

**CHALLENGE COST-SHARING COOPERATIVE MANAGEMENT AGREEMENT
(CCSCMA)
FOR RECREATION FACILITY
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
HALL COUNTY BOARD OF COMMISSIONERS**

THIS AGREEMENT, entered into this ____ day of _____, 20__, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District Mobile, and Hall County Board of Commissioners, (hereinafter the "Partner"), represented by the Chairman.

WITNESSETH, THAT:

WHEREAS, the Partner is a non-Federal public entity that desires to assist the Government in the operation and management of Bolding Mill Multi-Purpose Park, Duckett Mill Multi-Purpose Park, and Old Federal Campground at Lake Sidney Lanier (hereinafter referred to as the "Project Site Areas") by providing goods and services specified herein at no cost to the Government;

WHEREAS, Section 225 of the Water Resources Development Act (WRDA) of 1992, P.L. 102-580, as amended, authorizes the Government to enter into agreements with non-Federal public entities to provide for the operation and management of recreation facilities and natural resources at civil works projects where such facilities are being maintained at complete Federal expense and permit the non-Federal public entities to collect and utilize user fees for the operation, maintenance, and management activities at such sites, and,

WHEREAS, the Government and the Partner have the full authority and capability to perform as hereinafter set forth and intend to cooperate in accordance with the terms of this Agreement;

NOW THEREFORE, the Government and the Partner agree as follows:

ARTICLE I – SCOPE

The Government authorizes the Partner to perform, and the Partner agrees to perform, operations and management activities at the Project Site Areas, as set forth in an approved Partner Operations Plan described in Article II of this Agreement. Operations and management activities that may be included in a Partner Operations Plan under this Agreement include reservations management, site management, facility management, user fee collection, amenity management, special event coordination and approval, cleaning, custodial, and refuse removal, grass mowing, weeding, edging, and

pruning of shrubs and plants, tree and limb removal, non-household refuse and debris removal, removal of undesirable animals, facility and system maintenance, repair, and improvement, invasive species and pest control, visitor information services, security cameras and/or systems, and visitor programs. This Agreement provides no authority to, nor confers any responsibility on, the Partner to perform operations and management activities outside the Project Site Areas or beyond the scope of activities included in an approved Partner Operations Plan.

ARTICLE II – PARTNER OPERATIONS PLAN

a. Prior to the Partner providing or the Government accepting any goods or services under this Agreement, the parties shall develop a mutually agreed upon Partner Operations Plan that outlines the respective operations, management and development activities to be undertaken by the Partner and the Government.

b. The parties may develop a single Partner Operations Plan that spans the entire five-year duration of this Agreement or multiple Partner Operations Plans that cover shorter periods of time as agreed to by the parties. A Partner Operations Plan may be modified at any time during the course of this Agreement by mutual written agreement of the parties. Partner Operations Plans and any modifications thereto must be approved in writing by the Project Site Area Operations Project Manager (OPM) for the Government and the Director, Hall County Parks and Leisure Services, for the Partner.

c. Partner Operations Plans shall set forth the full extent of the Partner's authorities and responsibilities at the Project Site Areas. Partner conducted activities included under a Partner Operations Plan shall be limited to those categories of activities described in Article I of this Agreement. Unless otherwise authorized by law, Partner Operations Plans shall not include Partner activities that the Government could not perform on its own under existing authorities. Partner activities shall be described in sufficient detail to ensure a mutual understanding of the parties regarding the parameters of the Partner's authorities and responsibilities. Proposed construction activities to be performed by the Partner shall require a detailed scope of work and construction drawings. Proposed equipment acquisitions by the Partner shall require an explanation of the intended use of the equipment and describe the equipment by model and/or series number, if available.

d. In the event of a conflict between a Partner Operations Plan and this Agreement, this Agreement shall control.

