

CHALLENGE COST-SHARING AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
GARY KALBAUGH

THIS AGREEMENT, entered into this 10 day of, MARCH 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the Jennings Randolph Lake Operations Project Manager, U.S. Army Corps of Engineers, Baltimore District, and Gary Kalbaugh, (hereinafter the "Partner"), represented by Gary Kalbaugh.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Jennings Randolph Lake which includes a recreational fresh water fishing pond for the public and

WHEREAS, universal access improvements, including an access road, parking area, hard cap surfacing from the parking area to the pond, and a fishing platform at Jennings Randolph Lake, hereinafter the "Project", will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing this Project, and

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

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to absorb a portion of the cost in equipment, labor, time, and construction.

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 a 8'x 8' pressure-treated wood fishing pier that is universally accessible with decked surface and handrails and a hard cap surface from the parking area to the pond shoreline to a width of 12'. Appropriate culvert pipe shall be installed to drain any standing surface water. The shoreline shall be cleared of all brush and roots for an additional 50' to the left of the existing cleared area and to a width equal to the existing shoreline clearing. The Project access road will be upgraded from dirt to stone permitting vehicular access from the entrance point to the pond discharge stream. Culvert pipe required for this Project will be supplied by the Government. Large rocks or equivalent will be placed along the edge of the accessible shoreline appropriately spaced to prevent accidental wheelchair passage. All construction will meet or exceed industry standards for providing universal access. Details are as generally described in the approved program application titled "Sunset Trail Pond Accessibility Project" dated 17 October 2008, and approved by Steven L. Stockton, Director of Civil Works, on 21 November 2008.
- 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 services 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 all materials required for the Project construction.
- c. The Partner shall construct and provide all equipment, equipment operator, expertise, and equipment transportation to and from the project. The project shall meet or exceed industry standards for universal access.
- 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.c. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$14,400, and the Partner's contribution required under Article II.c. of this Agreement is projected to be \$7,500. Such amounts are estimates and 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.c. of this Agreement in accordance with the following provisions: Not less than 30 calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partner of the services 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 unless the Partner's proportionate share, of the Government's contractual and in-house financial obligations is 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 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 60 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 there from.

#### 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.





	<b>Local Corps Office</b>	<b>Handshake Funds</b>	<b>Partner 1</b>	<b>Partner 2</b>	<b>Partner 3</b>	<b>Total</b>
Salaries	\$1,000	N/A	\$0	\$0	\$0	\$1,000
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$400	\$4,000	\$0	\$0	\$0	\$4,400
Equipment Use	\$0	\$0	\$5,000	\$0	\$0	\$5,000
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer Efforts	N/A	N/A	\$0	\$0	\$0	\$0
In-Kind Services	N/A	N/A	\$2,500	\$0	\$0	\$2,500
Other (explain below)	\$0	\$1,500		\$0	\$0	\$1,500
<b>Total</b>	<b>\$1,400</b>	<b>\$5,500</b>	<b>\$7,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$14,400</b>
<b>Share of Total Cost</b>	9.7%	38.2%	52.1%	0.0%	0.0%	100%

# Pond Configuration Partnership Proposal

Campground ↑

