

CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN,  
US ARMY COPRPS OF ENGINEERS, FRANCIS E. WALTER DAM  
AND  
PHEASANTS FOREVER CHAPTER 803  
AND  
PHEASANTS AFIELD NEPA  
AND  
R.D. KEIPER EXCAVATING

THIS AGREEMENT, entered into this day of 3/20, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the Facilities Manager, Northern Area Office, U.S. Army Engineer District Philadelphia; and Pheasants Forever Chapter 803, represented by John Piccotti, President; Pheasants Afield NEPA, represented by Ross Piazza, President; and R.D. Keiper Excavating represented by owner/operator Robert Keiper, (hereinafter the "Partners").

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Francis E. Walter Dam which includes recreational opportunities for the public, and

WHEREAS, the construction of a large food and cover plot in a reclaimed borrow area at lands located on Francis E. Walter Dam will provide a safer wildlife movement corridor between habitats and will increase the recreational opportunities for the public, and

WHEREAS the Partners are interested in promoting and assisting the Government in constructing this large food and cover plot, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to make this large food and cover plot available to the public, and

WHEREAS, the Partners, in order to assist the Government in this project have voluntarily agreed to provide volunteer services, the use of equipment, supplies, and funds covering a portion of the total project 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 construction of a 1.25 acre food and cover plot with a nominal depth of no less than six inches in a reclaimed borrow area on Francis E. Walter Dam, as generally described in the Handshake Application (attached).

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 volunteer services, equipment, supplies, and 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:

- Land designated for construction of the Project
- Public safety and security through enforcement of Title 36 Rules and Regulations
- Two (2) full-time employees to work on the Project for a total of 16 hours
- Tractor with appropriate attachments for use on the Project for 16 hours
- Diesel fuel for bulldozer for three (3) days of use

c. Each Partner shall provide the following:

Pheasants Forever Chapter 803:

- Six (6) volunteers to work on the Project for a total of 96 hours (16 hours each)(value \$2,370.24)
- Seed (value \$300.00)
- Topsoil (value \$3,000.00)

Pheasants Afield NEPA:

-Three (3) volunteers to work on the Project for a total of 48 hours (16 hours each)(value \$1198.08)

R.D. Keiper Excavating

- One (1) bulldozer and volunteer operator to work on the Project for a total of 24 hours (value \$3,750.)

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' share of the 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' contributions required in accordance with Article II.c. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$19,530.00, and the Partners' contributions required under Article II.c. of this Agreement is projected to be worth \$10,605.00. 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. 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 Partners 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 Partners' required shares of total project costs.

2. In the event the final accounting shows that the total contribution provided by the Partners exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partners 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 Partners, 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 Partners 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

The Partners 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 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 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 Partners:      John Piccotti  
                                 Pheasants Forever Chapter 803 President  
                                 3 Coburn Hill Road  
                                 Laceyville, Pa 18623

Ross Piazza  
Pheasants Afield NEPA President  
99 N Pioneer Ave  
Shavertown, PA 18708

Robert Keiper

Owner/Operator R.D. Keiper Excavating  
728 Foster Avenue  
Freeland, PA 18224

If to the Government: David B. Williams  
Facilities Manager, Northern Area Office  
2145 Pohopoco Drive  
Lehighton, PA 18235

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 Facilities Manager, Northern Area Office.

The Department of the Army

David B. Williams  
Facilities Manager, Northern Area Office  
Division

Signature: WILLIAMS.DAVID.B.1229162418  
Date: D.B.1229162418

Digitally signed by WILLIAMS.DAVID.B.1229162418  
DN: c=US, o=U.S. Government, ou=DoD,  
ou=PKI, ou=USA,  
cn=WILLIAMS.DAVID.B.1229162418  
Date: 2019.03.19 11:47:22 -0400'

Monica A. Chasten  
Project Manager, Operations

Signature: CHASTEN.MONICA.A.1228857161  
Date: A.A.1228857161

Digitally signed by CHASTEN.MONICA.A.1228857161  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA,  
cn=CHASTEN.MONICA.A.1228857161  
Date: 2019.03.20 07:35:55 -0400'

John Piccotti  
Pheasants Forever Chapter 803 President

Signature: *John Piccotti*  
Date: 3/20/19

Ross Piazza  
Pheasants Afield NEPA President

Signature: *Ross Piazza*  
Date: 3/20/19

Robert Keiper  
Owner/Operator R.D. Keiper Excavating

Signature: 

Date: 3/20/19

## Challenge Partnership Financial Work Sheet

Corps Project Name: Francis E. Walter Dam

Work Project Title: Borrow Area Habitat Completion

POC Name: David B. Williams

Address: 2145 Pohopoco Drive

City: Lehighton

State: PA Zip Code: 18235

Telephone: 484 - 614 - 0074 x

Location on Project: Borrow area adjacent to SGL-119

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Partner Organization 1: Pheasants Forever Chapter 803

POC Name: John Piccotti

Address: 3 Coburn Hill Road

City: Laceyville

State: PA Zip Code: 18623

Telephone: 570 - 760 - 6969 x

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Partner Organization 2: Pheasants Afield NEPA

POC Name: Ross Piazza

Address: 99 Pioneer Avenue

City: Shavertown

State: PA Zip Code: 18708

Telephone: 570 - 760 - 9342 x

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Partner Organization 3: R.D. Keiper Excavating

POC Name: Robert Keiper

Address: 728 Foster Avenue

City: Freeland

State: PA Zip Code: 18224

Telephone: 570 - 350 - 1443 x

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Proposed start date of work:

Simple description of work to be accomplished through the partnership: The construction of a large food and cover plot in a reclaimed borrow area at lands located on Francis E. Walter Dam.

Double click on spreadsheet to access data entry fields:



	<b>Local Corps Office</b>	<b>Handshake Funds</b>	<b>Partner 1</b>	<b>Partner 2</b>	<b>Partner 3</b>	<b>Total</b>
Salaries	\$925	N/A	\$0	\$0	\$0	\$925
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$500	\$6,500	\$300	\$0	\$0	\$7,300
Equipment Use	\$1,000	\$0	\$0	\$0	\$3,750	\$4,750
Funds Contributed	N/A	N/A	\$3,000	\$0	\$0	\$3,000
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer	N/A	N/A	\$2,370	\$1,185	\$0	\$3,555
In-Kind Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$2,425</b>	<b>\$6,500</b>	<b>\$5,670</b>	<b>\$1,185</b>	<b>\$3,750</b>	<b>\$19,530</b>
<b>Share of Total Cost</b>	12.4%	33.3%	29.0%	6.1%	19.2%	100%

Explanations: