

CHALLENGE PARTNERSHIP AGREEMENT

BETWEEN

THE DEPARTMENT OF ARMY

AND

THE BOISE PROJECT BOARD OF CONTROL

PUBLIC RECREATION IMPROVEMENTS ON LUCKY PEAK LAKE

THIS AGREEMENT, entered into this 21 day of August, 2009, 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 Boise Project Board of Control (hereinafter the "Partner"), represented by the Manager, Boise Board of Control.

WITNESSETH, THAT:

WHEREAS, the Government manages the lands and waters of Lucky Peak Lake which includes recreational opportunities for the public; and

WHEREAS, the public has a increasing demand for shoreline parking and fisherman access to the Lucky Peak Lake; and

WHEREAS, Boise Project and its member irrigation districts (collectively Licensees) are political subdivisions of the State of Idaho which hold FERC License Number 4656 to construct a power plant at the Arrowrock Dam at the upper reaches of Lucky Peak Lake on the Boise River arm; and

WHEREAS, the FERC License, Article 411, requires the Partner to install a angler parking area near the Arrowrock Dam; and

WHEREAS, the Government and the Partner recognize there are significant benefits to providing sanitary facilities, restroom, parking, and angler access to Lucky Peak Lake; and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make these improvements for safe public access of Lucky Peak Lake shoreline downstream of the Arrowrock Hydroelectric Facility to provide benefits to the public; and

WHEREAS, the Partner has voluntarily agreed to make contributions, either financial or in-kind, for construction and installation of specific public access improvements; and

WHEREAS, the Government and the Partner agree that these public access improvements performed under this Challenge Partnership Agreement complies with the intent of FERC License, Article 411; and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, PL102-580 (October 31, 1998), authorizes the Secretary of the Army to accept contributions and apply those contributions to recreation facilities and improvements; and

WHEREAS, this Agreement is implemented without increasing future operations and maintenance costs at Lucky Peak Lake; and

WHEREAS, the Government and the Partner have full authority and capability to perform as set forth herein and intend to cooperate in the partnership in accordance with the terms of this Agreement

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

ARTICLE I. DEFINITION AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Project" shall mean four items as follows:
 - 1) Procure and install gravel at the four parking areas (Nos. 1-4) on the north shore of the Boise River arm of Lucky Peak Lake approaching the Arrowrock Dam, described and illustrated in the photos on Exhibit A,
 - 2) Purchase and erect a pre-engineered single vault concrete toilet building, as described on Exhibit B to be erected at parking site #3 (Five Mile Flat),
 - 3) Fabricate and install a metal staircase from parking area to a point above the high water mark of Lucky Peak Lake, as described on Exhibit C, to be installed at parking site #3 (Five Mile Flat),
 - 4) Procure and install an electrical service drop at the existing Macks Creek Recreation Area owned and operated by the Government, as described on Exhibit D. This electrical service drop will be provided directly by Caribou Electric, a subcontractor to Mountain States Hydro, which is the contractor for construction of the hydroelectric facility at Arrowrock.
- b. The term "Total Project Costs" shall mean all costs incurred by the Government and the Partner, including by Caribou Electric, directly related to the completion of the Project.
- c. This Agreement does not restrict 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 materials 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 installation oversight and shall provide all necessary permits and approvals. The Government shall make the parking areas available to Caribou Electric for material staging during its transmission line replacement work. The Government shall be responsible for all operations, maintenance, and repair of the facilities and materials provided under this Agreement upon final approval of the installation. The Government shall be responsible for arranging a customer agreement with and paying Idaho Power Company for all electrical usage at Macks Creek Recreation Area through the service drop described on Exhibit D.

2) The Government shall cooperate with the Partner in obtaining FERC approval for the Project under Article 411 of FERC License Number 4656

b. Partner Obligations:

1) The Partner shall provide labor and materials detailed in Exhibits A, B, C and D.

2) The installation of the materials described on Exhibits A, B and C shall take place in the fall of 2009 (following the recreation season) and after Caribou Electric has completed its interim use of the parking areas for lay down, storage, and helicopter use as authorized by the Government during the replacement of the electrical line from Arrowrock Dam to Highway 21 interconnection to Idaho Power Company transmission lines. Caribou Electric and the Government shall coordinate on timing of the installation of the service drop described in Exhibit D after Caribou has completed its use of the parking areas for equipment and material staging in its work to replace the transmission line.

ARTICLE III: METHOD OF PAYMENT

The Partner shall pay for all materials and installation outlined in Exhibits A, B, C and D.

ARTICLE IV: DISPUTE RESOLUTION

As a condition precedent to any of the parties bringing any suit for breach of agreement, that party must first notify the other party in writing of the nature of the purported breach and seeking good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they shall agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party. The parties shall divide all costs paid to the mediator equally. The existence of a dispute shall not excuse any party from performance under this Agreement.

ARTICLE V: FEDERAL AND STATE LAWS

In exercise of the 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 the following: Section 601 of Title VI of the Civil Rights Act of 1964; Public Law 88-352; Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title #2, Code of Federal Regulations; and Army Regulations 600.7, entitled "Nondiscrimination 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 exercise of their respective rights and obligations under this Agreement, the Government and the Partner act in an independent capacity, and none are to be considered the officer, agent, or employee of any other.
- b. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights either of the other parties may have to seek for relief or redress against such other party may have, or for violation of the 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 therefrom.

ARTICLE VII: INDEMNIFICATION

The Partner shall hold and save the Government free from all damages arising from services the Partner performs or provides for in the construction and installation 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 Government may terminate this Agreement or suspend future performance under this Agreement unless the Government determines that continuation of work on the Project is in the best 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 FERC fails to approve this Partnership Agreement as compliant with Article 411 of the FERC License, the Partner reserves the right to terminate the partnership Agreement or suspend performance unless the Partner determines that continuation of the Project is in the best interests of the Partner.

