

**CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS
WILLAMETTE VALLEY PROJECT**

AND

CITY OF LOWELL, OREGON

Summary of Project: The USACE and the City will work together to enhance approximately 9 acres of wetland located near the shoreline of Dexter Lake. The Corps and the City will cooperate in the design and implementation of the project. The City will be responsible for developing and maintaining wetland function and for all required monitoring and reporting for the designated 2.2 acres of compensatory wetland.

THIS AGREEMENT, entered into this day of November 9, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District Portland, and City of Lowell, Oregon (hereinafter the "Partner").

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters of the Willamette Valley Project Dexter Lake including fulfilling environmental stewardship objectives such as creation, restoration and enhancement of wildlife habitat, and

WHEREAS, the enhancement of existing wetland along the north shore of Dexter Lake will provide valuable habitat for many riparian species including songbirds, waterfowl, shorebirds, reptiles, and mammals, and

WHEREAS the Partner is interested in working with the Government to construct the wetland , and has a requirement to mitigate construction impacts to adjacent wetland habitat on City owned land.

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to construct an earthen dike to modify hydrology at the project site and manage vegetation to achieve functioning emergent and wooded wetland, and

WHEREAS, the Partner, in order to assist the Government in this project will construct a 1200 foot earthen dike with an outlet culvert and spillway, create a short channel for stormwater output into the wetland, and will manage vegetation on the mitigation portion to meet the required wetland objectives.

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 the services from the Partner and apply those contributions to the Project, and

WHEREAS, the Government and the Partner have the full authority and capability to perform as hereinafter set forth and intend to cooperate in project design, implementation and cost-sharing in accordance with the terms of this agreement;

WHEREAS, the Government will determine the compensatory mitigation required for the City's construction impacts during the permitting process for such proposed development and will consider the City's mitigation efforts with this project as a possible compensatory mitigation option for that proposed development;

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 creation of the Dexter Lake wetland on the lakeshore near Lowell, Oregon.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to construction, maintenance and monitoring 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 services provided by the Partner, shall expeditiously implement the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

b. The Government shall provide

- 1) the outlet culvert and spillway rock materials
- 2) a fence along the northern boundary of the project site below West Boundary Road
- 3) staff to participate in planning, design of wetland plantings
- 4) monitoring and management of the hydrology of the site
- 5) planting materials (including seed and transplants)
- 6) labor crews to assist with planting implementation
- 7) management of invasive plant species on the non-mitigation portion of the wetland
- 8) a wetland and wildlife overlook for public use.

c. The Partner shall be responsible for all permitting and the construction of the dike including installation of the outflow culvert, and spillway. Actual construction of the project is estimated to begin during the month of June 2010.

d. The Partner shall (for the mitigation portion of the wetland) provide personnel:

- 1) to develop functional wetland objectives
- 2) for planning, design of wetland planting
- 3) for management of vegetation to meet wetland objectives
- 4) for all mitigation-related monitoring and reporting.

e. The Government shall perform a final accounting to determine the contributions provided by all parties to this agreement and to determine whether each has met its obligations under paragraphs b, c and d of this Article.

f. No Federal funds may be used to meet the Partner's total project costs under this Agreement.

g. Period of the agreement: This agreement will remain in effect until the City has met the compensatory wetland obligations required by the Regulatory agencies. At that time, management of the entire site will revert to the Corps. Unless modified or extended, this agreement shall end on December 31, 2017.

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 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 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 the construction, operation, hydrological management, maintenance, repair, replacement, and rehabilitation of the 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 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. 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.

c. 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 X - 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 by telegram, or mailed either by first-class, registered, or certified mail, as follows:

If to the Partner:

City Administrator
P.O. Box 490
Lowell, OR 97452

If to the Government:

Operations Manager
U.S. Army Corps of Engineers, Willamette Valley Project
P.O. Box 429
Lowell, OR 97452

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 XI - 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 Commander of the Portland District.

The Department of the Army

BY: 

Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander

DATE: 5 NOV 09.

City of Lowell

BY: 

Warren R. Weathers
City of Lowell, Oregon
Mayor

DATE: 12/5/09

Challenge Partnership Financial Work Sheet

Corps Project Name: Willamette Valley Project, Dexter Lake

Work Project Title: Dexter Wetland

POC Name: Melissa Kirkland

Address: 26275 Clear Lake Road City: Junction City State: OR Zip Code
97448

Telephone: 541-461-2869

Location on Project: Dexter Wetland is located on Dexter Lake

Partner Organization: City of Lowell

POC Name: City Administrator

Address: P.O. Box 490 City: Lowell State: OR Zip Code:
97452

Telephone: 541-937-2157

Proposed start date of work: June 2010

	US Army Corps Willamette Valley	Partner: City of Lowell	Total
Salaries	9,000	34,000	43,300
Travel			
Materials and Supplies	15,500	17,500	33,000
Equipment Use			
Funds Contributed			
Volunteer Efforts			
In-Kind Services			
Other (explain below)	8,000		8,000
Total	32,500	51,500	84,000
Share of Total Cost	39%	61%	
Explanations: Labor Crew Time (County Sheriff and/or Youth Crews)			