

Challenge Partnership Agreement

between

The Department of the Army

and

Clarke County Commission

THIS AGREEMENT, entered into this 29th day of August 2011, by and between the Department of the Army, (hereinafter the "Government"), represented by the District Commander, U.S. Army Corps of Engineers, Mobile Engineer District and Clarke County Commission, (hereinafter "Partner A"), represented by the Chairman.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters on the Black Warrior-Tombigbee/Alabama-Coosa Project in Alabama which includes recreational opportunities for the public, and

WHEREAS, many members of the public visit Silver Creek Park on the Alabama River annually to fish, camp, launch boats, hike foot-trails, and

WHEREAS, site improvements to include public water service, a drinking fountain, and a playground in Silver Creek Park will upgrade the sanitary conditions, visitor experience, and overall recreational enjoyment by the public, and

WHEREAS, the Partner is interested in promoting and assisting the Government in planning and bringing these facilities to fruition in Clarke County, Alabama, and

WHEREAS, there are no facilities similar to these in any public use areas along the Alabama River in Clarke County, and it is mutually beneficial to the Government and the Partner to work cooperatively to make these facilities available to the public, and

WHEREAS, the Partners, in order to assist the Government in this project, have voluntarily agreed to provide financial resources, labor resources, and materials including water meter, water pipe, fountain, and a playground, 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 its 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/purchase of the water meter, waterline service, water fountain, and playground consisting of the following as generally described in the Silver Creek Park Improvement Project.

- One 2" water meter
- One playground, including hardware, surface and border material, including ADA material
- 9,500 feet of 3" class 200 PVC pipe
- One water fountain

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"), and using funds provided by the Partner, 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 trenching machine with operator to prepare a trench to install the PVC waterline and labor and equipment to connect the pipe and cover the waterline.

c. Partner shall provide 9,500 feet of 3", Class 200 PVC pipe to facilitate water service from Silver Creek Road to the location for playground/water fountain inside Silver Creek Park.

d. Partner will provide a 2" water meter and its installation at Government property line.

e. Partner will provide playground hardware, surface material such as sand, and 2/3 labor to assemble/install the playground.

f. The Government will provide labor and equipment to install the 9,500 feet of waterline, an installed water fountain, 1/3 labor to assemble the playground, equipment for playground and water fountain assembly, border timbers and ADA compliant surface for playground.

g. The Government shall provide on-going maintenance of the water line from meter (property line) throughout Government property. The Government shall provide on-going maintenance to playground and water fountain.

h. 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 this Article.

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

ARTICLE III – METHOD OF PAYMENT

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.

It is understood by both parties that the Partner shall pay the costs of its work under Article II.c, and the Government shall pay the costs of its work under Article II.b., and neither shall be required to provide cash payments to pay for the other party's work contemplated in this agreement. At least quarterly, each party shall provide the other with a report setting forth all costs incurred to date and the current projection of total cost to be expended by each remaining party respectively.

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 cost, 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 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 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 Partners 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. No party of this Agreement, without the consent of the other parties, 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, including damages to Government-supplied utilities and materials made available for the Partner's use beyond normal wear and tear, arising from services the Partner performs or provides for the construction, demolition, 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 Commander, US Army Corps of Engineers, Mobile Engineer District 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 any partner elects to terminate this Agreement pursuant to this Article, all partners 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 Partner A:

Tyrone Moye, Commission Chairman
114 Court Street
P.O. Box 548
Grove Hill, AL 36451

If to the Government:

District Commander
U.S. Army Corps of Engineers
Mobile Engineers District
P.O. Box 2288
Mobile, AL 36628

b. Any partner 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 District Commander, US Army Corps of Engineers, Mobile Engineer District.

The Department of the Army

BY: Steven J. Roemhildt

Steven J. Roemhildt, P.E.
Colonel, Corps of Engineers
District Commander

DATE: 29 Aug 11

Clarke County Commission

BY: Tyrone Moye

Tyrone Moye
Commission Chairman
Clarke County

DATE: 8/23/11

	Local Corps Office	Handshake Funds	Partner	Total
Salaries	\$8,000		\$5,000	\$13,000
Travel				
Materials/Supplies		\$12,500	\$37,000	\$49,500
Equipment Use		\$12,500		\$12,500
Funds Contributed				
Personal Property				
Volunteer				
In-Kind Services				
Other				
Total				\$75,000