

CHALLENGE PARTNERSHIP AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, BALTIMORE DISTRICT
TIOGA-HAMMOND & COWANESQUE LAKES PROJECT
AND
RESERVOIR FISHERIES HABITAT PARTNERSHIP

THIS AGREEMENT, entered into this day of _____, 2016, by and among the Department of the Army represented by the Chief, Operations Division, Baltimore District (hereinafter known as the "Government", and the entity identified above (hereinafter known as the "Partner").

WITNESSETH, THAT:

WHEREAS, the purpose of this partnership agreement is to provide stabilization of approximately 670 feet of eroded shoreline at Hammond and Cowanesque Lakes, which will improve water quality, lake habitat and soil conservation for the public. The total estimated cost of the facility to the U.S. Army Corps of Engineers and Partner listed herein amounts to \$37,400;

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, it is mutually beneficial to the Government and the Partner to work cooperatively to make these improvements, and 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, and

WHEREAS, the Partner has voluntarily agreed to make contributions, either financial or work in-kind, 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 partnering in accordance with the terms of this agreement and

WHEREAS, work on the Project is expected to begin in September 2016, materials and supplies being provided shall be available prior to commencement of construction, and construction and final cleanup of the Project will be completed no later than September 30, 2017.

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" shall mean the Tioga-Hammond and Cowanesque Lake Shoreline Stabilization Program that involves the stabilization of 670' of eroded shoreline using stone deflectors as described in Appendix A, "Challenge Partnership Agreement Financial Worksheet".
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to construction of the project, estimated in the "Challenge Partnership Financial Work Sheet", identified in Appendix A.
- 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 with assistance of 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 materials and services to assist in the construction of the Project as shown in Appendix A of this Agreement.
- c. The Partner shall provide materials, labor and equipment to assist in the construction of this Project as shown in Appendix A of this Agreement.
- 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' 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 provide the Partner a report setting forth all contributions provided by each party upon completion of the Project. Each party's contribution as detailed in the attached "Financial Worksheet of Estimated Project Costs" shall be the responsibility of the respective party. Total project costs are estimated to be \$37,400. Each party's contribution is an estimate subject to adjustment. Any adjustment above the estimated contributions in the "Financial Worksheet of Estimated Project Costs" shall be mutually agreed upon by each party.

b. 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.

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 partner(s) in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties involved 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 the involved parties. The involved 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 any party 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 2, Code of Federal Regulations, as well as Army Regulation 600.7, entitled "Nondiscrimination 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 none of the parties is to be considered the officer, agent, or employee of the others.

b. In the exercise of its rights and obligations under this Agreement, none of the parties shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights such other parties may have to seek relief or redress against such contractor either pursuant to any cause of action that such other parties 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

Reservoir Fisheries Habitat Partnership 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 individually or mutually fails to fulfill their respective obligations under this Agreement, the Government shall terminate this Agreement or suspend future performance under this Agreement unless the Government 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 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 Government receives sufficient appropriations or until either the Government or the Partner elects to terminate this Agreement.

c. In the event that any party elects to terminate this Agreement pursuant to this Article, all of the 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.

Appendix A: Challenge Partnership Financial Work Sheet

Corps Project Name: Tioga-Hammond & Cowanesque Lakes
Work Project Title: Shoreline Stabilization – Habitat Enhancement
POC Name: Tammy Cleveland
Address: 710 Ives Run Lane
Tioga, PA 16946
Telephone: (570) 835-0125

Partner Organization 1: Reservoir Fisheries Habitat Partnership
POC Name: Jeff Boxrucker
Address: 9321 E. State Highway 9
Norman, OK 73026
Telephone: (405) 659-1797

	Local Corps Office	Handshake Funds	RFHP	Partner 2	Partner 3	Partner 4
Salaries	\$3,000	N/A	\$0	\$0	\$0	\$0
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$15,000	\$19,400	\$0	\$0	\$0
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	N/A	N/A	\$0	\$0	\$0	\$0
In-Kind Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$3,000	\$15,000	\$19,400	\$0	\$0	\$0
Share of Total Cost	8.0%	40.1%	51.9%	0.0%	0.0%	0.0%

	Partner 5	Partner 6	Partner 7	Partner 8	Partner 9	Partner 10
Salaries	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$0	\$0	\$0	\$0	\$0
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	\$0	\$0	\$0	\$0	\$0	\$0
Personal Property	\$0	\$0	\$0	\$0	\$0	\$0
Volunteer	\$0	\$0	\$0	\$0	\$0	\$0
In-Kind Services	\$0	\$0	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0
Share of Total Cost	0.0%	0.0%	0.0%	0.0%	0.0%	0

	Partner 11	Partner 12	Partner 13	Partner 14	Partner 15	Total
Salaries	\$0	\$0	\$0	\$0	\$0	\$3,000
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$0	\$0	\$0	\$0	\$34,400
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	\$0	\$0	\$0	\$0	\$0	\$0
Personal Property	\$0	\$0	\$0	\$0	\$0	\$0
Volunteer	\$0	\$0	\$0	\$0	\$0	\$0
In-Kind Services	\$0	\$0	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$37,400
Share of Total Cost	0.0%	0.0%	0.0%	0.0%	0.0%	100%

Explanations: Local Corps office – 40 hours – GS-11 salary, handshake funds - \$2,000 – erosion control and site vegetation materials, \$13,000 – stone and gravel, RFHP will administer Shell Grant funding \$19,400 stone and gravel.