

CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN

THE DEPARTMENT OF THE ARMY

AND

VOICES FOR LAKE OAHE

AND

EMMONS COUNTY, NORTH DAKOTA

THIS AGREEMENT, entered into this day 8 of JUNE, 2011, by and between the U.S. Army Corps of Engineers (hereinafter the "Corps"), represented by Eric Stasch, Oahe Dam/Lake Oahe Operations Project Manager, U.S. Army Corps of Engineers Omaha District; Voices for Lake Oahe, (hereinafter the "Partner"), represented by Ron Kraft; and the Emmons County, North Dakota, Treasurer (hereinafter the "County").

WITNESSETH, THAT:

WHEREAS, the Corps manages lands and waters at Lake Oahe which includes recreational opportunities for the public, and

WHEREAS, the purchase of sub-base material for 0.25-mile access/internal roads and the new all-weather boat staging/launch and parking lot area in preparation for the later paving project along with installation of environmental stewardship interpretive signs on Lake Oahe will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Corps in providing this improved access road and boat staging/launch and parking lot area, and

WHEREAS the County will be managing the contract of completing the initial road preparation work as part of a larger North Dakota Department of Transportation (ND DOT) project, and

WHEREAS, it is mutually beneficial to the Corps and the Partner to work cooperatively under the 2011 Handshake Program to improve this access road and boat staging/launch and parking lot available to the public, and

WHEREAS, the Partner, in order to assist the Corps in this project has voluntarily agreed to pay a portion of the cost to fund this project and to obtain various grant monies to fund the project providing them to the County, 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 Corps and the Partner have the full authority and capability to perform as hereinafter set forth and intend to cooperate in financing and handshake cost-sharing in accordance with the terms of this agreement with the County managing the contract for the completion of the project,

NOW THEREFORE, the Corps and the Partner agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

a. The term "Project" shall mean creating access improvements in the Cattail Bay Recreation Area to include raising and widening of the entrance/internal roads and boat staging/launching/and parking lot area. The Cattail Bay recreation improvements are part of a larger road improvement project in Emmons County, ND totaling 5.25 miles. The last 0.25-mile section is under Corps jurisdiction within the Cattail Bay Recreation Area. The Handshake Partnership monies will be used only in the Cattail Bay Recreation Area and will support the entire road improvement project.

Phase one of the project is to widen the entrance/internal roads and improve the sub base of 0.25-mile of road and the boat staging/launch and parking lot to prepare for paving.

The road, parking lot, and launch area cost is estimated at \$200,000. The \$9,000 handshake will leverage over \$110,000 worth of improvements on Corps operated lands that had not been part of the original project. These Corps funded improvements will be contained within the Cattail Bay Recreation Area on Lake Oahe, as generally described in the Oahe Master Plan, signed September 2010. In addition, environmental stewardship interpretive signs will be installed in the area of the boat ramp parking lot area.

b. The term "total project costs" shall mean all costs incurred by the Corps and the Partner directly related to construction of the project.

c. 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.

d. All donated property, facilities and improvements placed on Corps land as well as any work accomplished under this agreement shall become the property of the Corps.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Corps, subject to and using funds appropriated by the Congress of the United States (hereinafter the "Congress"), shall expeditiously purchase the materials identified and provide to

the Partners contractor, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The Partner will provide funds to the County (Emmons County Treasurer) to be used in conjunction with grant funding that was received as part of the larger paving project of ND 1804. The performance of all work on Corps land, whether performed by County personnel, contractor personnel, or Partner members, shall be performed exclusively with the consent of, and under the control of the Corps. The award of contracts, modifications or change orders, and oversight of contractor personnel on the Project shall be within the control of the County.

b. The Corps shall purchase up to \$9,000 (received from the Handshake Program) of base material to be used to widen the entrance/internal roads and improve the sub-base of 0.25 mile of access road and boat staging/launch and parking lot area.

c. The Partner shall find grants for the ND Department of Transportation (DOT) contract for phase one of widening and raising the road bed for future paving work. Emmons County will administer this contract for ND DOT for the upgrade of the work of Phase 1 and the paving portion. No Federal funds may be used to meet the Partner's total project costs under this Agreement. If the Partner fails to raise sufficient funds, the parties may elect to suspend or terminate this Agreement, as described in Article IX, subpart b.

d. The Corps shall review the final accounting to ascertain the total contributions provided by all parties to this agreement and to determine whether each party has met its obligations under paragraphs b and c of this Article.

### ARTICLE III - METHOD OF PAYMENT

a. The County shall maintain current records of contributions provided by the parties and an updated projection of the total project costs. On a quarterly basis, the County shall provide the Partner and the Corps with a report setting forth all contributions provided to date, the current projection of the total project costs. This report will include a level of detail showing the individual components of total project costs, each party's share of total project costs, and the parties' actual contributions toward project costs, as required in accordance with Article II.b of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$190,500. The Corps contribution is to be no more than \$9,000. The Partner's contribution required under Article II.b of this Agreement is projected to be \$176,500. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the parties.

b. Upon completion of the Project and resolution of all relevant claims and appeals, the County shall conduct a final accounting and furnish the Corps and 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.

#### ARTICLE IV - DISPUTE RESOLUTION

As a condition precedent to any of the parties 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 third party acceptable to all parties. The parties shall each divide all costs paid to the third party equally for any and all costs for services provided by such 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 Corps 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 Corps, Partner and the County each act in an independent capacity and none are 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 Partner shall hold and save the Corps and the County free from all damages arising from services it performs or provides on Corps land for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, except for damages due to the fault or negligence of the County, its contractors, or the Corps. Likewise, the County shall hold and save the Corps and the Partner free from all damages arising from services it performs or provides on Corps land for the construction, operation, maintenance, repair, replacement, and rehabilitation

of the Project, including damages due to the fault or negligence of its contractors, except for damages due to the fault or negligence of the Corps or the Partner.

#### ARTICLE IX - TERMINATION OR SUSPENSION

a. If at any time the Partner or the County individually or mutually fails to fulfill their obligations under this Agreement, the Corps shall terminate this Agreement or suspend future performance under this Agreement unless they determine 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 Corps fails to receive annual appropriations in amounts sufficient to meet its share of Project expenditures for the then-current or upcoming fiscal year, the Corps shall so notify the Partner and the County. If the Partner fails to receive funding in amounts sufficient to meet its share of Project expenditures, it shall so notify the Corps and the County. Within 60 calendar days thereafter any of the parties may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that 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 notifying party receives sufficient funding, or until the Corps, the County, or the Partner elect to terminate this Agreement.

c. 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.

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 – PUBLICITY

Any publicity regarding the project, to include radio, television, and written print and electronic media, is encouraged, but shall be a joint effort by the parties. The parties will each have the opportunity to review and change any press releases concerning the project, so that such statements reflect the concurrence of the parties. The parties agree to apprise each other of other forms of publicity that they plan to initiate, and similarly ensure that the content reflects the concurrence of the parties.

ARTICLE XI - 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 certified mail, as follows:

If to the Partner:       Voices for Lake Oahe  
                                  C/O Ron Kraft  
                                  919 South 7<sup>th</sup> Street  
                                  Suite 308  
                                  Bismarck, ND 58504

If to the County:       Emmons County Treasurer  
                                  100 SW 4<sup>th</sup> Street  
                                  Linton, ND 58552

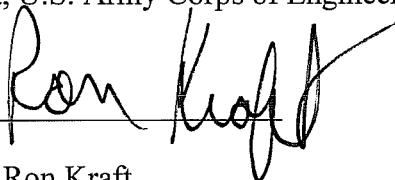
If to the Corps:       Eric D. Stasch  
                                  U.S. Army Corps of Engineers Oahe Project  
                                  28563 Powerhouse Road  
                                  Pierre, SD 57501-6174

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 XII - 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 Operations Project Manager, Oahe Project, Omaha District, U.S. Army Corps of Engineers.

BY:   
\_\_\_\_\_  
Ron Kraft  
Voice for Lake Oahe  
Partner Authorized Official

DATE: 5-3-11

BY: Florence Plenis

Treasurer  
Emmons County, North Dakota

DATE: 5-3-11

BY: Eric Stasch

Eric D. Stasch  
Oahe Operations Project Manager  
U.S. Army Corps of Engineers

DATE: 5/9/2011

BY: Kathryn D. Schenk

Kathryn D. Schenk  
Chief, Operations Division  
Omaha District  
U.S. Army Corps of Engineers

DATE: 6/8/2011

APPENDIX A

**Challenge Partnership Financial Work Sheet**

Corps Project Name: Oahe Project

Work Project Title: Cattail Bay Recreation Area access improvement

POC Name: Phil Sheffield

Address: 28563 Powerhouse Road                      City: Pierre                      State: SD    Zip Code: 57501

Telephone: 605-224-5862

Location on Project: Cattail Bay Recreation Area

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Partner Organization 1: Voices for Lake Oahe

POC Name: Ron Kraft

Address: 919 South 7<sup>th</sup> Street, Suite 308                      City: Bismarck                      State: ND    Zip Code: 58504

Telephone: 701-2231834

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Partner Organization 2: Emmons County

POC Name:

Address: 100 SW 4<sup>th</sup> Street                      City: Linton                      State: ND    Zip Code: 58552

Telephone: 701254-4802

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Partner Organization 3:

POC Name:

Address:                      City:                      State:                      Zip Code:

Telephone:

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Proposed start date of work: Summer 2011

Simple description of work to be accomplished through the partnership: The Corps of Engineers will provide \$9,000 of sub-base material to be placed on the portion of the road leading into Cattail Bay Recreation Area that lies between the portion of the access road that is leased by Emmons County, and the parking lot, and the internal roads. The partners will provide the additional funding for materials, labor and equipment to place an adequate thickness of base material, gravel, and preparation to completed Phase 1 of the project to provide a proper foundation for vehicles and trailers to travel across.



	Local Corps	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$0	N/A	\$0	\$0	\$0	\$0
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$9,000	\$0	\$0	\$0	\$9,000
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer Hrs - Value	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain in text)	\$0	\$0	\$176,500	\$0	\$0	\$176,500
<b>Total</b>	<b>\$0</b>	<b>\$9,000</b>	<b>\$176,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$185,500</b>
<b>Share of Total Cost</b>	0.0%	4.9%	95.1%	0.0%	0.0%	100%

Explanations: \$9K will purchase sub-base for parking lot and road.  
\$176.5K will provide contract to widen and build up road for Phase 2.