

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE ARMY CORPS OF ENGINEERS, FRANKLIN
FALLS DAM
AND
FRIENDS OF FRANKLIN FALLS DISC GOLF

THIS AGREEMENT, entered into this 5 day of April, 2016, by and between the Department of the Army (hereinafter the "Government"), represented by Franklin Falls Dam Manager, Tia Mercer and The Friends of Franklin Falls Disc Golf (hereinafter the "Partner" or "FFFDG"), represented by Tucker Davis.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Franklin Falls Dam which includes recreational opportunities for the public, and

WHEREAS, the installation of disc golf course at Franklin Falls Dam will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing this disc golf course, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make this disc golf course available to the public, and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to provide a portion of the materials, 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 the design and installation of an eighteen hole disc golf course at the Franklin Falls, with the possibility of expansion.
- 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. If both parties mutually agree to termination of project, consideration for the potential return of

donated property to FFFDG can be negotiated.

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 materials 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:

- 1/3 (3 of 9 or 6 of 18) of the required disc golf baskets.
- Printing of tee maps/score cards.
- Normal maintenance of course such as mowing, brush clearing, clean bathrooms, changing of trash cans, snow management.
- Land designated for course.
- Special use permits and pavilion usage for events.
- Public safety and security through the enforcement of Title 36 Rules and Regulations.
- Aid and recycled materials for installation of tee pads, sign posts and kiosks as necessary.

c. The Partner shall provide:

- Work in cooperation for the Corps during installation of course.
- Electronic versions of tee maps/score cards, subject to final approval by the Corps.
- Tee signs, subject to final approval by the Corps.
- Six (6) routine work days per year for course upkeep.
- Agreement to work in the safest possible manner in an effort to perform work without injuries.
- 2/3 (6 of 9 or 12 of 18) of the required disc golf baskets.
- Notification to the Corps of any hazards on course.
- Requests for any special use permits for desired events.
- Necessary insurances for events.
- Responsibility for any damages that may be caused to the property of the Corps by its activities and shall exercise reasonable care in the protection of all Corps property.
- Requests for approval in regards to all press releases, published advertisements, or other statements intended for the public that refer to this agreement, the Corps, or the name or title of any employee of the Corps in connection with this agreement. No press releases, published advertisements, or other statements intended for the public or any other action by the FFFDG may infer that the United States or the Corps endorse any of the FFFDG's activities or policies, nor may any such public communication or action imply that any preferential treatment, exclusive rights, or privileges are afforded to the FFFDG by the Corps.

d. 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.c. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$2400-2700, and the Partner's contribution required under Article II. c. of this Agreement is projected to be \$11,000-11,900. 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. 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:
Tucker Davis
President
381 Prospect St
Franklin, NH 03235

If to the Government:
Tia Mercer
Project Manager
46 Granite Drive
Franklin, NH 03235

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.

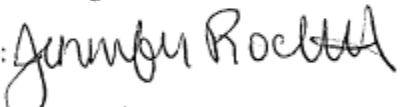
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Project Manager, Franklin Falls Dam.

Tia M. Mercer
Project Manager – Franklin Falls Dam

Signature: 

Date: 4/5/2016

Jennifer Rockett
Operations Manager – Merrimack River Basin

Signature: 

Date: April 5, 2016

Tucker Davis
President – Disc Golf Club

Signature: 

Date: 4/5/16

APPENDIX A

CHALLENGE COST-SHARING FINANCIAL WORK SHEET

Franklin Falls Dam
46 Granite Drive
Franklin, NH 03235

Corps Contact Person:

Dan Lapolla (Ranger)
 978-318-8327

FFFDG Contact Person:

Tucker Davis (President)
 603-494-7213

Project:

18 hole disc golf course at Franklin Falls Dam

Description:

Design and installation of 18 hole disc golf course at Franklin Falls Dam.

	Corps	Partner	Total
Salaries	\$ 600	\$n/a	\$ 600
Travel	\$ n/a	\$n/a	\$
Materials and Supplies*	\$ n/a	\$n/a	\$
Equipment Use	\$ n/a	\$n/a	\$
Cash/Funds	\$ n/a	\$n/a	\$
Personal Property	\$ n/a	\$n/a	\$
Other – Course Design	\$ n/a	\$ 5000	\$ 5000
Other - Baskets	\$ 1800-2100	\$ 3600-4200	\$ 5400-6300
<i>Total</i>	\$ 2400-2700	\$ 8600-9200	\$ 11000-11900

<i>Share of total cost</i>	22-23%	78-77%
<p>*Materials and Supplies. There is no cost for associated materials and supplies since all materials and supplies will be gathered from existing sources onsite. All wood for tees will come from scrap/recycled wood. A kiosk that is not being used will be put at the beginning of the course. If the site were to buy materials/supplies for the project it would have to spend approximately \$2000 for materials and supplies.</p>		