

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
WALLA WALLA COUNTY CONSERVATION DISTRICT

Mill Creek, Bennington Lake
Garrison Creek Division Structure Fish Screen

THIS AGREEMENT, entered into this 23th day of April, 2008, 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 Walla Walla County Conservation District, (hereinafter the "Partner"), represented by the District Manager, Walla Walla County Conservation District.

WITNESSETH, THAT:

WHEREAS, the Partner, a non-profit entity and a political subdivision of the State of Washington, is dedicated to the conservation and restoration of the natural resources of Walla Walla County through assistance to landowners in irrigation improvements, erosion reduction, improved water quality and protection of endangered fish species; and

WHEREAS, the Partner has extensive experience in designing, constructing and installing fish screening devices on pumps and irrigation diversions in order to prevent smolt, juvenile and adult fish entrapment in piping, ditches, fields and unsuitable natural streams; and

WHEREAS, the Government and Partner desire to work together to design, construct and install a fish screen on Garrison Creek, on Government land identified in Exhibit A, to prevent entrapment of salmon, steelhead and bull trout in Garrison Creek; 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 recreation features and natural resources at Corps of Engineers water resource development projects; and

WHEREAS, the Partner has authority to enter into this Agreement under the Revised Code of Washington (R.C.W.) 89.08.220.

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 design, construction and installation of a fish screen on Garrison Creek on Government lands identified in Exhibit A, hereinafter referred to as the "Premises".

b. 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.

c. All permanent 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. The Government will provide a permanent source of AC power to the Project. Additionally the Government will provide design assistance to the partner as well as any required environmental compliance review for cultural resources, endangered species and other environmental compliance requirements needed for work on Federal property.

2. After the Project is completed by the Partner, future operations and maintenance of the Project will be provided by the Government at no additional cost or obligation to the Partner, subject to the availability of funding from Congress and at the complete discretion of the District Engineer.

3. The Government shall maintain records of all Government costs and, upon termination of the agreement, shall provide the Partner, if requested, with a report setting forth all such costs.

b. Partner Obligations:

1. The Partner shall design, construct and install an appropriate juvenile fish screen and necessary cleaning apparatus at the location on Garrison Creek identified in Exhibit A. The fish screen will be designed and oriented to utilize the sweeping flows naturally directed down to the Yellowhawk Creek Division Structure which is adjacent to and downstream of the Premises.

2. The Partner shall provide evidence of insurance covering the activities of the Partner and the Partner’s contractors in performing the construction and installation work contemplated by this agreement.

3. Upon termination of this agreement, the 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 during the term of the Project.

4. The Partner shall provide the Mill Creek Operations Project Manager (OPM) with the initial, 40% and 90% fish screen plans for review.

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: Walla Walla County Conservation District
1501 Business One Circle, Suite 101
Walla Walla, WA 99362
ATTN: District Manager

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

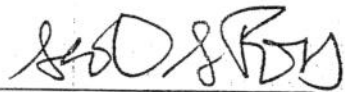
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

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.

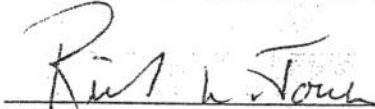
The Department of the Army

Walla Walla County Conservation District

BY:



Scott S. Ross, P.E.
Chief, Operations Division
Corps of Engineers Walla Walla District



Richard Jones
District Manager,
Walla Walla County Conservation District

DATE: 25 APR 2008

DATE: April 28, 2008



Walla Walla County Conservation District

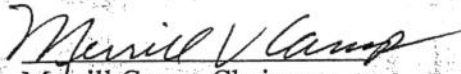
1501 Business One Circle, Suite 101
Walla Walla, WA 99362
(509)522-6340 ext 3

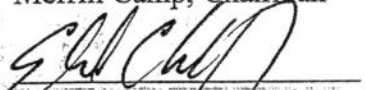
Scott S. Ross
Chief, Operations Division
Corps of Engineers Walla Walla District

April 18, 2008

Dear Mr. Ross,

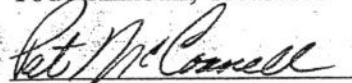
We, the Board of Supervisors, duly authorize Richard L. Jones, District Manager, to sign all documents and agreements and otherwise represent the Walla Walla County Conservation District in all matters related to the Garrison Creek fish screen project.


Merrill Camp, Chairman


Ed Chvatal, Vice-Chairman


Guy McCaw, Secretary


Todd Kimball, Treasurer


Pat McConnell, Member

**AMENDMENT NO. 1
TO
CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
WALLA WALLA COUNTY CONSERVATION DISTRICT**

Mill Creek, Bennington Lake
Garrison Creek Division Structure Fish Screen

THIS AMENDMENT NO. 1 is entered into 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 Walla Walla County Conservation District, (hereinafter the "Partner"), represented by the District Manager, Walla Walla County Conservation District.

WITNESSETH, THAT:

WHEREAS, the parties entered into a Cost-Share Agreement ("Agreement") on 23 April 2008, to provide for the construction of a fish screen on Garrison Creek, on the Mill Creek Flood Control Project, to prevent entrapment of salmon, steelhead and bull trout.

WHEREAS, the parties inadvertently omitted some important provisions from the Agreement and this Amendment is intended to add those provisions.

NOW, THEREFORE, the Government and the Partner agree to amend the Agreement as follows:

1. Article I (DEFINITIONS AND GENERAL PROVISIONS) is deleted in its entirety and replaced with the following:

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

1. Definitions.

a. The term "Project" shall mean the design, construction and installation of a fish screen on Garrison Creek on Government lands identified in Exhibit A, hereinafter referred to as the "Premises".

b. 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.

c. All permanent property, facilities and improvements placed on Government land, as well as any work accomplished under this agreement, shall become the property of the Government.

2. General Provisions.

a. The purpose of this Agreement is to identify and confirm the terms, conditions and obligations agreed upon between the Partner, who is undertaking a project (Project) funded by a grant (# IAC-02-1543, dated 9/3/03) from the Salmon Recovery Funding Board (SRFB), and the Government, who owns the property on which the Project will take place. The parties mutually agree to participate in conducting the salmon habitat improvement activities described in Exhibit A in Walla Walla Watershed (Water Resource Inventory Area 32, Walla Walla County, State of Washington, Tax Parcel No. 360724210006.

b. The Government will allow the Partner and SRFB access to the project area from time-to-time to monitor long term success of the completed project. The Partner and SRFB shall provide the Mill Creek Operations Manager at least 24 hours prior notice of such inspections.

c. The parties intend, subject to the Article VIII on termination/suspension, and availability of adequate funding, that all terms of the Agreement shall remain in effect for a period of at least ten years from the date of project completion.

2. Article 2.a is amended by adding the following subparagraph:


4. The Government agrees to assume all costs incurred as a result of any removal, modification, improvement, or destruction of the screen.


3. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the Government.

THE DEPARTMENT OF THE ARMY

WALLA WALLA COUNTY CONSERVATION DISTRICT

BY: 
SCOTT S. ROSS
Chief, Operations Division
Corps of Engineers, Walla Walla Dist.

BY: 
RICHARD JONES
District Manager
Walla Walla County Conservation District

DATE: 5 NOV 2008

DATE: Nov 7, 2008

MEMORANDUM FOR Chief, Operations Division (CENWW-OD)

SUBJECT: Mill Creek Fish Screen Challenge Cost-Sharing Agreement

1. PURPOSE:

To complete a signed Challenge Cost-Sharing Agreement with Walla Walla County Conservation District (WWCCD) in order to allow WWCCD to design, construct and install a fish screen on Garrison Creek at the Mill Creek Garrison Creek Division Structure.

2. BACKGROUND AND DISCUSSION:

a. The Corps Garrison Creek Division Structure is of concern to state and federal fisheries agencies because juvenile salmon swim or are carried down Garrison Creek from the Corps division structure near the Mill Creek Office. Once in Garrison Creek the young salmon become trapped in a stream channel with minimal flows and little chance to escape. Under the Endangered Species Act, the Corps will be required to install a fish screen at the division structure within the next few years. This installation would be at the Corps cost. As an alternative to the Corps installation, WWCCD has offered to install a fish screen and screen cleaning device funded through a fisheries grant WWCCD received from the Washington State Recreation and Conservation Office (RCO).

b. In order to accept this offer from WWCCD, the NWW Office of Counsel recommends completion of a Challenge Cost-Sharing Agreement with WWCCD. The attached Challenge Cost-Sharing Agreement has been coordinated through the Mill Creek OPM, Planning, Operations and OC. Under the Challenge Cost-Sharing Agreement ER district-level Chiefs of Operations are authorized to sign Challenge Cost-Sharing Agreements with a value of under \$200,000. The estimated cost for the Garrison Creek fish screen is approximately \$150,000.

c. Grant requirements include a 15% contribution from the Corps. The Corps contribution can be in-kind services, such as reviews and administration, or installation assistance. The Mill Creek OPM has determined this contribution requirement can be met within the existing Mill Creek budget.

