

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
AND
THE OREGON PARALYZED VETERANS OF AMERICA
AND
THE OREGON DEPARTMENT OF FISH AND WILDLIFE

THIS AGREEMENT, entered into this 15th day of April, 1996, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer, U.S. Army Engineer District Portland, and the Oregon Paralyzed Veterans of America (hereinafter the "partner") and the Oregon Department of Fish and Wildlife (hereinafter the "partner").

WITNESSETH, THAT:

WHEREAS, pursuant to The Flood Control Act of 1950, the Government manages lands and waters at Foster Lake which includes recreational opportunities for the public, and

WHEREAS, the installation of a fishing platform and access ramps at the Wing Dam access point on Foster Lake will increase the recreational opportunities for the public, and

WHEREAS, the Partners are interested in promoting and assisting the Government in providing this fishing platform and accessibility feature, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to make this fishing platform and accessibility feature available to the public, and

WHEREAS, the Oregon Department of Fish and Wildlife through their Fish Restoration and Enhancement Program has voluntarily agreed to fund a portion of the project cost, and

WHEREAS, the Oregon Paralyzed Veterans of America has applied for and entered into a Grant agreement with the Oregon Department of

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Fish and Wildlife for the purpose of receiving and disbursing Fish Restoration & Enhancement Program grant funds to complete the project, and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, 33 USC 2328, Public Law 102-580, (October 31, 1992), authorizes the Secretary of the Army to accept contributions from a Non-federal Partner and apply those contributions to the Project (Challenge Cost-Share), 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

For purposes of this agreement:

a. The term "Project" shall mean six segments or approximately 140 linear feet of concrete ramp approximately 5 feet in width, six concrete landings approximately 6 feet by 10 feet, and one 12 foot by 24 foot concrete fishing platform, fabricated steel guardrails and treated wood wheel stops constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) and Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) and the Foster Project "Wing Dam Accessibility Ramp and Fishing Platform" design drawings dated 9 August 1995.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partners 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.

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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 using funds appropriated by the Congress of the United States (hereinafter the "Congress"), and using services and or labor 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 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 engineering, site preparation, lumber for concrete forms, steel hand rails, paint and miscellaneous tools and equipment necessary for construction.

c. The Oregon Department of Fish and Wildlife shall provide funding for professional concrete finishing services, in accordance with ODFW Fish Restoration & Enhancement Program Grant Agreement.

d. The Oregon Paralyzed Veterans of America in cooperation with other contributors shall provide volunteer labor, professional concrete finishing service contract preparation and administration, and all project completion requirements identified in ODFW Fish Restoration & Enhancement Program Grant Agreement.

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 share of the total project costs under this Agreement.

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g. The Partner shall not use Government-supplied materials and equipment, or allow their use, for other than authorized project purposes

h. Actual construction of the facility is scheduled to begin on or about 1 February 1996 with project completion by 30 June 1996.

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 each party's share of the total costs, and of the Partner's contribution required in accordance with Article II.c and d of this Agreement. On the effective date of this agreement, total project costs are projected to be **\$27,639.42**, and the Partner's contributions required under Article II.c and d of this Agreement is projected to be **\$14,912.00**. 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. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partner 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.

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 parties 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

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dispute resolution with a qualified third party acceptable to each party. The parties shall each pay an equal share 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 any party 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, including, but not limited to, Section 504 of The Rehabilitation Act of 1973 (As Amended in 1978), 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 the exercise of their respective rights and obligations under this agreement, the Government and the Partners each act in an independent capacity, and no party is 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 such other parties may have to seek relief or redress against such contractor either pursuant to any cause of action that such other parties may have or for violation of any 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.

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ARTICLE VIII - INDEMNIFICATION

The Partner shall hold and save the Government free from all damages, including damages to Government-supplied materials and equipment made available for the Partner's use beyond normal wear and tear, arising from services the Partner 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 a Partner fails to fulfill its obligations under this Agreement, the District Engineer 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 Partners, and 60 days thereafter any party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that any 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 any party elects to terminate this agreement pursuant to this Article, or Article II.b. of this Agreement, each party shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article II.e. of this Agreement.

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d. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve any party 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: Oregon Department of Fish and Wildlife
Dennis Wise, R&E Coordinator
P.O. Box 59
Portland, Oregon 97207

If to the Partner: Oregon Paralyzed Veterans of America
16079 SE McLoughlin Blvd.
Milwaukie, Oregon 97267-4649

If to the Government: U.S. Army Corps of Engineers
Willamette Valley Projects
P.O. Box 429
Lowell, Oregon 97452-0429

b. Any party may change the address to which such communications are to be directed by giving written notice to the other parties 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.

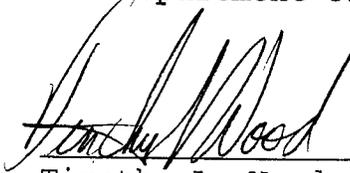
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ARTICLE XI - CONFIDENTIALITY

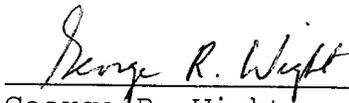
To the extent permitted by the laws governing each party, each party agrees to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Commander, Portland District.

The Department of the Army

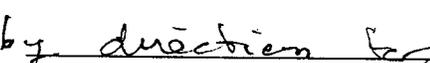


Timothy L. Wood 5 Apr 96 Date
Colonel, U.S. Army
Commanding



George R. Wight 4-5-96 Date
Contracting Officer

The Oregon Paralyzed Veterans of America


by  4-15-96 Date
Ronald G. Zumwalt Date
President

The Oregon Department of Fish and Wildlife

Sharon Conyers Date
Contract & Budget Specialist