

Challenge Partnership Agreement
Between
The Department of the Army
and
Sotoyome Resource Conservation District
and
Friends of Lake Sonoma

THIS AGREEMENT, entered into this 20 July 2009 by and between the Department of the Army (hereinafter the "Government"), represented by the Chief of Operations/Readiness, U.S. Army Engineer District, San Francisco and the, Sotoyome Resource Conservation District, and Friends of Lake Sonoma (hereinafter the "Partners").

WITNESSETH, THAT:

WHEREAS, the Government manages the Warm Springs Dam / Lake Sonoma and surrounding property which includes recreational activities such as camping, boating, hiking, and picnicking opportunities, and

WHEREAS, the California Department of Fish and Game operates the Don Clausen Fish Hatchery at Warm Springs Dam, and with the help of the US Army Corps of Engineers and, Sotoyome Resource Conservation District, and Friends of Lake Sonoma developed plans for a renovated fish passage between a fish ladder and the Don Clausen fish hatchery. The engineered fish passage will provide an additional educational and interpretive opportunity to demonstrate proper stream restoration techniques to be used within the Russian River watershed, and

WHEREAS, This proposal is based on the recommendations and targeted improvements as stated in the Interpretive Master Plan (IMP) for the Milt Brandt Visitor Center and Don Clausen Fish Hatchery, dated January 2006. The IMP was jointly supported by named partners of this agreement, and

WHEREAS, The Don Clausen Fish Hatchery was built to raise steelhead to replace spawning habitat lost when Warm Springs Dam was constructed. Approximately 7,000 steelhead migrate to the hatchery each year. Today the hatchery is the centerpiece of a multi-agency experimental effort, the Russian River Coho Salmon Captive Brood stock Program, to re-establish endangered wild Coho salmon to the Russian River Watershed, and

WHEREAS, The Hatchery is the center of significant winter-time activity for regional schools, visitors and biologists engaged in restoring native fisheries. The Milt Brandt Visitor Center was designed to interpret the natural and cultural resources of project lands and staff work in cooperation with the California Department of Fish and Game to provide interpretive services to thousands of visitors and school children during the salmon and steelhead spawning season. The engineered fish passage will serve to practically educate landowners, students, and recreationists about fishery management techniques, and

WHEREAS, The Warm Springs Dam/Lake Sonoma is located in northern California approximately 70 miles north of San Francisco. Project purposes are flood control, water supply and recreation to the residents of Sonoma and Marin Counties. There are over 100 boat-in campsites and over 40 miles of hiking and equestrian trails. In FY 07 the project hosted 1,930,780 visitor hours, and

WHEREAS, the Partners, in order to assist the Government, have voluntarily agreed to assist in the preparation, and physical implementation of structures made of natural materials. Partners have also agreed to plant portions with native riparian vegetation to accurately simulate a natural stream channel and associated biotic and a-biotic features commonly found in the areas being represented, 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 from the Partners and apply those contributions to the, Fish Hatchery Stream Access and Restoration Project. and

WHEREAS, the Government and the Partners 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 Partners agree as follows:

ARTICLE I. DEFINITIONS AND GENERAL PROVISIONS

- a. The term "Project" shall mean the Fish Hatchery Stream Access and Restoration Project.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partners directly related to the execution of the. Fish Hatchery Stream Access and Restoration Project.
- c. This agreement in no way restricts the Government or the Partners from participating in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations and individuals. This agreement in no way restricts the Partners from accepting contributions from individuals and groups, including governmental entities.
- 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 Partners, 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. The Partners shall assist in the planning and executing the. Fish Hatchery Stream Access and Restoration Project.
- b. The Government shall manage and take the lead in coordinating and purchasing supplies for the project.

The Sotoyome Resource Conservation District shall provide and purchase, use, and operate supplies and equipment for the purpose of planning and executing the Fish Hatchery Stream Access and Restoration Project..

- c. The Friends of Lake Sonoma will support the project thru a financial donation of \$5000.00 in unrestricted funds.
- 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 under paragraphs a & b of this Article.
- e. No federal funds may be used to meet the Partners' total project costs under this Agreement.

ARTICLE III. METHOD OF PAYMENT

- a. The Government shall maintain current records of contributions provided by the Partners and a current projection of total project costs. At least quarterly, the Government shall provide the Partners with a report setting forth all contributions provided to date and the current projection of total project costs, of the components of total projects costs, of each party's share of the \$211,343.00 and the Partners' contribution required under Article II.b. of this Agreement is projected to be \$ 193,843.00. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partners.
- b. The Partners shall provide the contribution required under Article II.b. of this Agreement in accordance with the following provisions: Not less than 30 calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partner of the funds required from the Partner to meet its projected contribution, including its proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction. Prior to the issuance of the solicitation, the Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, San Francisco.

The Government shall draw from the funds provided by the Partner such sums as the Government deems necessary to cover: (a) the Partner's proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partner's proportionate share of the Government's contractual and in-house financial obligations as they are incurred during the period of construction. In the event the Government determines that the Partners must provide additional funds to meet their obligations, the Government shall notify the Partners of the additional funds required. Within 60 calendar days thereafter, the Partners shall provide the Government with a check for the full amount of the additional required funds.

- c. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partners with the results of the final accounting. The final accounting shall establish total project costs, each party's contribution provided thereto, and each party's required share thereof.
- 1. In the event the final accounting shows that the total contribution provided by the Partners is less than their required share of total project costs, the Partners shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Partners' required share of total project costs.

2. In the event the final accounting shows that the total contribution provided by the Partners exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partners no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Partners, the Government shall seek such appropriations as are necessary to make the refund.

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 from 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 exercise of their respective rights and obligations under this Agreement, the Government and the Partners agree to comply with all applicable federal and state laws and regulations. These will include, but are 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 VI. RELATIONSHIP OF PARTIES

- a. In the exercise of their respective rights and obligations under this Agreement, the Government and the Partners 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 VII. OFFICIALS NOT TO BENEFIT

No member 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 Partners shall hold and save the Government free from all damages arising from services it performs or provides for the construction, 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 Partners fail to fulfill their 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. 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 Partners elect 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 the Project and proceed to a final accounting in accordance with Article II of this Agreement.
- d. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve these parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE X. 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 in writing and delivered personally or by telegram, or mailed either by first class, registered, or certified mail, as follows:

If to the Partners:

Friends of Lake Sonoma
P.O. Box 214
Healdsburg, CA 95448

Sotoyome Resource Conservation District
P.O. Box 11526
Santa Rosa, CA 95406

If to the Government: Michael Dillabough, Chief of Operations/Readiness Division
U.S. Army Corps of Engineers, San Francisco District
1455 Market St
San Francisco, CA 94015

CHALLENGE PARTNERSHIP FINANCIAL WORK SHEET

Project Name Warm Springs Dam/Lake Sonoma Contact: Merle Griffin

Address: 3333 Skaggs Springs Road, Geyserville CA 95441

Phone 707-431-4500

Work Project Title: Fish Hatchery Stream Access and Restoration Project.

Location: Lake Sonoma

Description of work:

Construct 700 feet of wheelchair accessible trail with viewing platforms along fish hatchery access stream. Demonstration site for local landowners on stream restoration techniques and guidelines. Install interpretive panels relating endangered species, fish hatchery and role of the Corps of Engineers in the Russian River Watershed. Plan adjacent lawn area with native trees and plants to improve local habitat. Remove non-native and invasive plant species in stream- replant with native riparian vegetation. This is considered a two-year project, but this proposal reflects work to be accomplished in FY09.

Partner 1: Friends of Lake Sonoma

Address: P.O. Box 214, Healdsburg, CA 95448

Phone: (707)542-4244

Partner 2: Sotoyome Resource Conservation District

Address: P.O. Box 11526, Santa Rosa, CA 95406

Phone: (707)569-1448

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Total
Salaries	\$0	N/A	\$0	\$91,311	\$91,311
Travel	\$0	N/A	\$0	\$1,842	\$1,842
Materials and Supplies	\$0	\$10,000	\$0	\$61,690	\$71,690
Equipment Use	\$0	\$0	\$0	\$9,000	\$9,000
Funds Contributed	N/A	N/A	\$5,000	\$0	\$5,000
Personal Property	N/A	N/A	\$0	\$0	\$0
Volunteer Efforts	N/A	N/A	\$0	\$0	\$0
In-Kind Services	N/A	N/A	\$0	\$0	\$0
Other –Interp Panels & CDF crews	\$7,500	\$0	\$0	\$25,000	\$32,500
Total	\$7,500	\$10,000	\$5,000	\$188,843	\$211,343
Share of Total Cost	3.54%	4.73%	2.37%	89.354%	100%

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 of Operations/Readiness, San Francisco District.

The Department of the Army

By: Michael Dillabough
Michael Dillabough
Chief of Operation/Readiness

Date: 4 August 2009

Sotoyome Resource Conservation District

By: Kara Heckert
Kara Heckert, Executive Director

Date: August 5, 2009

Friends of Lake Sonoma

By: David C. Harmeson Date: July 20, 2009
Dave Harmeson, President

Note:
The Challenge Partnership Program is one method to leverage budgets and execute recreation and resource programs that may not be possible otherwise. This program allows the Corps to accept funds, materials, and services following the approval of a Challenge Partnership Agreement, to accomplish work programs; however it does not permit the Corps to reimburse for services. At this time, USACE has no authority or mechanism to give funds to a non-federal partner. The contributed resources are combined with regular project O&M resources to accomplish work within current authorities and contained in the annual or five-year plan in the approved operational management plan. Work is generally accomplished during one fiscal year. The Corps' Challenge Partnership Program is authorized in Section 225 of the Water Resources Development Act of 1992.