

**CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
GREENWOOD COUNTY, KANSAS**

THIS AGREEMENT, entered into this 7th day of October, 1998, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District and Greenwood County, Kansas (hereinafter the "Partner"), represented by the Greenwood County Commissioners.

WITNESSETH, THAT:

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

WHEREAS, the installation of a hard surface, all weather road will facilitate access to Whitehall Bay Public Use Area on Fall River Lake and increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing and maintaining access to public recreation, and promoting economic and community development within Vaughn's Acres, Salt Springs Township, and the Fall River Lake environs, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to provide and maintain infrastructure within the Fall River Area, and

WHEREAS, the Partner and the Government agree to share in the initial cost and to share in subsequent maintenance costs of the project as stated in appendix 1, and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to pay a portion of the cost through work in kind on the project, 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 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" shall mean a hard surface chip seal road beginning at a point locally known as "Badger Creek Road" and extending to the entrance of Whitehall Bay PUA. All materials and supplies provided by the Government shall be expended upon Government property. Specifications for this project shall follow the general requirements as specified by Greenwood County.

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 cooperation from, other public and private agencies, organizations, and individuals.

d. All property, facilities, improvements and work performed or placed on Government land within the scope of the agreement shall become the property of the Government. The Partner and the Government will jointly maintain the road.

ARTICLE 11 - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds appropriated by the Congress of the United States (hereinafter the "Congress"), shall provide supplies, materials, and technical advice towards completion of the project. The partner shall expeditiously construct the Project, using equipment and labor as required to complete the project. Procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies will be followed. The award of contracts, modifications or change orders, and performance of all work on the Project shall

follow the usual procedures and protocols followed by Greenwood County.

b. The Government shall provide supplies and materials as outlined in Appendix 1.

c. The Partner shall provide equipment and labor as outlined in Appendix 1.

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. The Government and the Partner shall provide maintenance to the road as required within the dollar amounts shown in Appendix 1.

f. No Federal funds may be used to meet the Partner's total project costs under this Agreement.

ARTICLE III - METHOD OF PAYMENT

a. The Partner and the Government shall maintain current records of contributions provided as part of this agreement and a current projection of total project costs. At least quarterly, the Partner shall provide the Government 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 Government'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 \$48,000, and the Corps' and Partner's contributions required under Article II.b. of this Agreement are projected to be \$25,600 and \$22,400 respectively [NOTE: PROJECTIONS SHOULD BE ADJUSTED AS APPROPRIATE FOR INFLATION THROUGH THE PERIOD OF CONSTRUCTION.] Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partner. Amounts shown are for the first year of the agreement.

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 calendar days prior to issuance of the solicitation for the first construction contract, the Partner shall notify the Government of the supplies and materials required from the Government to meet its projected contribution.

c. Upon completion of the Project and resolution of all relevant claims and appeals, the Partner shall conduct a final accounting and furnish the Government 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 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 therefrom.

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 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 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 11 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:

Greenwood County Commissioners
Court House
Eureka, Kansas 67045

If to the Government:

Area Manager
US Army Corps of Engineers
Fall River Area Office
PO Box 37
Fall River, KS 67047-0037

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 Commander, Tulsa District.

The Department of the Army

The County of Greenwood

BY: _____
Leonardo V. Flor
Colonel, Corps of Engineers
District Commander

BY: _____
Stanley Kurtz
Commission Chairman

DATE: _____

DATE: _____

APPENDIX 1

COST-SHARING FINANCIAL WORK SHEET

Project Name - Fall River Lake Contact Person - Cleon Linton

Address - P.O. Box 37, Fall River, Kansas 67047

Phone - 316/658-4445 Fax 316/658-4919

Work Project Title - Whitehall Bay Road - Chip Seal Project

Beginning at the junction of Badger Creek/Whitehall Bay road and the state road to the Dam and extending to the entrance to Whitehall Bay PUA, excepting that portion that does not rest upon Government property.

Proposed date of work is September / October 1998, and extending through 1999 with a total of one application per year for initial work lasting two years. Subsequent applications of chip seal will be made 2,3 or 4 years as needed in perpetuity under the same shares as per this agreement after the two initial chip seal application.

Partner - Greenwood County, Kansas

Contact Person: Larry Thruston

Court House, Eureka, Kansas 67045

Phone 316/583-8121

**INITIAL WORK REQUIREMENTS
1998**

First application includes preparation of the road surface to receive Chip Seal application. The Corps and the Partner shall contribute the following toward the first application.

