

**CHALLENGE COST-SHARING AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY
AND GOVERNMENTAL ENTITIES
ADJACENT TO THE
ELM FORK PROJECT,
FT. WORTH DISTRICT, TEXAS.**

THIS AGREEMENT, entered into this 24 day of August, 2004, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer Fort Worth District, and, Governmental Entities (hereinafter the "Partner(s)"), represented by their duly authorized designated official.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at the Elm Fork Project (Lewisville, Grapevine, Ray Roberts Lakes) which includes recreational and educational opportunities for the public, and

WHEREAS, the Government has determined that partner agreements with an assortment of suitable organizations promotes stewardship of our Natural Resources while providing a way to stretch the Corps of Engineers budget by sharing the cost of constructing, operating, and managing recreation facilities and natural resources with others, and

WHEREAS, the expansion of recreational hiking and equestrian trails will increase the recreation and educational opportunities for the public, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to make this hiking and equestrian trail available to the public, and

WHEREAS, the Partners, in order to assist the Government in this project have voluntarily agreed to provide contributions (monetary, volunteers, etc.) and services (including emergency services) and access for the purpose of the establishment and ongoing safe operation and maintenance of the Hiking and Equestrian Trails on Government lands at Lewisville Lake as designated on Exhibit A, 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 Partners and apply those 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 cooperate in challenge cost-sharing in accordance with the terms of this 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 a Government authorized Hiking and Equestrian trail transversing the Partner's jurisdiction and extra-territorial jurisdiction on Government-owned property in the Elm Fork Project. This trail will interconnect as generally described in the Elm Fork Operation Management Plan, and as identified on the GIS Map attached as Exhibit A to this agreement, as may be amended from time to time.

b. The term "total project costs" shall mean all contributions (monetary, services, volunteer value, etc.) incurred by the Government and the Partners related to 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 property, facilities and improvements placed on Government land as well as any work accomplished under this agreement shall become the property of the Government.

e. The Partners and the Government may by mutual agreement assign trail construction, trail operation and maintenance duties to an approved assignee(s).

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using available operations and maintenance funds appropriated by the Congress of the United States (hereinafter the "Congress"), shall provide environmental review, operations and maintenance oversight, supplies and materials for the construction and ongoing operation and maintenance of the Project on Government lands. The Government reserves the rights to review, approve, or deny all or any portions of the Project development plan. All proposed work on the Project shall be subject to a mutually approved annual plan of operation and maintenance by all Partners. All properties, lands, and improvements will remain in exclusive control of the Government.

b. Each Partner, subject to and commensurate with available resources appropriated by their respective governmental body, shall assist with some or all of the following: construction and maintenance of approved trail and trail heads and provide emergency services, litter and debris cleanup, paid or volunteer manpower, supplies and materials for the construction and ongoing operation and maintenance for their portion of the Project. The Government reserves the rights to review, approve, or deny all or any portions of the Project. All proposed work on the Project conducted by each Partner and the Government shall be subject to a mutually approved Annual Plan of operation and

maintenance in accordance with applicable federal, state and local rules, regulations and laws.

c. Construction and maintenance of the Project is subject to the Partners agreeing to and jointly submitting a single Project development plan for Government approval.

d. In February of each year, the Government and Partners will meet to establish and coordinate the Annual Plan of operation and maintenance for the upcoming year.

ARTICLE III - REPORTS

a. The Government shall maintain current records of contributions provided by the Partners and a current projection of total project progress and costs.

b. Using a format prescribed by the Government, the Partners shall provide an annual report each November to the Government covering the prior period's total hours worked by volunteers and the monetary value of the work.

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 Partners 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 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, 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.

c. Additional Partners may be added to the Agreement by submitting a written request from the responsible senior officer or official of the agency or organization to the Elm Fork Project Operations Manager, 1801 N. Mill Street, Lewisville, TX 75057. Written requests for inclusion shall contain a commitment to adhere to the intent and specific purposes of the Agreement. They shall provide resources to provide on-going operations and maintenance of the Project and designate a coordination staff person responsible for the Partner requesting inclusion. The Elm Fork Operations Manager shall forward a copy to the coordination staff person of each current Partner.

d. This agreement shall not supercede or alter any other agreements, including but not limited to, any agreement held between a Partner(s) and the Government or any agreement held between Partners. This agreement is a separate instrument.

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

Each Partner shall hold and save the Government and the other Partners party to this agreement 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, Partners, or their contractors.

ARTICLE IX – DURATION OF AGREEMENT

This agreement shall be effective for five years commencing on the day following the ratification of this agreement by the Corps. This agreement will automatically renew for another five-year period on October 1 of the last year, unless a Partner gives notice of cancellation before the date of renewal.

ARTICLE X – MODIFICATION AND TERMINATION

a. If at any time a Partner fails to fulfill its obligations under this Agreement, the District Commander shall terminate this Agreement with said Partner 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 from Congress 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 a Partner may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that a Partner 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. This Agreement may be terminated upon written request of one of the Partners. A Partner may terminate its involvement upon 60 days written notice to the Government. A termination request by one Partner shall not terminate the Agreement between the remaining Partners.

d. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve a Partner of liability for any obligation previously incurred.

ARTICLE XI – 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:

Town of Copper Canyon
Mayor
400 Woodland Drive
Copper Canyon, Texas 75077

City of Corinth
Mayor
2003 South Corinth Street
Corinth, Texas 76210

Town of Hickory Creek
Mayor
8696 Stemmons Freeway
Hickory Creek, Texas 75065

Lake Manager
Lewisville Lake
1801 North Mill Street
Lewisville, TX 75057

Town of Shady Shores
Mayor
P.O. Box 362
101 S. Shady Shores Road
Shady Shores, Texas 75065

City of Highland Village
Mayor
1000 Highland Village Road
Highland Village, Texas 75077

b. A Partner may change the address to which such communications are to be directed by giving written notice to the other Partner 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 XII – CONFIDENTIALITY

To the extent permitted by the laws governing each Partner, the Partners agree to maintain the confidentiality of exchanged information when requested to do so by the providing Partner.

IN WITNESS WHEREOF, the Partners hereto have executed this Agreement, which shall become effective upon the date it is signed by the Commander, Ft. Worth District.

The Department of the Army
BY:

Gordon M. Wells
Colonel, Corps of Engineers
Ft. Worth, District Commander
DATE:

The City of Corinth
BY:

Mayor, J.B. Troutman

DATE:

The Town of Hickory Creek
BY:

Mayor, Jim Clarke
DATE:

The Town of Copper Canyon
BY:

Mayor, Chuck Wainscott
DATE:

ADDENDUM I – ADDITION OF BIKE TRAILS

a. With the additional interest by some Partners to construct bike and hike trails for their citizens on Government fee property, biking trails can be authorized under this Agreement as of March 2005.

b. Bike trails will not be constructed in conjunction with equestrian trails under any circumstances unless approved by the Corps and the appropriate Partner. The two user groups must be physically and, ideally, visually separated onto individual tread bases with adequate buffer space between the trail treads. The amount of ‘adequate buffer space’ will be determined on a site-by-site basis by both the Corps and the Partner requesting the trails.

c. All other provisions of the Challenge Agreement Between the Department of the Army and Governmental Entities Adjacent to the Elm Fork Project, Ft. Worth District, Texas shall apply.

The Department of the Army
BY:

Douglas L. Cox
Operations Manager
Elm Fork Project
DATE:

The Town of Little Elm
BY:

Doug Cravey
Mayor
Town of Little Elm
DATE:

The City of Highland Village
BY:

Bill Lawrence
Mayor
Highland Village
DATE: