

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
WASHINGTON STATE PARKS AND RECREATION COMMISSION

Cost share
224
Adv. Acct #
106

THIS AGREEMENT, entered into this 5th day of November, 2004, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer, U.S. Army Corps of Engineers, Walla Walla District, and the Washington State Parks and Recreation Commission, (hereinafter the "Partner"), represented by the Director.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at the Little Goose Lock and Dam Project, which includes recreational opportunities for the public, and

WHEREAS, the Partner previously leased Central Ferry Park (the "Park"), located on the Little Goose Lock and Dam Project, from the Government for park and recreation purposes, under Department of the Army Lease No. DACW68-1-00-12 (the "Lease"), and

WHEREAS, the Partner relinquished the Lease for Central Ferry Park (the "Park") on April 23, 2003, and was thereafter required to make certain repairs to the premises as part of its restoration responsibilities under the Lease, and

WHEREAS, it was determined after inspection of the Park's sewage lagoon that one of its cells ("Cell No. 2") was not operational and in need of major repair/rehabilitation, and

WHEREAS, the Government has maintained that the current condition of Cell No. 2 is the result of damaged caused during the term of Partner's lease of the Park and that, as such, Partner is obligated under the terms of the lease to repair/rehabilitate Cell No. 2. Partner has maintained that the current condition of Cell No. 2 is the result of normal wear and tear and that Cell No. 2 has reached the end of its useful life and that, as such, Partner has no obligation to repair/rehabilitate Cell No. 2. Nevertheless, the Government and the Partner both acknowledge that Cell No. 2 will need to be repaired/rehabilitated to support park and recreational activities at the Park in the future, and

WHEREAS, the Partner, in order to assist the Government in rehabilitating Cell No. 2, has voluntarily agreed to pay a portion of the cost, 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 repair Cell No. 2, 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; and

WHEREAS, the Partner and Government enter into this Agreement with the understanding that the contribution made by the Partner as herein provided will satisfy the Partner's restoration requirements under the Lease;

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Project" shall mean the complete repair/rehabilitation of Cell No. 2 of the sewage lagoon at Central Ferry Park, in accordance with the original plans and specifications and any applicable codes or requirements.
- b. The term "total project costs" shall mean all costs incurred by the Government directly related to construction of 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 donated property, facilities and improvements placed on Government land as well as any work accomplished under this agreement shall become the property of the Government.

ARTICLE II - OBLIGATIONS OF THE PARTIES

- a. The Government, subject to and using funds appropriated by the Congress of the United States (hereinafter the "Congress"), and using funds provided by the Partner, shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by the Government personnel) shall be exclusively within the control of the Government.
- b. The Government, subject to availability of funds, shall provide funds for all Project costs in excess of the amount contributed by the Partner, as stated in subsection (c) below.
- c. The Partner shall provide \$13,700.00 to the Project by directly furnishing such funds to the Government for use in constructing the Project. Such payment shall satisfy all of Partner's repair/restoration obligations for Central Ferry Park, Lyons Ferry Park, and Chief Timothy Park, as required by the Lease, and Partner shall, thereafter, be released from any further liability.
- d. The Government shall perform a final accounting to determine the total Project costs and each party's respective contributions.

e. No Federal funds may be used to meet the Partner's total project costs under this Agreement unless approved by the Federal Agency providing those funds.

ARTICLE III - METHOD OF PAYMENT

a. The Government shall maintain current records of Project costs and shall provide the Partner, if requested, with a report setting forth the current and projected total Project costs. On the effective date of this Agreement, total project costs are estimated to be \$37,000.00. Such amounts are estimates and subject to adjustment, but the Partner's contribution is set at \$13,700.00 and is not subject to adjustment without the written agreement of both the Government and the Partner.

b. The Partner shall provide the contribution required under Article II c of this Agreement in accordance with the following provisions:

1. Within 30 calendar days of the date this Agreement is executed by the District Engineer, the Partner shall provide the Government with the full amount of their contribution by delivering to the Government, in-person or by certified mail, a check made payable to "FAO, USAED, Walla Walla District." The Government shall deposit the Partner's contribution into the account in the Treasury of the United States entitled "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)."

2. To fund this Project, the Government shall first expend all funds contributed by the Partner before expended any Federal funds.

3. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and, if requested, furnish the Partner with the results of the final accounting. The final accounting shall establish total project costs and each party's contribution.

4. In the event the final accounting shows that the contribution provided by the Partner exceeds the total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partner no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Partner, the Government shall seek such appropriations as are necessary to make the refund.

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 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."

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 - TERMINATION OR SUSPENSION

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the District Commander shall terminate this Agreement or suspend future performance under this Agreement unless he/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 either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. 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.

c. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article II of this Agreement.

d. 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. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE IX - NOTICES

a. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed either by first-class, registered, or certified mail, as follows:

If to the Partner: Director, Washington State Parks and Recreation Commission
7150 Cleanwater Lane
P.O. Box 42650
Olympia, WA 98504-2650

If to the Government: District Engineer
U.S. Army Engineer District, Walla Walla
201 North Third Avenue
Walla Walla, WA 99362-1876

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE X – CONFIDENTIALITY

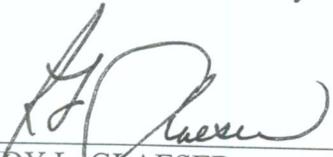
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

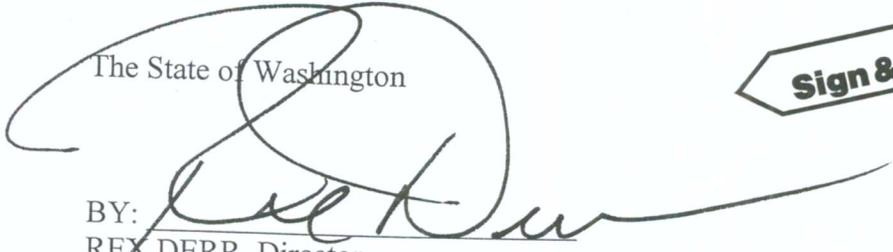
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer, Walla Walla District.

The Department of the Army

The State of Washington

Please
Sign & Return

BY: 
RANDY L. GLAESER
Lieutenant Colonel, Corps of Engineers
District Engineer, Walla Walla District

BY: 
REX DERR, Director
Washington Department of Parks and Recreation

DATE: 8 Nov 04

DATE: 10/26/04