



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

APR 04 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1155 of the Water Resources Development Act of 2016 (WRDA 2016), Management of Recreation Facilities

1. Section 1155 of WRDA 2016 was completed and signed on 30 March 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Heather Burke, National Partnership Program Manager, at (503) 808-4313 or Heather.D.Burke@usace.army.mil.

A handwritten signature in black ink, appearing to read "J. Dalton", written over a horizontal line.

JAMES C. DALTON, P.E.
Director of Civil Works

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
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MAR 30 2018

MEMORANDUM FOR COMMANDING GENERAL U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 1155, Management of Recreation Facilities, of the Water Resources Development Act (WRDA) of 2016, Public Law 114-322

1. Purpose. The purpose of this memorandum is to provide implementation guidance for Section 1155 of WRDA 2016 authorizing the Secretary to enter into agreements with non-Federal public entities under section 225 to collect and retain user fees for the use of developed recreation sites and facilities, whether developed or constructed by that entity or the Department of the Army, and reinvest collected fees at the site at which the fees are collected. Section 1155 further authorized participating public entities to use any visitor reservation service that the Secretary of the Army has provided for by contract or interagency agreement. Copies of WRDA 2016 Section 1155 and WRDA 1992 Section 225 are enclosed (Enclosure 1).

2. References.

- a. Water Resources and Development Act of 2016, Section 1155, P.L. 114-322.
- b. Water Resources Development Act of 1992, Section 225, P.L. 102-580, as amended (33 U.S.C. 2328).

3. The following policy update to the Partnership Program is effective immediately and will be incorporated as a new chapter in ER and EP 1130-2-500, "Project Operations - Partners and Support" when revised.

4. Applicability. This memorandum applies to all U.S. Army Corps of Engineer (Corps) commands having responsibilities for civil works functions.

5. Policy. It is the policy of the Corps that:

a. The Corps may share the cost of managing recreation facilities and natural resources at Corps water development projects by entering into an agreement with non-Federal public entities to provide for operation and management of recreation facilities and resources where such facilities are being maintained at complete federal expense.

(1) These agreements are NOT cooperative agreements as that term is used in the Federal Grant and Cooperative Agreement Act of 1977 (FGCAA) (31 U.S.C. 6301 to 6308) and are not otherwise subject to the FGCAA, nor are they subject to the

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Department of Defense Grant and Agreement Regulations (DoDGARs) published in Chapter I, Subchapter C of Title 32, Code of Federal Regulations, including the requirement for execution by a certified grants officer. Although Section 225, as amended, uses the term “cooperative agreement,” the principal purpose of the agreements authorized under that section, is not to transfer a thing of value from the Corps to a non-Federal entity and the agreements do not otherwise involve a type of transaction covered by the FGCAA or the DoDGARs.

(2) Under Section 225, as amended, there is no fixed rate of cost share. Percentages are determined by mutual agreement between the Corps and the partners. The roles of each entity are also flexible and agreements may involve multiple partners.

(3) Eligible Entities. Non-Federal public entities that may enter into agreements for the management of a recreation facility under this authority are limited to state, county, municipality or local governments; public institutions of higher education; and Indian Tribes. Non-profit entities or other private sector entities are not eligible.

(4) Eligible Areas. Facilities and natural resources in project site areas (PSAs) on Corps fee-title land or any land on which the Corps fully operates and maintains PSAs, including Tribal lands operated by the Corps are eligible for co-management under this authority. PSAs that are outgranted or cooperatively managed PSAs where the lease or other agreement term ends or is otherwise terminated after the issuance date of this guidance must receive written approval from the Assistant Secretary of the Army for Civil Works (ASA(CW)) that the area is suitable for co-management and operation under this authority before an agreement can be executed.

b. Competition. Competitive procedures will be used to encourage participation by a broad base of the most highly qualified non-Federal public entities to co-manage and operate Corps recreation areas. These procedures will include competition among as many eligible non-Federal public entities as possible with a published or widely disseminated notice. Competitive procedures must include, at a minimum:

(1) Notice to eligible non-Federal public entities. The notice may be publicly disseminated by the District Commander, with unlimited distribution, or, when specialized expertise is required, limited to at least two eligible non-Federal public entities. Multiple non-Federal public entities may submit a joint proposal to work together to co-manage and operate one or more PSAs.

(a) The synopsis for each notice must provide complete instructions on where to obtain the notice and should have an electronic link to the internet location at which the notice is posted. The notice will clearly explain the process to submit proposals, list all information and documentation that proposals must contain, and provide the evaluation method and selection criteria.

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(b) Notices must be posted for a minimum of 10 calendar days.

(2) Evaluation. To be qualified to enter into an agreement under this authority, at a minimum, an applicant must be a non-Federal public entity as defined in paragraph 5.a.(3) of this memorandum, have the management capability and adequate financial and technical resources to execute the program of activities envisioned under the agreement, and have a satisfactory record of executing recreation programs or natural resource management activities. The Corps' past experience with the non-Federal public entities should be a consideration factor.

(3) Selection. The Operations Project Manager (OPM) will review evaluations and make a recommendation to the District Commander in accordance with the evaluation method and selection criteria provided in the notice. The District Commander is the final partner selection approval authority and may accept the OPM's recommendation or conduct his/her own evaluation and selection based on the criteria provided in the notice. The OPM or District Commander may decline any proposal that could adversely affect the operation and beneficial use of the project, would violate existing laws or regulations, or would reflect unfavorably on the Corps of Engineers and the United States Army.

c. Challenge Cost Sharing Cooperative Management Agreement.

(1) Requirement for a Written Agreement. Once a non-Federal public entity has been selected, a Challenge Cost Sharing Cooperative Management Agreement (CCSCM Agreement) is required to establish the terms, conditions, administration, and responsibilities of the Corps and the non-Federal partner(s).

(2) Use of Model Agreement. All agreements under this authority must follow the model template included as Enclosure 2 of this memorandum. The model specifies areas where the parties have discretion to determine their respective operation and management responsibilities and contributions through negotiation. Any substantive deviations from all other provisions of the model must be approved by ASA(CW).

(3) Approval Authority. District Commanders are responsible for the approval of CCSCM Agreements that involve water resources projects within their district. This authority cannot be further delegated.

(4) Prior to executing the CCSCM Agreement, the Corps should provide the non-Federal public entity a survey listing all Government property.

(5) Term. CCSCM Agreements are limited to an initial term of five years, plus the allowance of five option years without the need for further competition. The parties must execute option years within thirty days of the termination date of the initial term or previous option period. Under no circumstances will a CCSCM Agreement extend

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beyond ten years. If a partner desires to continue a partnership relationship beyond the maximum term set forth in a CCSCM Agreement, the partner must recompetete for the opportunity.

d. Partner Operations Plan.

(1) Prior to a partner providing or the Corps accepting any goods or services under a CCSCM Agreement, the parties must 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 Corps over a specified period of time.

(2) Partner Operations Plans may span the entire duration of the initial term or an option period of a CCSCM Agreement or some other shorter period of time as agreed to by the parties. Partner Operations Plans may be modified at any time by mutual written agreement of the parties. Partner Operations Plans and any modifications thereto must be approved in writing by the OPM and designated partner representative.

(3) Once approved, Partner Operations Plans set forth the full extent of a partner's authorities and responsibilities at the PSA. Unless otherwise authorized by law, Partner Operations Plans will not include partner activities that the Corps could not perform on its own under existing authorities. Partner activities must be described in sufficient detail to ensure a mutual understanding of the parties regarding the parameters of the partner's authorities and responsibilities. Proposed partner construction activities will be supported by a detailed scope of work and construction drawings. Proposed partner equipment acquisitions will be supported by an explanation of the intended use of the equipment and will describe the equipment by model and/or series number, if available.

(4) During the term of the CCSCM Agreement, the OPM will notify the non-Federal partner of any updates to the existing project Master Plan affecting the premises, and provide the partner an opportunity to comment.

e. Annual Budget. Regardless of the duration of a Partner Operations Plan, the partner must 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 the year. The OPM has the sole discretion to approve adjustments of budgeted amounts for each partner activity/expense. Once the OPM approves an annual budget or modification, 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.

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f. Fees and Fiscal Management.

(1) Under a CCSCM Agreement, a non-Federal partner may collect "Recreation Use Fees" and "Special Use Permit Fees," as those fee types are defined under EC 1130-2-550, and retain up to 100 percent of collected fees for the operation, maintenance, and management activities at the recreation PSA at which the fees were collected, whether such sites or facilities were developed by the partner or the Corps.

(2) The non-Federal partner may only charge fees in accordance with guidance in EC 1130-2-550, Recreation Operations and Maintenance Guidance and Procedures, Chapter 9, Recreation Use Fees, utilizing the Corps fee schedule. 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; and submission of Special Use Permits to the OPM for approval. Within thirty days of executing a CCSCM Agreement, the applicable district and/or project offices will provide training to partner personnel regarding the applicable requirements of EC 1130-2-550.

(3) Fees may be charged by the non-Federal partner for the use of the premises or facilities only if a user charge by the Corps is permitted. This includes fees for use of campsites, swimming beaches, shelters, and boat launching ramps.

(4) The non-Federal partner is required to accept all America the Beautiful Interagency Passes (hereinafter "Interagency Passes") and Corps Annual Day Use Passes and discounts at the co-managed PSA as specified in EC 1130-2-550, Chapter 9 Standard Operating Procedures. Partners may be authorized to sell Interagency Passes pursuant to the requirements set forth in EC 1130-2-550. However, under no circumstances shall a non-Federal partner be authorized to retain revenues from the sale of Interagency Passes. Non-Federal partners must remit all revenues from Interagency Passes to the project office for deposit in the appropriate special account in the U.S. Treasury as required under EC 1130-2-550.

(5) The non-Federal partner may charge fees for outdoor recreation related equipment and services provided for visitor use in accordance with the guidelines set forth in EC 1130-2-550. Examples include firewood, ice, laundry machine use, shower use, dump station use, parking, and equipment rentals such as rent-a-tent or kayaks.

(6) It is the direct responsibility of the non-Federal partner to safeguard public monies from the time of collection until deposited.

(7) With the exception of revenues from the sale of Interagency Passes, fees collected by a non-Federal partner under this authority are retained onsite and are not deposited into the Treasury. All monies received must be utilized by the non-Federal partner for the administration, maintenance, operation, and development of the co-

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managed PSA in accordance with an approved Partner Development Plan, and within the funding limits of an approved annual budget.

(8) As permitted in Partner Operations Plans and annual budgets, partners may use collected fees to fund contractors and partner staff, whether term, temporary, seasonal, or permanent.

(9) The non-Federal partner must comply with the Office of Management and Budget (OMB) allowable cost principles set forth in OMB Circular A-87. In the event of a dispute over the non-Federal partner's use of user fee receipts, to include debt collection actions, the non-Federal partner will be held to these allowable cost standards and other limitations as set forth in a CCSCM Agreement, Partner Operations Plan, and annual budget.

(10) The non-Federal partner will provide an annual statement of receipts and expenditures to the District Commander. The District Commander will have the right to perform audits or require the non-Federal partner, using partner collected user fees, to audit the records and accounts of the partner in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the results of such audits to the District Commander.

g. Construction and Equipment. Non-Federal partners may construct facilities and acquire equipment that the Corps would otherwise be authorized to construct/acquire for the operation and maintenance of the PSA. All proposed construction activities and equipment acquisitions must be included in the Partner Operations Plan and be approved by the Corps OPM before commencement of construction or acquisition of equipment is allowed. All partner constructed facilities and acquired equipment will be considered property of the Corps and will remain property of the Corps following termination of the CCSCM Agreement, unless the non-Federal partner can demonstrate to the OPM's satisfaction that no Corps funding or Recreation Use Fee or Special Use Permit Fee receipts were used to construct/acquire the facility/equipment. In other words, the partner must demonstrate that it constructed/acquired the item in question using its own extraneous funding sources. However, even in such instances, the partner can agree to donate and the Corps can agree to accept the facility/equipment pursuant to 33 U.S.C. 2328(d) or other applicable Corps contributions authority.

h. Use of Property. The Corps may provide equipment, materials, or supplies purchased for Corps operation and maintenance purposes to the non-Federal partner to operate and maintain a co-managed PSA. Any non-expendable property will be considered on loan to the partner and must be returned to the Corps upon termination of the CCSCM Agreement. The non-Federal partner may be authorized to operate Government-owned or leased vehicles, vessels or other equipment if deemed appropriate and beneficial. In such cases, the same licensing policies and procedures that apply to Corps personnel in similar situations will apply to partners. Partner

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personnel who are assigned to operate machinery or equipment (such as chain saws, power shop tools, or specialized equipment) must first have demonstrated proficiency in the operation of that equipment and understanding of safety requirements to the satisfaction of the Corps. The non-Federal partner may contribute funds, including cash, materials, personal property, equipment, or services as a portion of the CCSCM Agreement.

i. Protection of Property. The non-Federal partner will be responsible for any damage that may be caused to property of the Corps by the activities of the partner, including actions by the partner's employees, agents, contractors, volunteers, or their invitees, and will exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes.

j. Reservation Service. The non-Federal partner may use, to manage fee collections and reservations, any visitor reservation service that the Corps has provided for by contract or interagency agreement.

k. Contracts. The non-Federal partner may procure and manage contracts for services such as janitorial, mowing, gate attendant, law enforcement, or other services required under the CCSCM Agreement and Partner Operations Plans. Such contracts, and any disputes or liabilities arising therefrom, will be the sole responsibility of the non-Federal partner. The non-Federal partner will maintain a contract administration system which ensures the contractors perform in accordance with the terms, conditions, and specifications of their contracts.

l. No Requirement for a Real Estate Instrument. CCSCM Agreements do not require a partner to receive an out grant or other form of real estate interest to accomplish the objectives under a CCSCM Agreement. All responsibilities and obligations of the parties should be set forth in the CCSCM Agreement. Any extraneous arrangements, such as concessions outgrants, shall be handled as separate transactions according to existing regulations and guidance.

m. Real Estate Interests. The Corps reserves the right to grant real estate interests affecting any part of the co-managed PSA to third parties. The Corps may solicit input from the partner, but it is the sole responsibility of the Corps to administer requests, make awards, and manage grants of real estate interests within the co-managed area. If a partner desires to receive a real estate interest from the Corps to perform activities beyond the scope of a CCSCM Agreement, districts and project offices will handle such requests in accordance with existing Corps regulations and policies and will afford the partner no deference or advantage as a result of a CCSCM Agreement.

n. Partner Recognition and Publicity. Recognition shall be encouraged as a way to express appreciation to partners and publicly acknowledge support that has been received. Partners should be advised to keep the Corps apprised of any publicity that

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they initiate. All publicity will be a joint effort by the partner and the Corps, to include mutually agreement of any publicity materials. Procedures for appropriate types of recognition and publicity are provided in Chapter 12 of EP 1130-2-500.

6. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at gib.a.owen.civ@mail.mil or 703-695-4641. Technical questions may be directed to Heather Burke, National Partnership Program Manager, at heather.d.burke@usace.army.mil or 503-808-4313.

Enclosures



R. D. JAMES
Assistant Secretary of the Army
Civil Works

ENCLOSURE 1

WRDA 2016 Section 1155 and WRDA 1992 Section 225

WRDA 2016

SEC. 1155. MANAGEMENT OF RECREATION FACILITIES

Section 225 of the Water Resources Development Act of 1992 (33 U.S.C. 2328) is amended

- (1) by redesignating subsection (c) as subsection (d); and
- (2) by inserting after subsection (b) the following

(c) User Fees.

(1) COLLECTION OF FEES

(A) IN GENERAL. The Secretary may allow a non-Federal public entity that has entered into an agreement pursuant to subsection (b) to collect user fees for the use of developed recreation sites and facilities, whether developed or constructed by that entity or the Department of the Army.

(B) USE OF VISITOR RESERVATION SERVICES. A non-Federal public entity described in subparagraph (A) may use, to manage fee collections and reservations under this section, any visitor reservation service that the Secretary has provided for by contract or interagency agreement, subject to such terms and conditions as the Secretary determines to be appropriate.

(2) USE OF FEES. A non-Federal public entity that collects user fees under paragraph (1)

(A) may retain up to 100 percent of the fees collected, as determined by the Secretary; and

(B) notwithstanding section 210(b)(4) of the Flood Control Act of 1968 (16 U.S.C. 460d-3(b)(4)), shall use any retained amount for operation, maintenance, and management activities at the recreation site at which the fee is collected.

(3) TERMS AND CONDITIONS. The authority of a non-Federal public entity under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to protect the interests of the United States.

WRDA 1992:

SEC. 225. CHALLENGE COST-SHARING PROGRAM FOR THE MANAGEMENT OF RECREATION FACILITIES.

(a) **IN GENERAL.** The Secretary is authorized to develop and implement a program to share the cost of managing recreation facilities and natural resources at water resource development projects under the Secretary's jurisdiction.

(b) **COOPERATIVE AGREEMENTS.** To implement the program under this section, the Secretary is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation and management of recreation facilities and natural resources at civil works projects under the Secretary's jurisdiction where such facilities and resources are being maintained at complete Federal expense.

(c) **CONTRIBUTIONS.** For purposes of carrying out this section the Secretary may accept contributions of funds, materials, and services from non-Federal public and private entities. Any funds received by the Secretary under this section shall be deposited into the account in the Treasury of the United States entitled "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8662)" and share be available until expended to carry out the purposes of this section. (33 U.S.C. 2328)

ENCLOSURE 2

Recreation Facility Public Cooperator (Section 1155) Agreement

CHALLENGE COST-SHARING COOPERATIVE MANAGEMENT AGREEMENT
(CCSCM)
FOR RECREATION FACILITY
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
(ENTER NON-FEDERAL PUBLIC ENTITY HERE)

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 ____, and ____, (hereinafter the "Partner"), represented by ____.

WITNESSETH, THAT:

WHEREAS, the Partner is a non-Federal public entity that desires to assist the Government in the operation and management of *[insert Project Site Area(s)]* at *[Insert Corps project name]* (hereinafter referred to as the "Project Site Area") 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 Area, 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 *[list types of activities (e.g., user fee collection, maintenance services, reservation management, educational and interpretative services, visitor information services, environmental stewardship, facility improvement, trail maintenance, etc.)]*. This Agreement provides no authority to, nor confers any responsibility on, the Partner to perform operations and management activities outside the Project Site Area 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 ___-year duration *[not to exceed 5 years]* 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 *[insert title of authorized Partner representative]* for the Partner.

c. Partner Operations Plans shall set forth the full extent of the Partner's authorities and responsibilities at the Project Site Area. 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 Area, 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 _____ 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. On a quarterly basis, the Partner shall remit the remaining _____ percent of user fees collected to the Government for disposition pursuant to EC 1130-2-550 as if the Government had collected the fees *[omit this sentence if Partner is authorized to retain 100% of fees]*. 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 Area 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 Area. 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 Area 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 Area, except as may be authorized under a Partner Operations Plan. The Partner may salvage fallen or dead timber within the Project Site Area 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 Area. 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 Area, except for damages due to the fault or negligence of the Government or its contractors.

c. The Partner may obtain insurance, at its sole expense. User fees shall not be used to cover the cost of insurance.

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 reasonable 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 Area 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 Area 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 area 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 thru the termination date; a list of all equipment, facilities, and improvements at the Project Site Area; 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 Area 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 *[insert period not to exceed 5 years]* beginning on the date of the final party's signature, plus the allowance of *[insert number of options years not to exceed 5]* 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 Area 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:

[TITLE]
[ADDRESS]

If to the Government:

District Commander
_____ District
[ADDRESS]

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

BY:

TITLE:

DATE:

[PARTNER]

BY:

TITLE:

DATE: