

Challenge Partnership Agreement
Between
the Department of the Army
U.S Army Corps of Engineers
Beaver Project Office
and
Wal-Mart

THIS AGREEMENT entered into this 2nd day of July 2001, by and between the Department of the Army (hereinafter the "Government"), represented by the Operations Manager, Beaver Lake, and Wal-Mart (hereinafter the "Partner") represented by Mr. Mike Walker, Manager, Store #1.

WITNESSETH THAT:

WHEREAS, the Government manages the lands and water at Beaver Lake and immediately downstream of Beaver Dam, which include recreational opportunities for the public, and

WHEREAS, the Partner is interested in promoting water safety and the use of Personal Flotation Devices (PFDs) on Beaver Lake to the benefit of the public, and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, Public Law 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 partnering 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 the purposes of this agreement:

- a. The term "Project" shall mean the PFD Loaner Program on Beaver Lake.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to procurement of PFDs used in the PFD Loaner Program.
- 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 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 contributions provided by the Partner, shall expeditiously complete the Project, applying those procedures usually applied to federal Projects, pursuant to federal laws, regulations, and policies. The Program execution on the Project shall be exclusively within the control of the Government.

b. The Government shall provide funds for 25 PFDs (50% of the project PFDs). The Government shall also provide coordination of the PFD Loaner Program at Beaver Lake boat launching ramps.

c. The Partner shall provide 25 PFDs (50% of the project PFDs).

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 portion of 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. The record will reflect any cost share commitments from other sources. On the effective date of this Agreement, total project costs are projected to be \$244.00, and the Partner’s contribution under this Agreement is projected to be 25 PFDs valued at \$122.00.

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 contribution to the Government of whatever supplies are required to meet the Partner’s required share of total project.

2. In the event the final accounting shows that the total contribution provided by the Partner exceeds its required share of total project contributions, the Government shall, subject to availability of funds, return supplies to the Partner no later than 90 calendar days after

the final accounting is complete. In the event existing funds/supplies are not available, the Government shall seek such appropriations as are necessary to make the refund.

- d. Further partners who are elicited by the Government or the Partner will be subject to prior approval by the Contracting Officer's Representative and must contractually agree to terms and conditions under Article III.b. and to any and all conditions of the Challenge Partnership Program Agreement. Any obligated services that another partner may commit to perform in the development of the project are also subject to these terms. Services that another partner performs must also be carried out in conformance with federal, state, and local laws and standards.

ARTICLE IV – DISPUTE RESOLUTION

As a condition for any 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 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 there from.

ARTICLE VIII – INDEMNIFICATION

The Partner shall hold and save the Government free from all damages arising from services it provides related to 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 Engineer shall notify the Partner of such failure. The Partner shall be given 30 calendar days to fulfill its obligations under this Agreement, after which the District Engineer may 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 Government or is necessary in order to satisfy agreements with any other non-federal interests in connection with the Project.

b. 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.

c. 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 by telegram, or mailed either first-class, registered, or certified mail, as follows:

If to the Partner: Mr. Mike Walker
Store #1
2110 W. Walnut
Rogers, Arkansas 727??

If to the Government: Ms. Dianne B. Batson
Operations Manager
Beaver Lake
2260 N. 2nd Street
Rogers, Arkansas 72756

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 the 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 THEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed.

The Department of the Army

Wal-Mart

By: _____

By: _____

DIANNE B. BATSON
OPERATIONS MANAGER
BEAVER LAKE

MIKE WALKER
MANAGER
STORE #1

Challenge Partnership Financial Worksheet

PROJECT NAME Beaver Lake Project

CONTACT PERSON George Ann Tabor
 ADDRESS 2260 N. 2nd Street
 Rogers, Arkansas 72756

PHONE 501-636-1210, x311

PROJECT TITLE Beaver Lake PFD Loaner Program

LOCATION Corps of Engineers Property – Beaver Lake

PROPOSED WORK
 DATE 2 July 2001 – 15 September 2001

WORK DESCRIPTION: 50 PFDs will be provided to the boating public on Beaver Lake
 through a PFD Loaner Program.

PARTNER Wal-Mart

CONTACT PERSON Mr. Mike Walker
 ADDRESS 2110 W. Walnut
 Rogers, Arkansas 727??

PHONE 501-636-3222

	Corps	Partner	Total
Salaries	0	0	0
Travel	0	0	0
Materials and Supplies	122	122	244
Equipment Use	0	0	0
Personal Property	0	0	0
Other	0	0	0
Contingencies	0	0	0
Total	\$122.00	\$122.00	\$244.00
<i>Share of Total Cost</i>	50%	50%	100%