CHALLENGE PARTNERSHIP AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

\_\_\_\_***EXAMPLE modify as appropriate\_\_\_\_***

THIS AGREEMENT, entered into this day of \_\_\_\_, 20\_\_\_ , by and between the

Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District \_\_\_\_\_\_ , and \_\_\_\_\_\_\_\_\_\_\_, (hereinafter the "Partner"), represented by \_\_\_\_\_\_\_\_\_.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Beautiful Lake which includes

recreational opportunities for the public, and

WHEREAS, the installation of an accessible fishing platform at Scenic Recreation Area on Beautiful Lake will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in

providing this accessible fishing platform, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work

cooperatively to make this accessible fishing platform available to the public, and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily

agreed to pay a portion of the 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 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 challenge 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 12' x 16' fishing platform with a 5'x 20' platform

walkway, aluminum frame, pressure-treated wood surface, and 5'x 30'x4' concrete sidewalk

leading from the parking lot to the platform in Scenic Recreation Area on Beautiful Lake, as

generally described in the [Specify the approved project report], dated , 19 and approved

by on , 19 .

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 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 funds provided by 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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*- account for all items listed in financial worksheet*

c. The Partner shall provide\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 *- account for all items listed in financial worksheet*

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 Partner's 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 a current projection of total project costs. At least quarterly, the Government shall

provide the 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.b. of

this Agreement. On the effective date of this Agreement, total project costs are projected to be $

, and the Partner's contribution required under Article II.b. of this Agreement is projected to

be $ *. [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.

b. The Partner shall provide the contribution required under Article II.b. of this

Agreement in accordance with the following provisions: Not less than *[NUMBER OF DAYS, 30*

*OR MORE]* calendar days prior to issuance of the solicitation for the first construction contract,

the Government shall notify the Partner of the funds required from the Partner to meet its

projected contribution, including its proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction. Prior to the issuance of the solicitation, the Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, *[APPROPRIATE USACE DISTRICT]"* to the Government's *[TITLE OF APPROPRIATE GOVERNMENT REPRESENTATIVE]*. The Government shall draw from the funds provided by the Partner such sums as the Government deems necessary to cover: (a) the Partner's proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partner's proportionate share of the Government's contractual and in-house financial obligations as they are incurred during the period of construction. In the event the Government determines that the Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required. Within [NORMALLY 60] calendar days thereafter, the Partner shall provide the Government with a check for the full amount of the additional required funds.

c. 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.

1. In the event the final accounting shows that the total contribution provided by the

Partner is less than its required share of total project costs, the Partner 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 Partner's required share of total project costs.

2. In the event the final accounting shows that the total contribution provided by the

Partner exceeds its required share of total project costs, the Government shall, subject to the

availability of funds, refund the excess to the Partner 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

Partner, 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 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 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 Partner: ??

*Address*

*City, State 00000*

If to the Government: ???

*U.S. Army Engineer District*

*Address*

*City, State 00000*

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 ??, \_\_\_\_\_\_\_\_\_\_\_\_\_\_* District.

The Department of the Army

BY:

TITLE:

DATE:

 ??*PARTNER??*

BY:

TITLE:

DATE:

??*PARTNER??*

BY:

TITLE:

DATE:

??*PARTNER??*

BY:

TITLE:

DATE:

**Challenge Partnership Financial Work Sheet**

Corps Project Name:

Work Project Title:

POC Name:

Address:       City:       State:    Zip Code:

Telephone:       -     -      x

Location on Project:

Partner Organization 1:

POC Name:

Address:       City:       State:    Zip Code:

Telephone:       -     -      x

Partner Organization 2:

POC Name:

Address:       City:       State:    Zip Code:

Telephone:       -     -      x

Partner Organization 3:

POC Name:

Address:       City:       State:    Zip Code:

Telephone:       -     -      x

Proposed start date of work:

Simple description of work to be accomplished through the partnership:

Double click on spreadsheet to access data entry fields:



Explanations: