

CHALLENGE PARTNERING AGREEMENT  
BETWEEN  
THE US ARMY CORPS OF ENGINEERS, HARTWELL PROJECT  
AND  
Hartwell Ramp Betterment Partners

THIS AGREEMENT, entered into this 15th day of December, 2008, by and between the US Army Corps of Engineers, Hartwell Project (hereinafter, the "Government"), represented by the Operations Manager, Hartwell Project and Hartwell Ramp Betterment Partners (hereinafter the "Partner"), represented by Tim Marchbanks .

WITNESSETH THAT:

WHEREAS, the Government manages lands and waters at the Hartwell Project, which includes recreational opportunities for the public, and

WHEREAS, the installation of an extension to the existing middle boat launching ramp at Broyles Recreation Area on Hartwell Lake will increase the recreational opportunities for the public, and

WHEREAS, the Partner is interested in promoting and assisting the Government in providing this ramp extension, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make this ramp extension 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 and 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 concrete extension to the existing middle boat launching ramp at Broyles Recreation Area, on Hartwell Lake.

- 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 all materials, equipment and labor to prepare the work site for ramp extension and for pouring/finishing concrete material used to extend existing ramp facility. The government will also provide any concrete over and above the 32 cubic yards provided by the partner, if necessary.
- c. The partner shall provide up to, but not exceeding, 32 cubic yards of concrete material (4000 psi with fiber), including delivery to the work site.
- 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. Upon completion, the Government shall provide the partner with a report setting forth all contributions provided by the partner under Article IIc. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$8,000.00, and the partner's contribution required under Article IIc. of this Agreement is projected to be \$2,900.00.
- b. The partner shall provide the contribution required under Article IIc. of this Agreement in accordance with the following provisions: Prior to the initiation of the project, the Partner will make arrangements for the concrete company (Thomas Concrete Company, Anderson, SC) to bill the Partner directly for the costs of the Partner's share of concrete material and delivery charges upon completion of the concrete pour. Once the area is prepared and ready for concrete material, the Government will contact the concrete company to arrange for delivery of the concrete material. Upon completion, the Partner will provide a copy of the receipt for their portion of the concrete material to the Government within 5 calendar days of completion of the Project to document the Partner's contribution.
- 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.

### 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 nonbinding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50% 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 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 case 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 Hartwell Operations Manager 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 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:

Hartwell Ramp Betterment Partners  
Mr. Tim Marchbanks  
104 Peninsula Drive  
Anderson, SC, 29626

If to the Government:

Operations Manager  
US Army Corps of Engineers  
Hartwell Project  
5625 Anderson Highway  
Hartwell, Georgia 30643

- b. A party may change the address to which such communications are to be directed by giving written notice to the other party in a 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 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 Operations Manager, Hartwell Project.

US Army Corps of Engineers  
Hartwell Project

Hartwell Ramp Betterment  
Partners

By:   
Virgil G. Hobbs III  
Operations Manager  
Hartwell Project

By:   
Mr. Tim Marchbanks

DATE: 12/15/08

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