

**Challenge Partnership Agreement Between**

**The Department of the Army and**

**Friends of David – a Trail Fund to Encourage an Active Lifestyle, Inc.**

THIS AGREEMENT, entered into this 30th day of October 2008, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District, Little Rock and Friends of David – a Trail Fund to Encourage an Active Lifestyle, Inc. a 501(c)(3) tax-exempt organization (herein after the "Partner"), represented by Jackson Rhoades, President of Friends David – Trail Fund.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Norfolk Lake which includes recreational opportunities for the public including fishing, camping, boating, swimming, hiking, biking, running and walking trails, and

WHEREAS, the development of trails at Norfolk Lake will safely increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in providing these trails, and

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

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to build and maintain the trails, 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**

- a) The term "Project" shall mean a system of multiple-use trails (herein after "David's Trail") to be constructed and maintained upon public land adjacent to Norfolk Lake. See attached map.
- 1) David's Trail will honor and remember the contributions David Floyd made to his community via a network of multiple-use trails designed to encourage an active lifestyle for all ages and abilities.
  - 2) The location will be initially concentrated between Buzzard Roost & Red Bank with future extensions to the Arkansas-Missouri state line and to the Norfolk Dam.
  - 3) Intended uses of David's Trail will include, but are not limited to:
    - i. Outdoor recreation & exercise
    - ii. Physical therapy & rehab, doctor-prescribed exercise, pet exercise
    - iii. Wildlife & nature experiences
    - iv. Organized group activities, workshops & educational events
- b) The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to construction, operation and maintenance of David's Trail for a five-year period.
- 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) This agreement in no way restricts the Partner from accepting contributions from individuals and groups, including governmental entities.
- e) 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.
- f) It is understood that Norfolk Lake is a public facility and the Project, property, facilities or improvements placed upon public land at Norfolk Lake cannot be closed to public use except under the provisions of the special events permit program.
- g) It is understood that Norfolk Dam is a flood control structure of national importance, the operation of which is directed by the Corps of Engineers. There will be no claim for damages by the Partner or its members should operation of the dam cause the loss of the Project or a portion thereof.

## **ARTICLE II - OBLIGATIONS OF THE PARTIES**

- a) The Partner shall construct the Project, applying those procedures usually applied to federal projects, pursuant to federal laws, regulations, and policies.
- b) The Partner's intent is to provide, according to industry standards:
  - 1) Construction and maintenance of David's Trail as agreed to by both Government and Partner;
  - 2) Payment for all non-donated materials, supplies, and labor to construct and maintain David's Trail;
  - 3) Installation and maintenance of trail markers, trail-head signs & maps, commemorative markers and other approved structures to facilitate and promote intended uses.
- c) The Government shall provide:
  - 1) Advice, guidance and training from Corps personnel on location, layout and maintenance of David's Trail,
  - 2) Specifications for trail construction for a variety of trail-users,
  - 3) Maps showing the proposed location of all trails, bridges and various segments with updated version as trail segments are completed.
  - 4) Final maps and annotated documents for promotion and public informational use.
- d) Upon completion, 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) In the event of a natural disaster or flood event, the Government and the Partner will meet to mutually decide which damaged or destroyed features will be repaired and/or replaced.
- f) To keep the lines of communication operating, the Government and the Partner will notify each other at least two (2) weeks in advance before work is to commence. This will include, but not be limited to, construction of trails, installation of signs, cutting of trees, etc. The Government will coordinate this communication with the natural resource manager, Mountain Home Project Office and the Partner will coordinate with the Friends of David – Trail Fund President and its members.

## **ARTICLE III - METHOD OF PAYMENT**

- a) The Government shall maintain current records of all cash & non-cash contributions (donated labor & donated materials) received by the Government. At least quarterly, the

Government shall provide the Partner with a report setting forth all contributions recorded to date.

- b) The Partner shall maintain current records of all cash & non-cash contributions received by the Partner. At least quarterly, the Partner shall provide the Government with a report setting forth all contributions recorded to date.
- c) The Partner will be responsible for payment for all non-donated materials and labor and shall be invoiced directly for all purchased materials, services and contracted labor.
- d) Upon final 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.

#### **ARTICLE IV - FEDERAL AND STATE LAWS**

- a) 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. These will include, but are 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.*"
- b) Environmental requirements for construction of the trail have been addressed in the Norfolk Lake Master Plan approved by Commander, Southwestern Division in August 1988. In section 6-06, Inter-site Trail Development (page 104), it is noted that additional trail opportunities at the project will be met by the continued construction of the Ozark Highlands Trail (OHT). The Norfolk Lake segment will serve as the connecting link of the OHT with the Ozark Trail in Missouri. Together, these trails will comprise the Trans-Ozark Trail, which will run from near Fort Smith, Arkansas to just east of St. Louis, Missouri. Presently, 13 miles of the estimated 62 total miles on project lands have been constructed, beginning at Norfolk Dam and temporarily terminating north of Tracy Park. Master Plan Plate 6-02 identifies the general route of the trail.

## **ARTICLE V - 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 VI - 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 VII - 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 VIII - 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 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) 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 IX - 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 mailed either by registered or certified mail, as follows:

If to the Partner:

Friends of David – a Trail Fund to Encourage an Active Lifestyle, Inc.  
 Jackson Rhoades  
 526 Cedar Ridge Circle  
 Mountain Home, AR 72653

If to the Government:

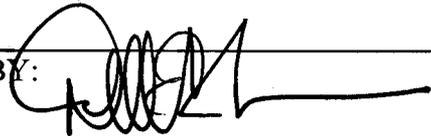
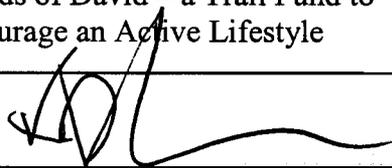
District Commander  
 U.S. Army Engineer District  
 P.O. Box 867  
 Little Rock, Arkansas 72203

- 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 X - 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, Little Rock District.

The Department of the Army	Friends of David – a Trail Fund to Encourage an Active Lifestyle
BY: 	BY: 
Donald E. Jackson, Jr.	Jackson Rhoades
Colonel, Corps of Engineers	President & Founder
District Commander	Friends of David – Trail Fund
DATE: 30 October 2008	DATE: 30 October 2008

## Challenge Partnership Financial Work Sheet

**Project Name:** Lake Norfolk – Mountain Home Project Office

**Contact person:** Jon Hiser (jonathan.a.hiser@usace.army.mil)

**Address:** 324 W. 7<sup>th</sup> St., Mountain Home, Arkansas 72653

**Phone:** 870-425-2700

**Work Project Title:** David's Trail – A Community Project to Encourage an Active Lifestyle

**Location:** Public lands surrounding Lake Norfolk between Norfolk Dam & AR/MO state line

**Proposed date of work:** September 2008

**Description of work:**

Government shall provide maps, photos, training, advice and guidance to design, layout and maintain a network of multiple-use trails. Partner shall provide fundraising to build and maintain David's Trail. Government and Partner will coordinate and allocate donated labor & materials. Government and Partner will promote usage of David's Trail for outdoor recreation, outdoor exercise and outdoor activities.

**Partner:** Friends of David – A Trail Fund to Encourage an Active Lifestyle

A 501(c)(3) tax-exempt organization.

**Contact person:** Jackson Rhoades (jackson.rhoades@gmail.com)

**Address:** 526 Cedar Ridge Circle; Mountain Home, AR 72653 **Phone:** 870-404-4623

Cost Estimates	Corps	Partner	Total
Building David's Trail (.600)	\$60,000	\$360,000	\$420,000
Materials & Supplies (.090)	\$15,000	\$54,000	\$69,000
Contingencies (.075)	\$	\$45,000	\$45,000
Maintaining David's Trail (.060)	\$30,000	\$36,000	\$66,000
Activities, events, workshops & promotion (.050)	\$16,000	\$30,000	\$46,000
Website design & maintenance (.030)	\$	\$18,000	\$18,000
Designing David's Trail (.030)	\$24,000	\$18,000	\$42,000
Other/Miscellaneous (.025)	\$10,000	\$15,000	\$25,000
Equipment to build & maintain David's Trail (.020)	\$	\$12,000	\$12,000
Fundraising (.020)	\$	\$12,000	\$12,000
Donated Time – volunteers doing work (19x500x5)	\$	\$47,500	\$47,500
Salaries (0.0)	\$	\$	\$
Travel (0.0)	\$	\$	\$
<b>Total Cost</b>	<b>\$155,000</b>	<b>\$647,500</b>	<b>\$802,500</b>
<b>Share of Total Cost</b>	<b>%20</b>	<b>%80</b>	<b>100%</b>