
Diesel fuel	\$ 400.00	KDFWR
Reseeding	\$ 400.00	KDFWR
Interpretive signs	\$ 1,000.00	Friends of BRL

**The cost of general maintenance for the equipment used in the project is equal to \$1300 to \$2000/yr*

***Approximate costs from time of proposal application, costs are subject to vary.*

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 Article II.b. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$24,600, and the Partner's contribution required under Article II.b. of this Agreement is projected to be \$8,800 . Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partner.

b. The Partner shall provide the contribution required under Article II.b. of this Agreement in accordance with the following provisions: Not less than 30 days calendar days prior to issuance of the solicitation for the initial implementation of the restoration project, the Government shall notify the Partner of the funds required from the Partner 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 Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, *LOUISVILLE 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 implementation of the restoration project. In the event the Government determines that the Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required. Within 60 calendar days thereafter, the Partner 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 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.

1. In the event the final accounting shows that the total contribution provided by the Partner 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 the 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 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 Barren River Lake Project Manager 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:

Wayne Tamminga
Kentucky Department of Fish and Wildlife Resources
1 Sportsman's Lane
Frankfort, KY 40601

And

Friends of Barren River Lake
PO Box 213
Glasgow KY 42142

If to the Government: Kevin Salvilla, BRL Project Manager
U.S. Army Engineer Louisville District
11088 Finney Road
Glasgow, KY 42141

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 Barren River Lake Project Manager.

The Department of the Army

Kevin Salvilla, Corps of Engineers
Barren River Lake Project Manager
U.S. Army Engineer District Louisville
(CELRL-OP)

BY: *Kevin R. Salvilla*
TITLE: *Barren River Lake Project Manager*
DATE: *1/12/2009*

Kentucky Department of Fish and Wildlife
Resources

BY: *Wendy Thompson*
TITLE: *wildlife biologist*
DATE: *1-14-2009*

Friends of Barren River Lake

BY: *[Signature]*
TITLE: *CHAIRMAN of the board*
DATE: *1/27/09*

Corps Project Name: Barren River Lake, Louisville District

Work Project Title: **Restoration of Warm Season Native Grasses on Barren River Lake: A joint effort with the Corps, KDFWR, and the Friends of Barren River Lake**

POC Name: Libby Watt

Address: 11088 Finney Road City: Glasgow State: KY Zip Code: 42141

Telephone: 270-646-2055

Location on Project: Barren River Lake

Partner Organization 1: Kentucky Department of Fish and Wildlife Resources

POC Name: Wayne Tamminga

Address: 1457 South Lucas Road City: Lucas State: KY Zip Code: 42156

Telephone: 270-646-5167

Partner Organization 2: Friends of Barren River Lake

POC Name: Jim Secrest, JR

Address: P.O. Box 213 City: Glasgow State: KY Zip Code: 42141

Telephone: 270-622-7212

Partner Organization 3:

POC Name:

Address: City: State: Zip Code:

Telephone:

Proposed start date of work: March 2009

Simple description of work to be accomplished through the partnership: Natural resource restoration of warm season grass for improved wildlife habitat, soil stabilization, environmental education, and visual aesthetics.

	Corps	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$2,600	N/A	\$4,500	\$0	\$0	\$7,100
Travel	\$3,200	N/A	\$0	\$0	\$0	\$3,200
Materials and Supplies	\$0	\$10,000	\$1,300	\$0	\$0	\$11,300
Equipment Use	\$0	\$0	\$2,000	\$0	\$0	\$2,000
Funds Contributed	N/A	N/A	\$0	\$1,000	\$0	\$1,000
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain in text)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$5,800	\$10,000	\$7,800	\$1,000	\$0	\$24,600
Share of Total Cost	23.6%	40.7%	31.7%	4.1%	0.0%	100%