3. RECOMMENDATION:

The NWW Chief of Operation's signature on the attached agreement will allow the Corps to provide the agreement to the WWCCD Director for his signature. The two signatures on the agreement will allow design, construction and installation of the fish screen to proceed.

CENWW-OD-T

SUBJECT: Mill Creek Fish Screen Challenge Cost-Sharing Agreement

4. IMPACT:

Without this agreement NWW will, within the next few years, be responsible for design, construction and installation of a fish screen at the Garrison Creek Division Structure for an estimated cost of \$150,000. With the signed agreement the WWCCD will use grant funding to complete the same work this summer. The recommended action will save Corps funding for other work and provide enhanced fish protection in Garrison Creek much soon than would be possible with Corps funding.

5. DISTRIBUTION:

Two original signature pages on the attached agreement are required for distribution to Walla Walla County Conservation District and the Corps of Engineers.

LONNIE E. METTLER
Chief, Natural Resources Management Section

Encl

BENGE/OD-T:kjv

METTLER/OD-T

LSM 4/24/08

ESKILDSEN/OC

NOE 4/24/08

WESTON/OD-T

DWW 4/24/08

ROSS/OD

SR 4/24/08

VILLELLA/OD-T

MEMORANDUM FOR Chief, Operations Division (CENWW-OD)

SUBJECT: Signing Amendment Number 1 to the Challenge Cost Sharing Agreement

1. PURPOSE:

The purpose of this memo and attachments are to complete a signed Amendment Number 1 to the Challenge Cost-Sharing Agreement between the Corps of Engineers and the Walla Walla County Conservation District (WWCCD). The original Cost-Sharing agreement was completed in April 2008 in order to allow WWCCD to design, construct and install a fish screen on Garrison Creek at the Mill Creek Garrison Creek Division Structure.

2. BACKGROUND AND DISCUSSION:

a. The original Challenge Cost-Sharing Agreement for fish passage improvements at the Corps' Garrison Creek Division Structure was signed on April 25, 2008 for the Corps of Engineers by Scott Ross, Walla Walla District, Chief of Operations. The improvements, consisting of a fish screen, diversion walls and a screen cleaning system were installed under this agreement to prevent juvenile salmon from swimming or moving down Garrison Creek from the Corps division structure near the Mill Creek Office. Once the young salmon were in Garrison Creek they were trapped in a stream channel with minimal flows and little chance of escape. The WWCCD offered to install a fish screen and screen cleaning device funded through a fisheries grant WWCCD received from the Washington State Recreation and Conservation Office (RCO).

b. In October 2008, with the installation completed, WWCCD discovered that in order to receive payment of the state funds under the grant program there was an additional agreement which needed to be signed. After review by the Corps' Office of Counsel, it was determined that rather than a new agreement, an amendment to the Challenge Cost-Sharing Agreement would meet the needs of the State of Washington requirements.

c. Attached to this memo are copies of the request memo for the original agreement, the signed agreement and a letter of permission from the WWCCD Board of Directors authorizing the District Manager of the WWCCD to sign "all agreements" related to the Garrison Creek fish screen project.

3. RECOMMENDATION:

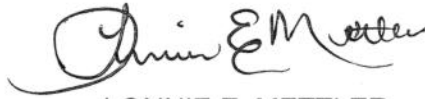
The NWW Chief of Operation's signature on the attached amendment to the Challenge Cost-Sharing agreement will allow the Corps to provide the amendment to the WWCCD Director for his signature. The two signatures on the agreement will allow WWCCD to receive payment for the design, construction and installation of the fish screen and other fish passage improvements from the State of Washington RCO.

CENWW-OD-T

SUBJECT: Signing Amendment Number 1 to the Challenge Cost Sharing Agreement

4. DISTRIBUTION:

Two original signature pages of the attached amendment to the original agreement are required for distribution of original copies to both the Walla Walla County Conservation District and the Corps of Engineers.

A handwritten signature in black ink, appearing to read "Lonnie E. Mettler". The signature is written in a cursive style with a large initial "L".

LONNIE E. METTLER
Chief, Natural Resources Management

Encl