

**CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CLINTON LAKE TRAILBUSTERS
AND
RIDE KANSAS TRAIL CLUB
AND
LET'S RIDE
AND
CLINTON RIDGE STABLES**

THIS AGREEMENT is entered into this 15th day of June 2012 by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Corps of Engineers, Kansas City District; and Clinton Lake Trailbusters (hereinafter Trailbusters), represented by Sandy Gilliland, President; and Ride Kansas Trail Club, (hereinafter Ride Kansas), represented by Diana Skinner, President; and Let's Ride, represented by Kenneth and Susan Johnson; and Clinton Ridge Stables (hereinafter Clinton Ridge), represented by Keith Gilliland, Owner.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Clinton Lake which includes recreational opportunities for the public, and

WHEREAS, Trailbusters, Ride Kansas, Let's Ride, and Clinton Ridge (collectively to be known as Partners) are interested in the development, construction, and preventative maintenance of a cable fence around the perimeter of Rockhaven Campground at Clinton Lake (hereinafter Rockhaven Fence Project) which will increase outdoor recreational safety for the public and protection of the natural resources, and

WHEREAS, the Partners and the Government agree to the fence location designated as the Rockhaven Fence Project as indicated in Appendix A.

WHEREAS, the Partners, in order to assist the Government in this project, have voluntarily agreed to provide in-kind services associated with Operation and Maintenance work items and funding when possible and for completion of specified work items on the Rockhaven Fence Project; 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 in-kind services contributions from the Partners and apply those in-kind services 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 provide in-kind services for both annual and long term O & M work items and intend to cooperate in accordance with the terms of the 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 development and construction and preventative maintenance of the Rockhaven Fence Project (See Appendix A, Challenge Partnership Agreement Financial Work Sheet, for a detailed description of the work to be done and allocated costs). The Project generally consists of:

1. Cutting steel pipe to fencepost height.
2. Welding a cover over the top of each fencepost.
3. Installing cable connectors to each fencepost or drilling holes through each fencepost through which the cable would threaded.
4. Installation of fenceposts to be placed approximately 12 feet apart as terrain allows.
5. Connection of cable to steel posts and tightening of cable using connectors and clamps.
6. Assisting in positive publicity for the Project.

B. The term “total project costs” shall mean all costs incurred by the Government and the Partners directly related to the development, construction, and preventative maintenance of the Rockhaven Fence Project both annually (per financial worksheet) and cumulatively for the duration of this agreement.

C. The term of this Challenge Partnership Agreement is one year, although the parties anticipate that subsequent agreements may be signed, resulting in a long term agreement between parties for additional maintenance and improvements as needed. The financial worksheet will be updated and the Challenge Partnership Agreement signed annually when additional maintenance is required.

D. The agreement in no way restricts the Government from participating in similar activities or arrangement with, or accepting contributions from other public and private agencies, organizations, and individuals.

E. All donated property, facilities, and improvements placed on Government land as well as any work accomplished under this agreement, to include plans and construction documents, 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 in-kind services/contributions provided by the Partners, shall expeditiously coordinate the Project Activities with the designated Partners of this agreement, 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. The Government and Partners will cooperatively coordinate all work activities of this project on an annual, monthly, and as-needed basis for the duration of this agreement.
- B. The Government shall provide labor, materials, and construction oversight as shown in Appendix A. Upon Project completion, the Government shall be responsible for all trail maintenance activities in future years, if within current authorities and contained in the annual or five-year plan in the approved Operational Management Plan (OMP).
- C. The Partners shall provide labor, materials, and supplies for the design and construction of the Project as shown in Appendix A. Partners will provide contributions within 90 days after project sponsor's initial notification.
- 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 share of the total project costs under this Agreement.

ARTICLE III – METHOD OF PAYMENT

- A. The Government shall maintain current records of in-kind services/contributions provided by the Partners and a current projection of annual and total project costs. The Partners shall forward to the Government a copy of receipts showing all payments associated with the Project, or the estimated value of in-kind services provided for the Project, within ten (10) days after the expenditure was made or the in-kind service was provided. The Government shall maintain current records of said contributions provided by the Partners and a current projection of total project costs. At least quarterly, the Government shall provide the Partners 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 each 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 \$10,950, and the Partners' contributions required under Article II.c. of this Agreement are projected to be \$5,450 for Ride KS,

\$3,000 for Clinton Ridge, \$1,500 for Trailbusters, \$1,000 for Let's Ride. amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partners.

- B. The Partners shall provide the contributions required under Article II.b. of this Agreement in accordance with the following provisions: Not less than 90 calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partners of the funds required from the Partners to meet their projected contributions, including their proportionate shares of the Government's financial obligations incurred prior to the commencement of the period of construction. Prior to the issuance of the solicitation, the Partners shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Kansas City District, to the Government's *REPRESENTATIVE*. The Government shall draw from the funds provided by the Partners such sums as the Government deems necessary to cover: (a) the Partners' proportionate shares of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partners' proportionate shares of the Government's contractual and in-house financial obligations as they are incurred during the period of construction. In the event the Government determines that the Partners must provide additional funds to meet its obligation, the Government shall notify the Partners of the additional funds required. Within 60 calendar days thereafter, each Partner shall provide the Government with a check for the full amount of the additional required funds.
- C. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partners 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 any Partner is less than its required share of total project costs, that 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 any Partner exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to that 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, 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 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, no party shall provide, without the consent of the other parties, 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 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 Partners shall hold and save the Government free from all damages arising from services they perform or provide 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. The Government agrees that the Project shall be properly maintained and shall be held open for public recreational use. The Government therefore does not anticipate that any claims will be filed related to the operation, maintenance, repair, replacement, and rehabilitation of the Project. The Government shall, however, vigorously defend any such claim against the Government and shall endeavor to do so without involving, joining, or impleading the Partners. The Government further agrees that it shall not agree to any settlement of any such tort claim or lawsuit without prior consultation with the Partners.

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 interest in connection with the Project.

B. If the Government fails to receive annual appropriations or provide in-kind services in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Partners, and 60 calendar days thereafter any party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement.

C. In the event that any party elects to terminate this Agreement pursuant to this Article, all 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 communications 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: Ride Kansas Trail Club
Diana Skinner, President
1007 E. 700 Rd.
Lawrence, KS 66047

If to the Partner: Clinton Ridge Stables
Keith Gilliland, Owner
721 N. 1032 Rd.
Lawrence, KS 66047

If to the Partner: Douglas County Trailbusters
Sandy Gilliland, President
721 N. 1032 Rd.
Lawrence, KS 66047

If to the Partner: Let's Ride
Kenneth and Susan Johnson
20643 S. Paulen Rd.
Overbrook, KS

If to the Government: U.S. Army Corps of Engineers
Kansas City District
ATTN: CENWK-OD-TR
601 East 12th Street
Kansas City, MO 64106-2896

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties 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 Commander, Kansas City District and the representatives of the Partners as stated below.

U.S. Army Corps of Engineers
Kansas City District

Ride Kansas Trail Club

for BY: Kelly Ryan
Des R. Goyal
Chief, Operations Division

BY: Diana Skinner
Diana Skinner
President

DATE: 7/31/12

DATE: 7/23/12

Clinton Ridge Stables

Douglas County Trailbusters

BY: Keith Gilliland
Keith Gilliland
Owner

BY: Sandy Gilliland
Sandy Gilliland
President

DATE: 7/23/12

DATE: 7/23/12

Let's Ride

BY: Susan Johnson
Kenneth and Susan Johnson

DATE: 7/30/12

APPENDIX A
CHALLENGE PARTNERSHIP AGREEMENT
FINANCIAL WORK SHEET

Project Name: Clinton Lake Project- Rockhaven Fence Project
Contact Person: Operations Manager
Address: US Army Corps of Engineers
872 N. 1402 Rd.
Lawrence, Kansas 66049

Phone: 785-843-7665

Work Project Title: Development, Construction, and Preventative Maintenance of a cable fence around the perimeter of Rockhaven Campground, Rockhaven Fence Project.

Location: Clinton Lake's Rockhaven Park located in Douglas County, Kansas; 1050 E. 700 Rd., Lawrence, KS 66047.

Proposed Agreement Time Terms: Described coordination of work activities on the Project is expected to begin immediately upon execution of this Agreement.

Description of Project Work: The term " Project" shall mean the development, construction, and preventative maintenance of the Rockhaven Fence Project for the duration of a one-year agreement or until the project is completed as described in **Article I.A., I.B. and I.C.** The Partners' contributions, however, shall be determined on a year to year basis and a new annual financial worksheet shall be prepared and signed annually to specify the construction, in-kind services, maintenance and contributions each party is to provide in that year. Provided that the items stated in Article I. A. are completed after the first year, parties may choose to not partner for additional years. Each party's in-kind services /contributions for the current year are shown on the attached chart.

Appendix A Financial Work Sheet –
 Year One: August 2012 – August 2013

| O&M Items Financial Worksheet | Cost Explanation | Local Corps Office | Handshake Funds | Ride Kansas | Clinton Ridge Stables | Clinton Lake Trailbusters | Let's Ride | Total |
|---|------------------|--------------------|-----------------|----------------|-----------------------|---------------------------|----------------|-----------------|
| Volunteer/Labor (1) | | \$500 | N/A | \$4,000 | \$0 | \$1,000 | \$500 | \$6,500 |
| Management Oversight/Coordination | | \$1,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,000 |
| Materials - Cable, cable connectors, concrete, installation tools | | \$0 | \$7,400 | \$0 | \$0 | \$0 | \$0 | \$7,400 |
| Materials - Steel pipe for posts | | \$0 | \$0 | \$0 | \$3,000 | \$0 | \$0 | \$3,000 |
| Welding Supplies | | \$0 | \$0 | \$450 | \$0 | \$0 | \$0 | \$450 |
| Equipment Use - Drill holes, haul materials | | \$350 | \$0 | \$0 | \$0 | \$0 | \$0 | \$350 |
| Fence Installation and Maintenance (2) | | \$0 | N/A | \$1,000 | \$0 | \$500 | \$500 | \$2,500 |
| Other (explain below) | | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Total | | \$1,850 | \$7,400 | \$5,450 | \$3,000 | \$1,500 | \$1,000 | \$20,200 |
| Share of Total Cost | | 9% | 35% | 26% | 14% | 7% | 5% | 100.0% |

1. Volunteer hours = # of hours x \$21.36 per hour worked.

2. The latest Bacon Davis Wage rates will be used to calculate the total amount of the contributions for all welding and equipment operations.