ARTICLE III – ANNUAL BUDGETS

Within thirty (30) days from the execution date of this Agreement and annually thereafter for the period covered by this Agreement, the Partner shall submit a proposed

annual budget to the OPM for review and approval. Partner budgets must provide cost estimates for all Partner activities listed in a Partner Operations Plan for a given year and all anticipated Partner personnel and overhead expenses for a given year. Approval and adjustment of budgeted amounts for each Partner activity/expense is at the sole discretion of the OPM. Once the OPM approves an annual budget, the budgeted amounts cited therein for each Partner activity/expense serve as the maximum limits for Partner expenditures on that activity/expense and may not be exceeded without the prior written approval of the OPM.

ARTICLE IV –FEES

a. Unless prohibited or otherwise limited in a Partner Operations Plan, the Partner is authorized to collect and retain “Recreation Use Fees” and “Special Use Permit Fees,” as those fee types are defined by Engineer Circular (EC) 1130-2-550, for use of recreation sites and facilities within the Project Site Areas, whether such sites or facilities were developed by the Partner or the Government. The Partner shall honor America the Beautiful Interagency Passes (hereinafter “Interagency Passes”), and may be authorized to sell Interagency Passes pursuant to the requirements set forth in EC 1130-2-550, but shall not have authority to retain revenues from the sale of such passes.

b. With the exception of the fee remittance requirements for Recreation Use Fees and Special Use Permit Fees under EC 1130-2-550, the Partner’s collection and administration of fees must comply with the requirements of EC 1130-2-550. Applicable requirements under EC 1130-2-550 include, but are not limited to, limitations on fee rates and items for which fees may be charged; the biennial submission of fee schedules to the District Chief of Operations for approval; submission of Special Use Permits to the OPM for approval, and the remittance of all revenues from the sale of Interagency Passes into a special account in the U.S. Treasury. The Partner shall remit all revenues from the sale of Interagency Passes to the Government for further deposit in the U.S. Treasury as required under EC 1130-2-550.

c. With the exception of revenues from the sale of Interagency Passes, the Partner is authorized to retain up to 100 percent of all fees that it collects and shall exclusively utilize such fees for operations, maintenance, and management activities specified in an approved Partner Operations Plan, and within such amounts as set forth in an annual Partner budget. Partner expenditures must also comply with the allowable cost principles set forth in the Office of Management Budget Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” or its replacement. The Partner’s failure to strictly adhere to the fee requirements under this Agreement may result in the Government taking adverse actions against the Partner, to include debt collection actions for inappropriately collected and/or utilized fee amounts.

ARTICLE V – FISCAL MANAGEMENT

a. The Partner shall conduct its fiscal operations in accordance with accepted business and accounting practices. This includes appropriate use of a funds accountability system, purchase orders, receipts, invoices, and inventory records. The Partner shall abide by the fund security measures set forth in EC 1130-2-550, or its replacement.

b. Beginning on the first anniversary of this Agreement, the Partner shall submit, in conjunction with its annual budget proposal, an annual financial and performance report that contains a list of all Partner receipts and expenditures for the prior year, a comparison of actual accomplishments to the objectives established in the Partner Operations Plan for the prior year, and, if applicable, the reason(s) established objectives were not met.

c. At any point during the term of this Agreement the Government may perform audits or require the Partner, using Partner collected user fees, to perform audits of the Partner's records and accounts in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the applicable state. If, during the course of an audit, Partner records are found to be incomplete or otherwise noncompliant with the aforementioned standards, the Partner's collection and utilization of any missing fee receipts shall be presumed to be noncompliant with this Agreement and the Government may terminate this Agreement and pursue collection actions as it deems appropriate.

ARTICLE VI – CONTRACTING

The Partner may award and manage contracts for the execution of its assigned activities under a Partner Operations Plan. Such contracts, and any disputes or liabilities arising therefrom, shall be the sole responsibility of the Partner. The Partner shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their respective contracts.

ARTICLE VII – EQUIPMENT AND FACILITIES

a. Unless otherwise provided for in a separate agreement, all existing Government equipment and facilities at the Project Site Areas at the time this Agreement is executed shall remain property of the Government. All equipment, facilities, and improvements acquired and/or constructed by the Government or Partner during the course of this Agreement shall be considered property of the Government unless the Partner expresses a desire to retain the item in question and can demonstrate to the OPM's satisfaction that no Government funding or Recreation Use Fee or Special Use Permit Fee receipts were used to acquire and/or construct the item.

b. Partner personnel may be authorized to operate, for official use, government-

owned or leased vehicles, vessels, machinery or other specialized equipment if deemed appropriate and beneficial by the OPM. Partner personnel must have the proper training, license, and/or experience in accordance with Government operator permit policies before operating government-owned or leased vehicles, vessels, or equipment.

c. The Government may provide equipment, materials, or supplies purchased for Corps operation and maintenance purposes to the non-Federal partner to operate and maintain the Project Site Areas. Any non-expendable property will be considered on loan to the partner and must be returned to the Corps upon termination of this Agreement.

ARTICLE IX – PROTECTION AND CARE OF PROPERTY

a. The Partner shall exercise reasonable care to prevent damage to any Government property and, insofar as possible, protect all such property. The Partner shall be responsible for, and shall promptly repair, replace, or remedy any damage to Government property caused by the Partner, including actions by the Partner's employees, agents, contractors, volunteers, or their invitees.

b. The Partner shall keep all areas, facilities, and equipment for which it has responsibility and/or authorization for use in good order and in a clean safe condition. The Partner shall perform all activities specified herein or in an approved Partner Operations Plan in a safe manner as required by applicable Federal and State laws and regulations, and Government guidance.

c. The Partner will work with the Government to protect the Project Site Areas against pollution of its air, ground, and water. The storage or disposal of any toxic or hazardous materials within the premises is prohibited. The parties shall ensure that all activities conducted pursuant to this Agreement comply with applicable Federal and State environmental laws and regulations.

d. The Partner shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind nor in any manner substantially change the contour or condition of the Project Site Areas, except as may be authorized under a Partner Operations Plan. The Partner may salvage fallen or dead timber within the Project Site Areas for use as firewood. Except for salvaged firewood, the Government shall conduct all sales of forest products and the proceeds therefrom shall not be available to the Partner under the provisions of this Agreement.

e. The Partner will not remove or disturb any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Partner shall immediately notify the Government and protect the site and the material from further disturbance until the Government gives clearance to proceed.

ARTICLE X – REAL ESTATE INTERESTS

a. This Agreement does not grant, convey, assign, or otherwise provide any real estate interest to the Partner, nor does it authorize the Partner to grant, convey, assign, or otherwise provide real estate interests to third parties. The Government retains the sole responsibility and authority to administer requests, make awards, and manage grants of real estate interests within the Project Site Areas. The Government shall coordinate the proposed grant of any new real estate interests with the Partner and will endeavor to not grant any such interests that will, in the opinion of the Government, unduly interfere with activities set forth in an approved Partner Operations Plan.

b. All Partner activities specified herein or under an approved Partner Operations Plan shall be subject to real estate interests currently held by the Government or hereafter granted by the Government to third parties, including, but not limited to, flowage easements, utility and roadway easements, outgrants, and mineral interests. The Partner shall have no authority to restrict the Government or its grantees from fully utilizing duly held real estate interests.

c. If the Partner desires to receive a real estate interest from the Government to perform activities beyond the scope of this Agreement, the Government shall handle such requests in accordance with existing Government regulations and policies and shall afford the Partner no deference or advantage as a result of this Agreement.

ARTICLE XI - 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 XII - 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;" laws

and regulations regarding fair wage practices; and laws and regulations regarding construction, health, safety, food service, water supply, sanitation, and use of pesticides.

ARTICLE XIII - 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.

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.

ARTICLE XIV - INDEMNIFICATION

a. The Partner shall be responsible for any activity of the Partner and shall indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments and expenses arising out of, or from any omission, or activity of the Partner.

b. The Partner shall hold and save the Government free from all damages arising from services the Government performs or provides for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project Site Areas, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE XV – ENFORCMENT, TERMINATION AND CLOSEOUT

a. The Partner is charged at all times with full knowledge of all the limitations and requirements of this Agreement, the necessity for correction of deficiencies, and a duty to comply with reasonable requests by the Government. If the Partner fails to comply with any term of this Agreement, the Government may take one or more of the following actions, as appropriate in the circumstances:

- (1) Disallow the use of Recreation Use Fee and Special Use Permit Fee receipts for all or part of the cost of the activity or action not in compliance,
- (2) Collect debts for misuse of funds,

- (3) Wholly or partially suspend or terminate this Agreement, or
- (4) Take other remedies that may be legally available.

b. The Government will notify the Partner of any non-compliance in writing and give a period of time in which the Partner must correct the non-compliance.

c. This Agreement may be terminated for any reason by the Government or the Partner by giving ninety (90) days written notification, setting forth the reasons for termination and the termination effective date.

d. The Government's participation under this Agreement and the Government's performance of any activities at the Project Site Areas are subject to the availability of appropriated funding. If the Government fails to receive annual appropriations in amounts sufficient to perform activities at the Project Site Areas that would allow this Agreement to continue, the Government shall so notify the Partner and either party may elect without penalty to terminate or suspend performance under this Agreement as of the date the Government exhausts all appropriated funding available for the Project Site Areas or sixty (60) calendar days from the date of notification, whichever occurs first. 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.

e. 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.

f. In the event that this Agreement is terminated, whether by expiration of the agreement term or pursuant to this Article, the Partner shall provide a final accounting to the Government within ninety (90) days following termination of this Agreement. At a minimum, the final accounting shall include a financial and performance report, as described in Article V, subparagraph b. of this Agreement, for the applicable year through the termination date; a list of all equipment, facilities, and improvements at the Project Site Areas; and Partner account statements showing the amount of Partner held Recreation Use Fee and Special Use Permit Fee receipts that the Partner had on-hand as of the termination date. Ownership of all property at the Project Site Areas or that was otherwise acquired pursuant to the Agreement shall be determined pursuant to Article VII of this Agreement. Within ninety (90) days of the termination of this Agreement the Partner shall return all remaining Recreation Use Fee and Special Use Permit Fee receipts to the Government for disposition pursuant to EC 1130-2-550 as if the Government had collected the fees.

ARTICLE XVI – TERM OF AGREEMENT

Unless otherwise terminated pursuant to Article XV, this Agreement will remain in effect for an initial period of five year beginning on the date of the final party's signature, plus the allowance of five option years without further competition. To exercise an option to extend this Agreement the parties must execute an addendum to this Agreement setting forth the additional option period within thirty (30) days of the termination date of the initial term of this Agreement or a previous option period. Under no circumstances shall this Agreement extend beyond ten (10) years. If the Partner wishes to continue co-management and operation of the Project Site Areas beyond the maximum period of this Agreement, the Partner must recompetete for the opportunity pursuant to the establishment policies of the Government.

ARTICLE XVII - 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 mailed by registered or certified mail, with return receipt, as follows:

If to the Partner:

Director
Hall County Parks and Leisure Services
4175 Nopone Road
Gainesville, GA 30506

If to the Government:

Operations Project Manager
US Army Corps of Engineers
Lake Sidney Lanier
1050 Buford Dam Road
Buford, GA 30518

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.

ARTICLE XVIII - 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 signature of the final party's authorized representative.

The Department of the Army

Hall County Board of Commissioners

BY:

TITLE: District Commander

DATE:

BY:

TITLE: Chairman

DATE: