

# Challenge Partnership Agreement

*between*

**The Department of the Army**

**And SORBA**

*THIS AGREEMENT*, entered into this 23rd Day of February, 2012, by and between the Department of the Army (hereinafter the "Government"), represented by the Operations Project Manager, US Army Corps of Engineers, Hartwell Dam and Lake; and the Southern Off Road Bicycle Association, (hereinafter the "Partner"), represented by Mr. Scott Clegg;

*WITNESSETH, THAT:*

*WHEREAS*, the Government manages lands and waters on the Hartwell Lake Project in Georgia and South Carolina which includes recreational opportunities for the public, and

*WHEREAS*, site improvements at Paynes Creek Campground Area on the Hartwell Lake Project will increase the recreational opportunities for the public, and

*WHEREAS*, the Partner is interested in promoting and assisting the Government in providing these improvements, and

*WHEREAS*, it is mutually beneficial to the Government and the Partner to work cooperatively to make these improvements available to the public, and

*WHEREAS*, the Partner, in order to assist the Government in this project has voluntarily agreed to provide trail pre-construction activities, volunteer labor, and consultation throughout the trail construction process, and

*WHEREAS*, Section 225 of the Water Resources Development Act of 1992, Public Law 102-580, (Oct 31, 1992), authorizes the Secretary of the Army to accept contributions 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 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 construction improvements to the Paynes Creek Multipurpose Trail Project consisting of the following items shown on the *General Site Plan* dated 30 September 2009:

•The Challenge Partnership Handshake funds recently awarded for this project from application submitted jointly by the Partners and the Corps will be used to foster the partnership between the two organizations and complete an additional 3 mile loop to the existing 7.2 miles. The trail is designed to enhance the mountain biking recreational opportunities on the upper portion of Hartwell Lake and also increase opportunities for low impact usage such as bank fishing, hiking, and bird watching and will encourage local user groups to partner with the Corps of Engineers to accomplish this.

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 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"), shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by the Government personnel) shall be exclusively within the control of the Government.

b. The Government shall provide a cooperating partnership with SORBA to enhance the Paynes Creek Multi-Purpose Trail, will compensate the trail construction contractor, will maintain the Paynes Creek Multi-Purpose Trail once it has been established, will maintain responsibility for all trail signage and will provide campsites within the Paynes Creek Campground to trail work volunteers free of charge for more than one day's worth of work (dependant on availabililty, season, etc.).

c. The Partner shall provide a cooperating relationship with the US Army Corps of Engineers, Hartwell Lake Office to enhance the existing multi-purpose trail within the Paynes Creek Recreation Area, will consult with Corps employees through planning meetings, will provide volunteer work to flag and clear trail and volunteers to update and maintain the Paynes Creek Multi-Purpose Trail once it is complete.

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 obligations stated above in paragraphs a and b of this Article.

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

### **ARTICLE III — ACCOUNTING**

a. Prior to commencing work, the Government shall prepare a Preliminary Financial Worksheet. This worksheet shall generally describe the project, designate contact persons and delineate the estimated total project cost with the contributions to be made by each party. The partner shall assist in preparing this worksheet by furnishing the Government with its estimated costs as per the itemized list found therein.

b. Upon completion of the Project, the Government shall conduct a final accounting and furnish the Partner with a Final Financial Worksheet. The final accounting shall establish total project costs, each party's contribution provided thereto, and each party's share thereof. The partner shall assist in preparing this worksheet by furnishing the Government with its actual costs as per the itemized list found therein.

### **ARTICLE IV — 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 V — FEDERAL AND STATE LAWS**

In exercising 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, Public Law 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 VI — *RELATIONSHIP OF PARTIES***

a. In exercising their respective rights and obligations under this Agreement, the Government and the Partner shall each act in independent capacities, and neither is to be considered the officer, agent, or employee of the other.

b. Neither party of this Agreement, without the consent of the other party, shall provide any contractor a release that waives, or purports to waive, any of the other party's rights to seek relief or redress against such contractor, either for violation of any law, or pursuant to any cause of action that the other party may have.

## **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 there from.

## **ARTICLE VIII — *INDEMNIFICATION***

The Partner shall hold and save the Government free from all damages arising from the services it performs or provides for the construction, demolition, operation, maintenance, repair, replacement, and rehabilitation of the Project, except for damages due to the fault or negligence of the Government or its contractors.

## **ARTICLE IX — *TERMINATION OR SUSPENSION***

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the Operations Project Manager, US Army Corps of Engineers, Hartwell Lake 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. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Partner, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Partner elects to terminate this Agreement.

c. 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 X — NOTICES**

a. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed as duly given if in writing and delivered personally; by registered first-class, or certified mail; or by telegram as follows:

If to the Partner:                                 Scott Clegg  
  SORBA  
  1662 Main Street  
  Comer, GA 30629

If to the Government:                             Peggy A. O'Bryan  
  Chief, Operations Division  
  US Army Corps of Engineers  
  Savannah District  
  100 W. Oglethorpe Ave.  
  Savannah, GA 31402

b. Either party may change their address for receiving such communications by giving written notice to the other party in the manner described above in paragraph a. of this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed as received by the addressee on the earlier of either the day of its actual receipt or the first business day following seven calendar days after it is mailed.

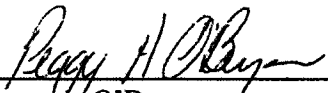
## **ARTICLE XI — CONFIDENTIALITY**

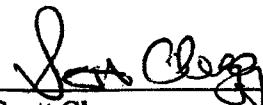
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Chief, Operations Division, US Army Corps of Engineers, Savannah District.

***The Department of the Army***

***SORBA***

BY:   
Peggy A. O'Bryan  
Chief, Operations Division  
US Army Corps of Engineers  
Savannah District

BY:   
Scott Clegg  
SORBA  
1662 Main Street  
Comer, GA 30629

DATE: 6 Mar 2012

DATE: 13 March 2012