

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY AND
OROFINO CHAMBER OF COMMERCE

THIS AGREEMENT, entered into this 28 day of April, 2011, 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, Orofino Chamber of Commerce (hereinafter the "Partner"), represented by the Executive Director, Orofino Chamber of Commerce.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at Dworshak Dam and Reservoir which includes recreational opportunities for the public, and

WHEREAS, the Government has historically provided the public with Pack It In/Pack It Out litter bags. The litter bag program was adopted by the Corps National Water Safety Team in FY06 as a nationwide campaign action. Bags are distributed to visitors and serve a dual purpose of keeping our operating projects clean and educating visitors about boating and water safety.

WHEREAS, the Partner, as a local business, is interested in assisting the Government in providing these litter bags, and in recognizing local supporting members through the display of business logos or contributor's names, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to continue to provide these litter bags to the public, and

WHEREAS, the Partner, in order to assist the Government in this project, has voluntarily agreed to pay a portion of the project 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 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 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;

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 a one-time purchase and supply of plastic Pack It In/Pack It Out litter bags. General specifications for the litter bags shall be as follows:

1. Plastic to be 1.75 ML thick
2. Bag size, 20 inches x 33 inches (500 bags per roll)
3. Each bag will have printing on both sides:
 - a) One message printed and configured proportionally on entire bag on one side, (Corps water safety message).
 - b) Another message printed and configured proportionally on entire bag on the opposite side. Partner will provide the Government in advance with any logos or company names and the camera-ready art which is subject to prior approval by the Government.
4. Each bag to include a perforated edge to rip-tear each bag apart on the roll so that as people unwind the roll they can separate or tear each bag off individually, without handles.
5. Include the recycling symbol and number according to how the bag can be recycled itself.
6. Inside diameter of the cardboard that roll is wrapped around has to be 3 inches.
7. Rolls shall be placed on government supplied dispensers at designated recreation areas.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to completion 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 purchase the litter bags, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications or change orders shall be exclusively within the control of the Government.

1. The Government shall provide at least \$2,000 of the total cost of purchasing the litter bags, design the bag art (with input from Chamber of Commerce) and order the bags.
2. Subject to paragraph b. below the Partner shall provide \$2,000.00 and will be invoiced not to exceed this agreed upon amount from the producer of the bags. The Partner is responsible for prompt payment of this invoice.
3. The Government will not procure items under this agreement until Partner gives notice of funds availability.
4. Printed bags will be delivered to Dworshak Dam and Reservoir and distributed to all recreation areas for public distribution by Government staff or contractors.

b. This Challenge Partnership is dependent on a grant to fund the Partner's portion of the Project; if funding is not granted, this cost-sharing agreement will be null and void.

c. Discretion to Decline -The Government has complete discretion to decline this cost share opportunity based upon the profit motive and/or character or notoriety of the partner's contributing members especially if the proposed sponsor's business is contrary to the Corps mission.

d. 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 obligation under Article II.

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

f. Any publicity associated with this Challenge Partnership project shall be by joint effort and agreement between the parties.

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 purchase of the litter bags 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 Chief, Operation Division 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.

ARTICLE IX – NOTICES

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: Stephanie Deyo
Executive Director
Orofino Chamber of Commerce
P.O. Box 2346
Orofino, ID 83544

If to the Government: Richard Werner
Chief, Operations Division
USACE, Walla Walla District
201 N. 3rd Ave
Walla Walla, WA 99362

Dworshak Point of Contact: Paul Pence
Natural Resources Manager
Dworshak Dam and Reservoir
P.O. Box 48
Ahsahka, ID 83520

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

BY: Richard D. Werner
Richard Werner, P.E.
Chief, Operations Division
Walla Walla District
DATE: 4/28/2011

Orofino Chamber of Commerce

BY: Stephanie Deyo
Stephanie Deyo
Director, Orofino Chamber of Commerce
DATE: 05/02/2011