

Cost Share Control No 232  
Advance Act 151

AMKPKS

**AMENDMENT NO. 1 TO  
DEPARTMENT OF ARMY CHALLENGE COST-SHARING AGREEMENT  
WITH THE CITY OF PASCO, WASHINGTON**

**CHIAWANA PARK AND SACAJAWEA TRAIL MAINTENANCE**

**WHEREAS**, on May 2, 2006 the Department of Army (Government) entered into a Challenge Cost-Sharing Agreement (Agreement) with the City of Pasco, Washington (Partner) for Chiawana Park and Sacajawea Trail maintenance; and

**WHEREAS**, Chiawana Park and Sacajawea Trail (Premises) were successfully managed by the joint efforts of the Government and the Partner during the 2006 recreation season; and

**WHEREAS**, the parties desire to extend the Agreement to allow the Partner to open and maintain the premises from May 1, 2007 through September 30, 2007, or until a park and recreation lease is executed by the parties for operation and maintenance of the premises; and

**WHEREAS**, this amendment to the Agreement will not conflict or interfere with nor adversely affect the operation of McNary Lock and Dam, Lake Wallula for its authorized purposes;

**NOW, THEREFORE**, effective on the date of execution of this amendment by the Government, the Agreement is hereby modified in the following particulars, but in no others:

1. Article II.a.1 is modified by removing “, including the issuance of any use permits or park use reservations”.

2. The following is made a part of the Agreement as new Article II.a.3:

The Government shall, subject to available funding, complete the environmental compliance requirements for a replacement public boat dock in the West Park area of Chiawana Park and will, in conjunction with the Partner's cost share obligation described in Article II.b.7, fund and provide a replacement public dock which meets current National Marine Fisheries Service requirements for Columbia River floating structures under the Endangered Species Act.

3. Article II.b is modified by extending the operating period of the Agreement to allow the Partner to open and maintain the premises from May 1, 2007 through September 30, 2007, or until a park and recreation lease is executed by the parties for operation and maintenance of the premises.

4. The following is made a part of the Agreement as new Article II.b.7:

The Partner shall contribute one-half the cost for a new environmentally compliant public boat dock to replace the damaged public boat dock located in the West Park area of Chiawana Park. The Partner's obligation under this Article shall be no more than \$37,500. Any additional costs, subject to available funding, shall be borne by the Government.

5. Article II.b.6 is moved to Government Obligations as new Article II.a.4.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment, which shall become effective upon the date it is signed by the Government.

The Department of the Army

City of Pasco

BY: \_\_\_\_\_

SCOTT S. ROSS

Chief, Operations Division

Corps of Engineers Walla Walla District

BY: \_\_\_\_\_

JOYCE OLSON

Mayor,

City of Pasco, Washington

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Cost Share Control No 232  
Advance Acct 151

**CHALLENGE COST-SHARING AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CITY OF PASCO, WASHINGTON**

**CHIAWANA PARK AND SACAJAWEA TRAIL MAINTENANCE**

THIS AGREEMENT, entered into this 2nd day of May, 2006, by and between the Department of the Army (hereinafter the "Government"), represented by the Chief, Operations Division, U.S. Army Corps of Engineers, Walla Walla District, and the City of Pasco, Washington, (hereinafter the "Partner"), represented by the Mayor of the City of Pasco.

WITNESSETH, THAT:

WHEREAS, Franklin County, Washington formerly leased lands from the Government, pursuant to Department of the Army Lease No. DACW 68-1-77-20 for park and recreation purposes; and

WHEREAS, Franklin County has terminated said lease, which includes Chiawana Park and portions of the Sacajawea Heritage Trail on Levee 12-2; and

WHEREAS, the Partner leases certain lands from the Government, pursuant to Department of the Army Lease No. W912EF-1-04-13, for park and recreation purposes, and is considering requesting the addition of portions of Chiawana Park and the Heritage Trail to its lease, provided that adequate funding for ongoing maintenance of such lands can be secured; and

WHEREAS, Partner is willing to provide supervision and funding for maintenance of certain portions of Chiawana Park and the Heritage Trail for the 2006 recreation season, 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 of funds, materials and services for the operation and maintenance of recreational support facilities at Corps of Engineers water resource development projects, and

WHEREAS, the Government and the Partner have the full authority and capability to enter into this Agreement and perform as hereinafter set forth,

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 routine care and maintenance of the recreation and public access lands as shown on the attached aerial photo labeled as Exhibit "A" (incorporated herein by this reference), hereinafter referred to as the "Premises," and more particularly described as follows:

1) The asphalt trail on levee 12-2 from Road 54 to Road 88; 2) the improved portions of Chiawana Park (the boat launch, boat dock, east improved area, west improved area and all parking lots) and 3) The asphalt trail (pavement plus 8 feet on either side) west of Chiawana Park to the west extent of such trail on Government property (east of Road 100).

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner 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 or 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. Government Obligations:

1. The Government, subject to and using funds appropriated by the Congress of the United States (hereinafter the "Congress"), and using any contribution of funds, materials or services provided by the Partner, shall provide overall project management, including the issuance of any use permits or park use reservations.

2. Any additional or ongoing maintenance of the Premises by the Government, before or after Partner has completed its obligations under Paragraph "b" below, shall be within the complete discretion of the District Engineer.

### b. Partner Obligations:

1. The Partner may open and maintain the premises from May 5, 2006 to September 30, 2006 and shall provide project maintenance services from May 1, 2006 to November 1, 2006 to include the following:

- a. Turf maintenance, including: mowing, fertilization, weed and pest control irrigation, trimming and leaf removal.
- b. Restroom cleaning and stocking of supplies.
- c. Playground area inspection and maintenance.
- d. Boat launch and dock inspection and maintenance.
- e. Trail maintenance.
- f. Litter control and garbage collection
- g. Daily park opening and closing.

2. Partner shall provide all necessary labor, equipment and supplies necessary to perform the listed services and shall pay all costs for water, sewer, garbage disposal and electricity to perform the services listed.

3. Partner shall provide appropriate start-up and winterization of all restrooms and irrigation systems.

4. The Partner shall provide evidence of insurance covering the activities of Partner and Partner's contractors in performing the maintenance work contemplated by this agreement.

5. Upon completion of the Project, Partner shall provide the Government with a final accounting of all costs incurred by the Partner in completing the services provided for in this agreement, together with a report summarizing its activities for the term of the Project. In no case shall Partner's total expenses exceed \$100,000.

6. The Government shall maintain records of all Government costs and, upon completion of the Project, shall provide the Partner, if requested, with a report setting forth all such costs.

### ARTICLE III – 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 IV – 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 Regulation 600.7, entitled "Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

### ARTICLE V – 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 VI – 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 VII – INDEMNIFICATION

The Partner shall hold and save the Government free from all damages arising from services it performs or provides for this Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE VIII – TERMINATION OR SUSPENSION

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the Government shall terminate this Agreement or suspend future performance under this Agreement, unless the Government 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. 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.

#### 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: Joyce Olson  
Mayor, City of Pasco  
PO Box 293  
Pasco WA 99301

If to the Government: District Engineer  
U.S. Army Engineer District, Walla Walla  
ATTN: Chief, Operations Division  
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 Chief, Operations Division, Walla Walla District.

The Department of the Army

City of Pasco

BY: \_\_\_\_\_  
Wayne H. John  
Chief, Operations Division  
Corps of Engineers Walla Walla District

\_\_\_\_\_  
JOYCE OLSON  
Mayor,  
City of Pasco, Washington

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_