

**CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
CLAY COUNTY**

THIS AGREEMENT, is entered into this \_\_\_\_ day of \_\_\_\_\_ 2009 by and between the Department of the Army (hereinafter the “Government”), represented by the Chief, Operations Division, Kansas City District, and Clay County (hereinafter the “Partner”), represented by the Presiding Commissioner.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Smithville Lake, which includes water quality, water control, and fish and wildlife conservation; and

WHEREAS, the development and construction of aquatic habitat and shoreline protection structures in significantly degraded areas at Smithville Lake will improve water quality and fish and wildlife conservation for the public; and

WHEREAS, the Partner is interested in promoting and assisting the Government in providing the aquatic habitat and shoreline protection structures; and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make these aquatic habitat and shoreline protection structures available to the public; and

WHEREAS, the Partner, in order to assist the Government in this Project, has voluntarily agreed to make contributions toward the development and construction of the Smithville Lake aquatic habitat and shoreline protection structures; and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, Public Law 102-580, (October 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 County agree as follows:

## **ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS**

For the purpose of this Agreement:

a. The term “Project” shall mean the Smithville Aquatic Habitat/Shoreline Protection Program that involves the development and construction of eight aquatic habitat and shoreline protection structures, as described in Appendix A, “Challenge Cost-Sharing Financial Work Sheet.” *See also* Appendix B, Project Map, for a depiction of structure locations.

b. The term “total project costs” shall mean all costs incurred by the Government and the Partner directly related to the development and 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, and using contributions provided by the Partner, shall expeditiously coordinate the construction of the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. Performance of all work on the Project, whether the work is performed under contract or by Government personnel, shall be exclusively within the control of the Government.

b. The Government shall provide materials and services to assist in the design and 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 the Project as shown in Appendix A of this Agreement. Upon Project completion, the Partner shall be responsible for all repairs to roads and sod damage.

d. The Government shall perform a final accounting to determine the contributions provided by the 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 share of the total project costs under this Agreement.

### **ARTICLE III – METHOD OF PAYMENT AND FINAL ACCOUNTING**

a. The Government shall maintain current records of contributions provided by the Partner and a current projection of total project costs. Each party's contribution towards this Project, as outlined in Article II and Appendix A, shall be the responsibility of the respective party. A copy of all receipts showing payments associated with the Project shall be provided to the Government to determine total project costs. On the effective date of this Agreement, total project costs are projected to be \$155,000.00 and the Partner's contribution required under Article II.c. is projected to be \$60,000.00 as set out in Appendix A. 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. Work on the project is expected to begin in November 2009 and to be completed by January 2010. Site preparation and structure location will take place in November 2009. The Partner will begin Project construction in December 2009.

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 and each party's contribution provided thereto.

### **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, Public Law 88-352, and the Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 195 of Title 32, Code of Federal Regulations, as well as Army Regulation 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 THE 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 exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor or third party with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor or third party 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 Government shall terminate this Agreement or suspend future performance under this Agreement unless it 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 III 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 mailed either first class, registered, or certified mail as follows:

If to the Partner:

Clay County  
17201 Paradesian St  
Smithville, MO 64089  
ATTN: Park Director

If to the Government:

U.S. Army Corps of Engineers  
16311 DD Highway North  
Smithville, MO 64089  
ATTN: Operations Manager

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, Kansas City District.

The Department of Army

Clay County

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Des R. Goyal Chief, Operations Division  
Kansas City District Corps of Engineers  
DATE: \_\_\_\_\_

Presiding Commissioner  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Legal Counsel  
Approved as to form  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
County Clerk  
DATE: \_\_\_\_\_

**APPENDIX A**  
**CHALLENGE COST-SHARING FINANCIAL WORK SHEET**

Project Name: Smithville Lake Project

Contact person: Derek Dorsey  
Address: U.S. Army Corps of Engineers  
P.O. Box 428  
Smithville, MO. 64089

Phone: 816-532-0174

Work Project Title: Smithville Aquatic Habitat/Shoreline Protection Program

Location: The aquatic habitat/shoreline protection structures will be placed along the shoreline of Camp Branch Boat Ramp parking lot, the peninsula in Camp Branch Camp Ground in B and D loops, Camp Branch swim beach point, Sailboat Cove Day Sail, Crows Creek Campground point, and the Jerry Litton Visitor Center point. The aquatic habitat/shoreline protection structures will be constructed as indicated on Appendix B, Structure Map. Sections 9 & 17, T 53 N, R 32 W.

Proposed Dates of work: Nov 2009-Jan 2010

Description of Work: The Project includes the development and construction of eight (8) aquatic habitat and shoreline protection structures, approximately six (6) feet high, two (2) feet in width and in varying lengths to provide optimum habitat development and shoreline protection. The structures will be constructed with shot rock rip rap.

The Partner shall provide materials, services, and equipment for the construction of eight (8) aquatic habitat/shoreline protection structures. Services shall include site preparation for rip rap delivery, rip rap placement, performing seedbed preparation, and grass seeding of effected areas adjacent to the construction area. The Partner shall provide all equipment necessary for rip rap placement, site reconstruction, and seeding operations. The Partner shall provide materials to include, approximately 2125 tons of rip rap, grass seed, and diesel fuel.

The Government shall provide materials and services for the design and construction of the Project. Services shall include the design of the aquatic habitat/shoreline protection structures, and designation of the structure locations. The government shall also provide materials for construction, to include, approximately 6000 tons of rip rap delivered to the construction site. The Government shall retain final approval authority over all design and construction activities.

Partner: Clay County  
Contact Person: Charlie Barr  
Address: Clay County  
17201 Paradesian St  
Smithville, MO 64089

Phone: 816-407-3401

	Corps	County	Total
Salaries	\$ <u>5,000</u>	\$ <u>15,000</u>	\$ <u>20,000</u>
Travel	\$ _____	\$ _____	\$ _____
Materials and Supplies	\$ <u>90,000</u>	\$ <u>30,000</u>	\$ <u>120,000</u>
Equipment Use	\$ _____	\$ <u>15,000</u>	\$ <u>15,000</u>
Cash/Funds	\$ _____	\$ _____	\$ _____
Personal Property	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
Contingencies	\$ _____	\$ _____	\$ _____
<i>Total</i>	\$ <u>95,000</u>	\$ <u>60,000</u>	\$ <u>155,000</u>



# Appendix B

## Proposed Aquatic Habitat/Shoreline Protection Structures

