

CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY,  
THE AMERICAN CHESTNUT FOUNDATION,  
APPALACHIAN STATE UNIVERSITY,  
NORTH CAROLINA DEPARTMENT OF AGRICULTURE FOREST SERVICE,  
WEST WILKES HIGH SCHOOL AGRICULTURE PROGRAM  
AND  
FRIENDS OF W. KERR SCOTT LAKE

THIS AGREEMENT, entered into this day of 4 March, 20 16 , by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District Wilmington or his delegated representative, and The American Chestnut Foundation (TACF), Appalachian State University (ASU), North Carolina Department of Agriculture Forest Service (NCFS), West Wilkes High School Agriculture Program (WWHS), and Friends of W. Kerr Scott Lake (FOL). (Collectively hereinafter the "Partners"),

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at W. Kerr Scott Dam and Reservoir and is responsible for the environmental stewardship of these resources, which includes forest restoration, and

WHEREAS, restoration of the American chestnut on project lands at W. Kerr Scott Dam and Reservoir by planting of experimental stands will help ensure the health and vigor of the chestnut population and provide for a healthy forest ecosystem, and

WHEREAS the Partners are interested in promoting and assisting the Government in restoring and enhancing chestnut stands and a healthy forest ecosystem, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to restore and enhance chestnut stands for ecological and educational purposes, and

WHEREAS, the Partners, in order to assist the Government in this project have voluntarily agreed to provide in-kind services, volunteer services, and materials and supplies, as outlined in the attached Timeline and Budget 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 planting of 20 acres of chestnut trees on project lands located in the Smithey's Creek and Ft. Hamby Wildlife Management Areas (WMA) at W. Kerr Scott Reservoir and the gathering of scientific data for the benefit of restoring and enhancing the American chestnut population and for ecological and educational purposes.

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 expertise and resources 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:

Project oversight, contract services, and materials and supplies

c. The Partners shall provide:

1. TACF: provide tree seedlings, guidance on care and planting, and assist in data collection and analysis

2. ASU: assistance with tree planting and scientific assessment; data collection and analysis; publication of results

3. NCFS: assistance with construction of deer exclusion devices, planting, and maintenance of plantings (NOTE: The Crew's availability for work days is subject to their duty to fight wildfires which takes precedence. Additionally, the Crew cannot work concurrently with WWHS students in accordance with Dept. of Public Safety policy.)

4. WWHS: assistance in the planting and maintenance of the trees

5. FOL: assistance with tree planting and site maintenance and community outreach

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 Partners and a current projection of total project costs. At least quarterly, the Government shall provide each 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.c. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$131,707, and the Partners' contribution required under Article II.c. of this Agreement is projected to be \$103,399.

b. The Partners will provide services, materials, and supplies. Each Partner's specific contribution is described in Article II (c), the Project Timeline, and the attached financial worksheet. Partners will use their own funds, labor, and contracts to contribute for the Project. It is not anticipated that the Partners will provide funds to the Government for any of the materials, supplies, or services described in Article II. If the Partners elect to provide funds to the Government to accomplish any of the items in Articles II, this Agreement will be amended to reflect the payment and accounting associated with those funds.

ARTICLE IV - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that a party must first notify the other party(ies) in writing of the nature of the purported breach and seek in good-faith to resolve the dispute through negotiation. Any dispute or controversy arising under, out of or in connection with, or in relation to this Agreement, or any amendment hereof, or the breach hereof shall first be sent for resolution by a group consisting of the Chief Executive Officer of each Partner, or designee thereof, and the District Commander, or designee thereof. If the parties cannot resolve the issues within sixty (60) days of receipt of written notice of the need for dispute resolution, then the parties may seek other means of resolution, to the extent authorized by law.

