

**CHALLENGE PARTNERSHIP AGREEMENT**  
**between**  
**THE DEPARTMENT OF THE ARMY, FORT WORTH DISTRICT**  
**and**  
**FRIENDS OF LAKE O' THE PINES**

THIS AGREEMENT, entered into this day of <sup>June 15</sup>     , 20 23, by and between the Department of the Army, U.S. Army Corps of Engineers, Fort Worth District (hereinafter the "Government"), represented by Timothy L. MacAllister, Chief, Operations Division, U.S. Army Corps of Engineers, Fort Worth District and Friends of Lake O' The Pines represented by Becky Rockwell, President (hereinafter the "Partner").

WITNESSETH, THAT:

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

WHEREAS, the dock modifications at Johnson Creek, Buckhorn, Lakeside, and Brushy Creek Parks at Lake O' the Pines will increase the recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting the Government in modifying the docks, and

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

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to assist with installation of dock parts, 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 Partner agree as follows:

## ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Project" shall include all reviews, clearances, and oversight of applicable environmental laws and regulations, as well as the design, installation, and construction of dock modifications at Johnson Creek, Buckhorn, Lakeside, and Brushy Creek Parks at Lake O' the Pines.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to the project, estimated in the "Challenge Cost-Sharing Financial Worksheet" identified in Appendix A.
- c. This agreement in no way restricts the Government or the Partner from participating in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations, and individuals.
- d. All donated materials, equipment, 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 shall provide the following:
  - The Government will provide the funding for supplies and materials, as well as items such as signage, construction tools, and other items needed for the completion of the Project. This shall include providing materials and equipment necessary for dock modifications.
  - The Government will provide a copy of Engineer Manual 385-1-1 and will coordinate any necessary training and/or Position Hazard Analysis or Activity Hazard Analysis necessary to complete the work.
  - 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, within sixty (60) days from the completion of the Project.
- b. The Partner shall provide the following:
  - The Partner shall provide volunteer services to install dock modifications as identified in Appendix A.
  - The Partner will provide all labor to build the docks and will provide oversight and coordination among the partner throughout the scope of the project. This includes staff time to oversee volunteer activities and services through project completion.
  - The Partner will abide by all safety requirements, to include taking any necessary training and submitting any necessary paperwork prior to work. The Partner will coordinate any necessary personal protective equipment

- (PPE) necessary, pursuant to the AHA and/or PHA.
- The Partner shall provide an accounting of the hours utilized for the Project within thirty (30) days from the completion of the Project.
- c. Partner-funded personnel are not considered federal government employees, nor do they qualify as volunteers under 33 U.S.C. 569c. Accordingly, Partner funded personnel are not eligible to receive the liability protection or work injury compensation benefits provided respectively under chapter 171 of Title 28 and chapter 81 of Title 5 of the United States Code. Additionally, the Government cannot provide for the incidental expenses of Partner-funded personnel as authorized for volunteers under 33 U.S.C. 569c. All Partner-funded personnel shall be required to sign a written statement recognizing their status and the limitations thereof.
- d. No Federal funds may be used to meet the Partner's total Project costs under this Agreement.
- e. The Partners shall not use Government-supplied materials and equipment, nor allow their use, for other than authorized project purposes.

### **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 the conclusion of the Project the Government shall provide the Partner with a report setting forth all contributions provided in relation to 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 \$27,810, and the Partner collective contributions required under Article II.b of this Agreement is projected to be \$8,386. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government or of the Partner.
- b. The Partner shall provide services required under Article II.c. of this agreement based on funding and/or volunteer availability.
- 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.

#### **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 all parties involved in such a dispute. All the parties involved in a dispute would each pay an equal share 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 60 I 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 Chief of Operations 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 any party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that a 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 elect to terminate this Agreement.
- c. In the event that a 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 II of this Agreement.

## **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 the Partner:

FRIENDS OF LAKE O' THE PINES  
Becky Rockwell  
President  
150 Driftwood Ct.  
Jefferson, TX 75657  
Phone: 970-769-6386

If to the Government:

Dustin Flowers  
Natural Resources Manager,  
Wright Patman Lake,  
2669 FM 726  
Jefferson, TX 75657  
Phone: 903-665-2336

- 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, Fort Worth District, or his/her designee.

The Department of the Army

By: Timothy L. MacAllister

Chief, Operations Division  
Fort Worth District  
U.S. Army Corps of Engineers

Signature: Timothy L. MacAllister

Date: 31 May 2023

FRIENDS OF LAKE O' THE PINES

Becky Rockwell

President

Signature: Becky Rockwell

Date: June 15, 2023

