

CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
FRIENDS OF W. KERR SCOTT LAKE  
AND  
OLD HICKORY COUNCIL, BOY SCOUTS OF AMERICA

THIS AGREEMENT, entered into this 27 day of April, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District Wilmington, Col. Jefferson Ryscavage, and the Friends of W. Kerr Scott Lake (hereinafter "Partner 1"), represented by Teresa Ford, Executive Director, and Old Hickory Council, Boy Scouts of America (hereinafter "Partner 2") (collectively "the "Partners"), represented by Daniel Baird, District Executive.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at W. Kerr Scott Lake which includes recreational opportunities for the public, and

WHEREAS, the completion of the W. Kerr Scott Lake Environmental Education Center (EEC) exhibits will increase the awareness of the project's natural resources by the public;

WHEREAS the Partners are interested in promoting and assisting the Government in Completion of the EEC, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to make the W. Kerr Scott Lake EEC available to the public, and

WHEREAS, the Partners, in order to assist the Government in this project, have 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 Partners and apply those contributions to the Project, and

WHEREAS, the Government and the Partners 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 Partners agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

a. The term "Project" shall mean the construction and installation of educational exhibits located in the Environmental Education Center located in the basement of the Visitor Assistance Center at W. Kerr Scott Reservoir. The scope of the "Project" includes the cost of performing pre-exhibit construction and installing 5 interior exhibits at a sub- total of approximately \$260,000.00. In addition, \$5,000 worth of work is needed to complete the outdoor native garden exhibit. The total project cost is \$265,000.00.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partners 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 and/or services provided by the Partners, 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 will:

Review and approve exhibit designs and oversee the construction of the exhibits. The Government will oversee its contractor(s) in the construction of preparatory or pre-exhibit work. The Government will provide oversight of the entire project to include planning, development and installation of the exhibits. The Government will maintain records of invoices from the Government and from Partner 1, Friends of W. Kerr Scott Lake which reflect the budget on the attached financial worksheet. The Government will monitor and approve the completion of the volunteer work by Partner 2, Old Hickory Council, BSA. The Government's cost share in the partnership consists of labor in salaries necessary for planning exhibit design, approving exhibit layout, and performing quality assurance inspections which total \$30,000. The Government will also provide contractual services to include acquisition of lumber, gravel, dry wall materials, mulch, bathroom fixtures, carpet, lab tables, and electrical wiring materials which are necessary for the pre-exhibit installation and interior modifications. The total value of contractual

services provided by the Government under this agreement is \$90,000, which includes the handshake funds (see column 2 of the attached worksheet). The amount required for equipment and rental equipment to implement landscaping, tree planting placement of exhibit features and miscellaneous construction is \$10,000. The total of the Government's contributions, to include handshake funds, is estimated to be \$130,000.

c. The Partners will:

1. Friends of W. Kerr Scott Lake (Partner 1) will provide funding from grants, sponsorships and private donations for design and construction of exhibits, coordinate donation of services of members and volunteers, and work with other local and regional groups to promote the EEC project and to enlist and recruit additional partnership opportunities. Friends of W. Kerr Scott Lake will provide salary costs valued at \$30,000 necessary to manage all work associated with Partner 1's portion of this project. Friends of W. Kerr Scott Lake will also provide \$10,000 in lab materials, supplies, lab room Computer Equipment ( listed in the attached worksheet under materials and supplies) . In addition, Friends of W. Kerr Scott Lake will provide contractual services valued at \$60,000 for exhibit design, construction & installation costs. Friends of W. Kerr Scott Lake will recruit volunteer labor to complete the exhibits at a value of \$30,000. The total estimated amount to be contributed by the Partner is \$130,000
2. The Old Hickory Council, Boy Scouts of America will provide volunteer labor in landscaping of a native species wildflower and herb garden in the adjacent native species outdoor exhibit at the Kerr Scott Environment Education Center – total value of volunteer labor - \$5,000.

