

CHALLENGE PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
CITY OF WACO, CAMERON PARK ZOO

THIS AGREEMENT, entered into this day of 1 Jan 2013, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer Fort Worth District, and the City of Waco, Cameron Park Zoo, (hereinafter the "Partner"), represented by Johnny Binder.

WITNESSETH, THAT:

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

WHEREAS, the installation of an artificial eagle nesting platform at Lacy Point Recreation Area on Waco Lake will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing this artificial nesting platform, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to construct and install this eagle nesting platform, 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 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 constructing and installing a 40' tall tower and a 6' diameter artificial nesting platform at Lacy Point Recreation Area at Waco Lake. GPS coordinates of the platform will be 31°34'57" N, 97°14'45" W.

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:

- *The land on which to place the nesting platform*
- *Materials for boundary fencing, gates, access roadway around perimeter, "boats keep out" buoys to prevent disturbance of the nest*
- *Materials for viewing blinds and educational signage*
- *Assistance with cost of materials and installation of nesting platform and tower*

c. The Partner shall provide:

- *Materials for platform, tower and nest*
- *Assistance with cost of installation of tower and platform*
- *Materials and installation of camera equipment*
- *Provide all future operation and maintenance cost for the 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. 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.b. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$60,000, and the Partner's contribution required under Article II.b. of this Agreement is projected to be \$30,000. *[NOTE: PROJECTIONS SHOULD BE ADJUSTED AS APPROPRIATE FOR INFLATION THROUGH THE PERIOD OF CONSTRUCTION.]* 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. The Partner shall provide the contribution required under Article II.b. of this Agreement in accordance with the following provisions: Not less than *[NUMBER OF DAYS, 30 OR MORE]* calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partner of the funds required from the Partner to meet its projected contribution, including its proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction. Prior to the issuance of the solicitation, the Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, *[APPROPRIATE USACE DISTRICT]*" to the Government's *[TITLE OF APPROPRIATE GOVERNMENT REPRESENTATIVE]*. The Government shall draw from the funds provided by the Partner such sums as the Government deems necessary to cover: (a) the Partner's proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partner's proportionate share 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 Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required. Within *[NORMALLY 60]* calendar days thereafter, the 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 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:



## Challenge Partnership Financial Work Sheet

Corps Project Name: Waco Lake Office  
 Work Project Title: Eagle Nesting Platform  
 POC Name: Ranger Elizabeth Anderson  
 Address: 3801 Zoo Park Drive City: Waco State: TX Zip Code: 76708  
 Telephone: 254 756-5359  
 Location on Project: Lacy Point Recreation Area

Partner Organization 1: City of Waco, Cameron Park Zoo  
 POC Name: Johnny Binder  
 Address: 1701 North 4th City: Waco State: TX Zip Code: 76707  
 Telephone: 254 750-8428

Proposed start date of work: January 2013

Simple description of work to be accomplished through the partnership: Nesting pair of bald eagles will be provided with a permanent, safe nesting platform. Nest will be viewed by general public in real time through website.

	Local Corps	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
In-Kind Services	\$0	N/A	\$0	\$0	\$0	\$0
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$20,000	\$20,000	\$0	\$0	\$20,000
Equipment Use	\$0	\$10,000	\$5,600	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer Hrs - Value	N/A	N/A	\$4,400	\$0	\$0	\$0
Other (explain in text)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$30,000</b>	<b>\$30,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$60,000</b>
<b>Share of Total Cost</b>	0.0%	100.0%	0.0%	0.0%	0.0%	100%

If to the Partner: City of Waco  
Cameron Park Zoo  
Attn: Johnny Binder  
1701 North 4<sup>th</sup> St.  
Waco, TX 76707

If to the Government: U.S. Army Corps of Engineers  
Waco Lake  
Attn. Ranger Elizabeth Anderson  
3801 Zoo Park Drive  
Waco, TX 76708

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 Chief of Operations, Fort Worth District.

**The Department of the Army:**

NAME: Charlie Burger

SIGNATURE: 

TITLE: Chief, Operations Division

DATE: 11 Dec 2012

**Partner:**

NAME: Johnny Binder

SIGNATURE: 

TITLE: General Curator, Cameron Park  
Zoo

DATE: 11Dec 2012