Item:	Specifications	Partner	Corps
MC 800	16,000 GL (+ -)10% @.625		\$10,000 (+-\$ 1,000 max \$11,000
½ inch washed limestone chips	900 Tons (+-) 10% @ \$7.45		\$ 6,705 (+-\$ 670 max \$ 7,375
Ag Lime	1353.85 Tons @ \$1.80		\$ 2,436.93
Grader	80 hrs @ \$50.00/hr		\$ 4,000
SM Dozer	16 hrs @ \$50.00/hr		\$ 800
			TOTAL CORPS \$25,611.93
mc-30 Penetrating Oil	12,600 GL @ .62		\$ 7,812
LG. Motor Grader	80 hrs @ \$50.00/hr		\$ 4,000
Water Truck	73.5 hrs @ \$40.00/hr		\$ 2,942

Sheep foot, steel wheel, Pneumatic rollers & broom	86.5 hrs -----	\$ 2,162.50
	@ \$25.00/hr	
Chip Spreader	42 hrs -----	\$ 1,260
	@ \$30.00/hr	
Oil Distributor	36.5 hrs -----	\$ 547.50
	@ \$15.00/hr	
Dump Truck Hauling Chips	840 tons -----	\$ 672
	@ .80/Tn	
Labor	380 hrs -----	\$ 3,040
	@ \$8.00/hr	

TOTAL PARTNER \$22,436

Preparation of the road to receive the above surface treatment will be a joint effort between the Corps and the Partner with the Corps supplying a grader with scarifier blade and a small dozer; and the partner supplying a roller/rollers, water wagon and large grader.

1999 SECOND APPLICATION

	Partner	Corps
MC 800 16000 GL @ .62/gl-----		\$ 9,895
½ inch 840 Ton @ \$7.45-----		\$ 6,090
chips		
	CORPS TOTAL	\$15,985

Patching 48 Tons @ \$34.25---\$1,644
Material
& hauling

Equipment-----\$ 340

Hauling 840 Ton @ .64-----\$ 537

Chip Spreader 40 hrs @ \$30/hr-\$1,200

Oil Distributor 36 hrs @ \$25-\$ 900
 Broom 45 hrs @ \$25-----\$1,125
 Roller
 Labor 105 hrs @ \$8/hr-----\$ 840
 Misc. equipment-----\$ 300

Partner Total \$6,888

FUTURE YEARS MAINTENANCE COSTS

The Corps agrees to budget \$5,000 each year in materials for maintenance. Maintenance will include a new chip seal application every 2nd, 3rd, or 4th year as necessary to keep the road in good condition. The partner shall supply all equipment and manpower to apply the chip & seal application. The partner shall also be responsible for maintaining the road in accordance with good road management practices. Said maintenance shall include; snow removal, pothole patching, ditch cleaning, and general up keep.

Traffic signs for the portion of the road on Government property shall be the responsibility of the Corps. Traffic signs on the portion of the road not on Government property will be the responsibility of the partner. Portions of the road lying off government property will be the responsibility of the partner. Mowing of the road sides shall be a shared responsibility.

**YEAR 2000 PLAN ESTIMATE
 and Alternate Years**

	Partner	Corps
Patching Material 30 Tons @ \$34.25/Tn-----	\$1,027.50	
Broom Roller 12 hrs @ \$25/hr-----	\$ 300	
Labor 12 hrs @ \$9/hr-----	\$ 108	
Misc. equipment	\$ 50	
1/2" Chips 672 tons @ \$7.45-----		\$5,004
TOTAL PARTNER	\$1,485.50	
TOTAL CORPS		\$5,004.00

YEAR 2001 PLAN ESTIMATE
and Alternate Years

	Partner	
Patch Material 40 Ton @ \$35-----	\$1,400	
Equip Mobilization -----	\$ 500	
Chips 168 Ton @ 7.45-----	\$1,252	
Hauling 840 Ton @ .64-----	\$ 537	
Spreader 40 hrs @ \$30/hr-----	\$1,200	
MC800 7,935 gal @ .62/gal-----	\$4,920	
MC800 8,065 gal @ .62/gal-----		\$5,000
Oil Distr. 36 hrs @ \$25/hr-----	\$ 900	
Broom/Roller 45 hrs @ \$25/hr-----	\$1,125	
Labor 100 hrs @ \$9/hr-----	\$ 900	
Misc. -----	\$ 300	
	PARTNER TOTAL	\$13,034
	CORPS TOTAL	\$ 5,000