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 Partners will provide the services described in Article II (c), above, using their own funds, labor, and contracts. It is not anticipated that the Partners will provide funds to the Government for any of the facilities or services described in Article II. If the Partners elect to provide funds to the Government to accomplish any of the items in Article II, this Agreement will be amended to reflect the payment and accounting associated with those funds.

b. On the effective date of this Agreement, total project costs are projected to be \$265,000 and the Partners' contribution required under to accomplish items under Article II.c. of this Agreement is projected to be \$135,000. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partners.

#### 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 Partners 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 Partners 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 Partners 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 a 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 Partner 1:      Teresa Ford, Executive Director  
                                 Friends of W. Kerr Scott Lake  
                                 499 Reservoir Road  
                                 Wilkesboro, NC 28697

If to Partner 2: Old Hickory Council, Boy Scouts of America  
Daniel Baird, District Executive  
6600 Silas Creek Parkway  
Winston-Salem, NC 27106

If to the Government: Terry Ramsey, Operations Manager  
U.S. Army Corps of Engineers  
499 Reservoir Road  
Wilkesboro, NC 28697

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 District Commander , Wilmington District.

#### **The Department of the Army**



COLONEL JEFFERSON M. RYSCAVAGE  
District Commander, Wilmington District

Friends of W. Kerr Scott Lake

Teresa Ford EXECUTIVE DIRECTOR of FRIENDS of W. KERR SCOTT LAKE  
INC.

BY: Teresa Ford

TITLE: Executive Director

DATE: 5/10/10

Old Hickory Council, Boy Scouts of America

Steve Wilburn  
BY: Daniel Baird Steve Wilburn  
TITLE: District Executive Scout Executive  
DATE: 4/27/10

### Challenge Partnership Financial Work Sheet

Corps Project Name: W. Kerr Scott Lake

Work Project Title: W. Kerr Scott Lake Environmental Education Center

POC Name: Ray G. Absher

Address: 499 Reservoir Road City: Wilkesboro State: N Zip Code: 28697

Telephone: 336-921-3750

Location on Project: Visitor's Assistance Center

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Partner Organization 1: Friends of W. Kerr Scott Lake

POC Name: Teresa Ford, Executive Director

Address: 499 Reservoir Road City: Wilkesboro State: NC Zip Code: 28697

Telephone: 336-921-3390

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Partner Organization 2: Old Hickory Council, Boy Scouts of America

POC Name: Daniel Baird, District Executive

Address: 6600 Silas Creek Parkway City: Winston-Salem State: NC Zip Code: 27106

Telephone: 336-469-9976

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Proposed start date of work: November 2010

Simple description of work to be accomplished through the partnership: Completion of exhibit installation, W. Kerr Scott Lake Environmental Education Center

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$30,000	N/A	\$30,000	\$0	\$0	\$60,000
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$0	\$10,000	\$0	\$0	\$10,000
Equipment Use	\$10,000	\$0	\$0	\$0	\$0	\$10,000
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer	N/A	N/A	\$30,000	\$5,000	\$0	\$35,000
In-Kind Services	N/A	N/A	\$0	\$0	\$0	\$0
Other (explain below)	\$60,000	\$30,000	\$60,000	\$0	\$0	\$150,000
<b>Total</b>	<b>\$100,000</b>	<b>\$30,000</b>	<b>\$130,000</b>	<b>\$5,000</b>	<b>\$0</b>	<b>\$265,000</b>
<b>Share of Total Cost</b>	37.7%	11.3%	49.1%	1.9%	0.0%	100%

**Explanations:**

Under "Local Corps Office," Other - Contractual services and acquisition of materials, including the purchase of lumber, gravel, dry wall materials, mulch, bathoorm fixtures, carpet, lab tables, and electrical wiring materials which are necessary for the pre-exhibit installation and interior modifications - \$60,000.00

Under Handshake Funds, Other - Contractual services and acquisition of materials, including the purchase of lumber, gravel, dry wall materials, mulch, bathroom fixtures, carpet, lab tables, and

electrical wiring materials which are necessary for the pre-exhibit installation and interior modifications-  
\$30,000

Under "Partner 1" – Other - Friends of W. Kerr Scott Lake will provide contractual services for exhibit design, construction and installation - \$60,000.