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 each Partner shall 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

To the extent allowed by NC Law and without a waiver of Sovereign Immunity, each Partner independently shall hold and save the Government free from all damages arising from the services it performs or provides for the construction, operation, maintenance, repair, replacement, assessment, 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 a Partner(s) fail to fulfill its obligation under this Agreement, the District Commander shall terminate this Agreement or suspend future performance under this Agreement with that Partner 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 each Partner, within 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 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/s:

Partner Organization 1: The American Chestnut Foundation

POC Name: Thomas McNeill Saielli

Address: 50 N Merrimon Ave, #115 City: Asheville State: NC Zip Code: 28804

Telephone: 828 - 450 - 9100

Partner Organization 2: Appalachian State University

POC Name: Charna K Howson, Director of Sponsored Programs

Address: Appalachian State University, 287 Rivers Street, Suite 382 City: Boone State: NC Zip Code: 28608-2174

Telephone: 828-262-7311

Partner Organization 3: North Carolina Department of Agriculture Forest Service

POC Name: Danny Carswell

Address: 2161 B. Mount Home Church Rd. City: Morganton State: NC Zip Code: 28655

Telephone: 828 - 438 - 6267

Partner Organization 4: West Wilkes High School Agriculture Program

POC Name: Jacob Shepherd

Address: 6598 Boone Trail City: Millers Creek State: NC Zip Code: 28651

Telephone: 336 - 973 - 4503 x160

Partner Organization 5: Friends of W. Kerr Scott Lake

POC Name: Michael Kennedy

Address: 499 Reservoir Rd. City: Wilkesboro State: NC Zip Code: 28697

Telephone: 336 - 921 - 3390 x114

If to the Government:

POC Name: Kevin Heape

Address: 499 Reservoir Rd. City: Wilkesboro State: NC Zip Code: 28697

Telephone: 336 - 921 - 3390 x102

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.

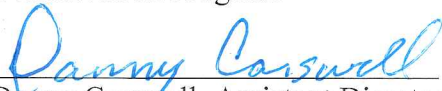
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Chief, Operations Division, Wilmington District.

The Department of the Army  
Corps of Engineers, Wilmington District

  
Daniel Brown, Operations Division-Chief

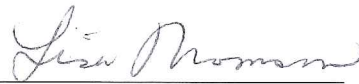
Date 3/4/2016

North Carolina Department of Agriculture  
Forest Service, Young Offenders Forest  
Conservation Program

  
Danny Carswell, Assistant Director


Date 2/29/2016

The American Chestnut Foundation

  
Lisa Thomson, President & CEO


Date February 17, 2016

West Wilkes High School Agriculture  
Program

  
Jacob Shepherd, Teacher

Date 2/23/16

Appalachian State University

  
Charna K. Howson, Director of  
Sponsored Programs

Date 2/25/2016

Friends of W. Kerr Scott Lake

  
Michael Kennedy, President

Date 02-22-2016

## Challenge Partnership Agreement Financial Work Sheet

Corps Project Name: W. Kerr Scott Dam and Reservoir, Wilmington District  
Work Project Title: American Chestnut Planting & Silviculture Research  
POC Name: Kevin Heape  
Address : 499 Reservoir Road City: Wilkesboro State: NC Zip Code: 28697  
Telephone: 336-921-3390  
Location(s) on Project: Smithey's Creek WMA and Ft. Hamby WMA

Partner Organization 1: The American Chestnut Foundation  
POC Name: Thomas McNeill Saielli  
Address: 50 N Merrimon Ave, #115 City: Asheville State: NC Zip Code: 28804  
Telephone: 828 - 450 - 9100

Partner Organization 2: Appalachian State University/RIEEE  
POC Name: Grace Plummer  
Address: 234 IG Greer Hall, ASU Box 32131 City: Boone State: NC Zip Code: 28608- 2131  
Telephone: 828-262-7514

Partner Organization 3: North Carolina Department of Agriculture Forest Service  
POC Name: Danny Carswell  
Address: 2161 B. Mount Home Church Rd. City: Morganton State: NC Zip Code: 28655  
Telephone: 828 - 438 - 6267

Partner Organization 4: West Wilkes High School Agriculture Program  
POC Name: Jacob Shepherd  
Address: 6598 Boone Trail City: Millers Creek State: NC Zip Code: 28651  
Telephone: 336 - 973 - 4503 x160

Partner Organization 5: Friends of W. Kerr Scott Lake  
POC Name: Michael Kennedy  
Address: 499 Reservoir Rd. City: Wilkesboro State: NC Zip Code: 28697  
Telephone: 336 - 921 - 3390 x114

**Proposed start/end date of work:** March 1, 2016 – September 30, 2019

**Simple description of work to be accomplished through the partnership:** Experimental planting of 20 acres of chestnut trees in the Smithey's Creek WMA and Ft. Hamby WMA.

