

# Challenge Partnership Agreement

*between*

**The Department of the Army**

*and*

**SORBA**

*THIS AGREEMENT*, entered into this 10th day of March, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the Operations Project Manager, US Army Corps of Engineers, Hartwell Lake & Dam; and the Southern Off Road Bicycle Association, (hereinafter the "Partner"), represented by Mr. Keith McFadden;

*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 design and layout, trail construction, 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 3 of the 6 miles of the North Loop portion of the trail. 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 create the Paynes Creek Recreation Area multipurpose trail, will match funds received by the handshake partnership agreement to compensate the SORBA trail construction contractor, will update and maintain the Paynes Creek 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 availability, season, etc.).

c. The Partner shall provide a cooperating relationship with the US Army Corps of Engineers, Hartwell Lake Office for the creation of a multi-use trail within the Paynes Creek Recreation Area, will consult with Corps employees through planning meetings, will provide trail design and layout, volunteer work to flag and clear trail, trail contractor work for initial trail

construction and volunteers to update and maintain the Paynes Creek Trail once it has been established.

d. The Government shall perform a final accounting document 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.



*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Operations Project Manager, US Army Corps of Engineers, Hartwell Lake.

***The Department of the Army***

BY: *Linda A. Morrison*  
Linda A. Morrison  
Chief, Operations  
US Army Corps of Engineers  
Savannah District

***SORBA***

BY: *Keith McFadden*  
Keith McFadden  
SORBA  
2125 Elachee Drive  
Gainesville, Ga. 30504

DATE: *March 12, 2010*

DATE: *March, 26 2010*

## Challenge Partnership Financial Work Sheet

Corps Project Name: Hartwell Dam And Lake

Work Project Title: Payne's Creek Multipurpose Trail

POC Name: Zach Harkness

Address: 5625 Anderson Hwy

City: Hartwell

State: GA Zip Code: 30643

Telephone: 7068560310

Location on Project:Payne's Creek Day Use Area

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Partner Organization 1: International Mountain Bike Association/Southern Off Road Bicycle Association

POC Name: Keith W Mcfadden

Address:

City: Gainesville

State: GA Zip Code:

Telephone: 7707784881

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Partner Organization 2:

POC Name:

Address:

City:

State:

Zip Code:

Telephone:

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Partner Organization 3:

POC Name:

Address:

City:

State:

Zip Code:

Telephone:

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Proposed start date of work: Mar-10

Simple description of work to be accomplished through the partnership:The Hartwell Lake Office will work in cooperation with IMBA/SORBA to plan, develop and maintain a multi use trail within the Paynes Creek Campground area. The partner will provide funds to pay for materials, labor and in kind services, the Corps will assist in the provision of materials and supplies, the Handshake funds will pay for the partner's trail contractor.

Double click on spreadsheet to access data entry fields:

|                            | Local Corps<br>Office | Handshake<br>Funds | Partner 1       | Partner 2  | Partner 3  | Total           |
|----------------------------|-----------------------|--------------------|-----------------|------------|------------|-----------------|
| Salaries                   | \$4,000               | N/A                | \$9,000         | \$0        | \$0        | \$13,000        |
| Travel                     | \$0                   | N/A                | \$1,000         | \$0        | \$0        | \$1,000         |
| Materials and Supplies     | \$15,000              | \$25,000           | \$15,000        | \$0        | \$0        | \$55,000        |
| Equipment Use              | \$0                   | \$0                | \$0             | \$0        | \$0        | \$0             |
| Funds Contributed          | N/A                   | N/A                | \$0             | \$0        | \$0        | \$0             |
| Personal Property          | N/A                   | N/A                | \$0             | \$0        | \$0        | \$0             |
| Volunteer                  | N/A                   | N/A                | \$10,000        | \$0        | \$0        | \$10,000        |
| In-Kind Services           | N/A                   | N/A                | \$0             | \$0        | \$0        | \$0             |
| Other (explain below)      | \$0                   | \$0                | \$0             | \$0        | \$0        | \$0             |
| <b>Total</b>               | <b>\$19,000</b>       | <b>\$25,000</b>    | <b>\$35,000</b> | <b>\$0</b> | <b>\$0</b> | <b>\$79,000</b> |
| <b>Share of Total Cost</b> | 24.1%                 | 31.6%              | 44.3%           | 0.0%       | 0.0%       | 100%            |

Explanations: The \$25,000 requested handshake funds will go to pay the SORBA trail contractor. The Corps intends to contribute at least another \$20,000 to assist the partner and continue working on the trail after the handshake funds are gone. The Corps will help in the provision of supplies, services and materials such as signs, posts, crusher run gravel, carsonite markers and timbers.