## Project Timeline

Activities	Partner(s)	Year
Planting trees	Chestnut Fnd, ASU	1
Fencing	Friends of Scott Lake	1
Initial soil sampling	ASU	1
Year 2 soil and vegetation sampling	ASU	2
Year 2 soil and vegetation sampling	ASU	3

## Budget

	Government		The American Chestnut Foundation	Appalachian State University	NC Forest Service	West Wilkes High School	Friends of W. Kerr Scott Lake	Total
	Local Corps Office	Handshake Funds (Corps)						
Salaries	\$7,308	N/A	\$15,000	\$10,000	\$0	\$0	\$0	\$32,308
Travel	\$0	N/A	\$450	\$278	\$0	\$0	\$0	\$728
Materials and Supplies	\$0	\$11,000	\$50,000	\$0	\$0	\$0	\$0	\$61,000
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0	\$0	\$0
Volunteer	N/A	N/A	\$0	\$13,842	\$2,768	\$3,691	\$369	\$20,671
In-Kind Services	N/A	N/A	\$0	\$7,000	\$0	\$0	\$0	\$7,000
Other (explain below)	\$0	\$10,000	\$0	\$0	\$0	\$0	\$0	\$10,000
<b>Total</b>	<b>\$7,308</b>	<b>\$21,000</b>	<b>\$65,450</b>	<b>\$31,120</b>	<b>\$2,768</b>	<b>\$3,691</b>	<b>\$369</b>	<b>\$131,707</b>
<b>Share of Total Cost</b>	<b>5.5%</b>	<b>15.9%</b>	<b>49.7%</b>	<b>23.6%</b>	<b>2.1%</b>	<b>2.8%</b>	<b>0.3%</b>	

### Explanations:

#### Local Corps Office

Salaries - \$60.90 per hour for 120 hours = \$7,308.00.

#### Handshake Funds

##### Materials

Electric Fencing for deer exclusion = \$3,000.

Landscape cloth = \$2,000

Landscape staples = \$250

7' T post for fencing = \$1,400



Cages = \$1,000  
Gravel for roadways = \$2,500  
Shovels, wire cutters, hammers, gloves, ladder = \$850

Other

Release Thinning (operations and maintenance) = \$5,000  
Clearing land (operations and maintenance) = \$5,000

Partner 1 (The American Chestnut Foundation)

Salaries – Biologist = \$15,000  
Materials and Supplies - \$50 per tree for ≈ 1,000 trees = \$50,000  
Travel – \$0.58 per mile; 97 miles; 8 trips; 1 biologist = \$450.08

Partner 2 (Appalachian State University)

Salaries- Appalachian State University professors \$10,000. Years 1, 2, and 3 Neufeld ¼ month summer salary (\$5,400) Madritch ¼ month summer salary (\$4,600)  
Volunteer- \$13,842. At a cost of \$23.07 per hour for 5 volunteers for 120 hours Years 1, 2, and 3 - 200 hours/ 20 students @ 10 hours each, or equivalent.  
Travel- \$278.40. Three trips in years 1 and 2, and at least two trips in year 3 at a cost of \$0.58 per mile; 30 mile distance; 8 trips; 2 graduate students.  
In-Kind- \$7,000.

Analysis utilizing Sperry apparatus for measuring hydraulic conductivity = \$1000  
Years 2 and 3

Biogeochemical analyses = \$2,000 (C:N analysis at \$7.50/sample 90 samples each in Years 1, 2, and 3).

Microbial assays = \$3,000 (Enzyme/sequencing analysis: \$50/sample 50 samples each in Years 1, 2, and 3).

Analysis utilizing forestry biometrics equipment = \$1,000 (Years 2 and 3)

Partner 3 (North Carolina Forest Service)

Volunteer- \$23.07 per hour for 6 volunteers for 20 hours = \$2,768.40

Partner 4 (West Wilkes High School)

Volunteer - \$23.07 per hour for 20 volunteers for 8 hours = \$3,691.20

Partner 5 (Friends of W. Kerr Scott Lake)

Volunteer – \$23.07 per hour for 2 volunteers for 8 hours = \$369.12