

CHALLENGE COST-SHARING AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE AMERICAN CHESNUT FOUNDATION

THIS AGREEMENT, entered into this day of 31 August 2011 by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District, Mobile, and The American Chestnut Foundation, (hereinafter the "Partner"), represented by Georgia Chapter President Joe Nicholson and Southern Regional Breeding Program Coordinator William White.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters on Allatoona Lake Project which includes protection and restoration of natural resources; and

WHEREAS, the restoration of the American chestnut tree to its native range would benefit the public, and enhance the natural resources at the Allatoona Lake Project; and

WHEREAS the Partner is interested in promoting and assisting the Government in restoring the American chestnut on Allatoona Lake Project lands; and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively on the restoration, and education of the public; and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to pay a portion of the cost; 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 Partner and Apply those contributions to the Allatoona Lake 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 the creation of a backcross American Chestnut orchard and a smaller educational Chestnut demonstration site near the Allatoona Lake Operations Project Management Office, as generally described in the Handshake Program Application dated, 01 November 2010 and approved 05 January 2011.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to the restoration 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 Government's portion of the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

b. The Government shall provide:

- Ten acre backcross orchard location near Stamp Creek Day Use Area.
- Orchard site cleared and mulched in accordance with Partner recommendations.
- Suitable second site near the Allatoona Lake Operations Project Management Office for American Chestnut Demonstration Site.
- Educational opportunities for the public to learn more about the American Chestnut tree.
- Offer security for backcross orchard through Ranger patrols.

c. The Partner shall provide:

- Blight resistant American Chestnut seeds and/or trees for the project.
- Expert analysis and advice on the project including location sites, soil testing, test orchards, and assistance with backcrossed and demonstration orchards.

ARTICLE III – METHOD OF PAYMENT

a. 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.

b. Upon completion of the Project and resolution of all relevant claims and appeals, the parties shall each conduct a final accounting and furnish the other with the results of its 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 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 exercise of 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, 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 Partner 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 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.

ARTICLE VIII - INDEMNIFICATION

The Partner 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 Partner fails to fulfill its 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 Partner elects to terminate this Agreement.

c. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties 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: *Martin L. Cipollini*
2277 Martha Berry Highway NW
Mount Berry, GA 30149

If to the Government: *William W. Fuller*
Operations Division Chief
U.S. Army Engineer District, Mobile
PO BOX 2288
Mobile, AL 36628

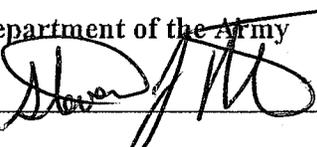
b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

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.

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 Engineer, Mobile District.

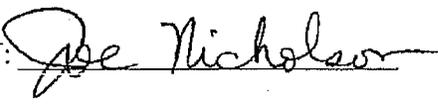
The Department of the Army

BY: 

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

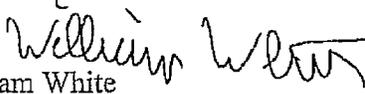
DATE: 31 Aug 11

American Chestnut Foundation,

BY: 

Joe Nicholson
Chapter President
Georgia Chapter

DATE: 8-18-2011


William White
Southern Regional Breeding Program
Coordinator
TACF

DATE: 8/25/11

Challenge Partnership Financial Work Sheet

Corps Project Name: Allatoona Lake

Work Project Title: Allatoona Lake Chestnut Restoration Project

POC Name: Shea Sennett

Address: 1138 GA Hwy Spur 20

City: Cartersville

State: GA Zip Code: 30120

Telephone: 678-721-6740

Location on Project: Allatoona Operations Project Management Office and Stamp Creek Day Use Area

Partner Organization 1: The American Chestnut Foundation Georgia Chapter

POC Name: Martin L. Cipollini

Address: 2277 Martha Berry Highway NW

City: Mount Berry State: GA Zip Code: 30149

Telephone: 706-290-2149

Proposed start date of work: January 2011.

Simple description of work to be accomplished through the partnership: Planting of a backcross American Chestnut Orchard, a Chesnut Demonstration site near the Allatoona Lake OPMO, installation of interpretive signs and creation of an educational trail.

| | Corps | Handshake Funds | Partner 1 | Partner 2 | Partner 3 | Total |
|----------------------------|----------------|-----------------|-----------------|-------------|-------------|-----------------|
| Salaries | \$7,000 | \$0 | \$0 | \$0 | \$0 | \$7,000 |
| Travel | \$0 | N/A | \$0 | \$0 | \$0 | \$0 |
| Materials and Supplies | \$2,000 | \$2,000 | \$10,000 | \$0 | \$0 | \$14,000 |
| Equipment Use | \$0 | \$2,000 | \$0 | \$0 | \$0 | \$2,000 |
| Funds Contributed | N/A | N/A | \$0 | \$0 | \$0 | \$0 |
| Personal Property | N/A | N/A | \$0 | \$0 | \$0 | \$0 |
| Volunteer Services | N/A | N/A | \$10,000 | \$0 | \$0 | \$10,000 |
| Other (explain in text) | | \$7,000 | | \$0 | \$0 | \$7,000 |
| Total | \$9,000 | \$11,000 | \$20,000 | \$0 | \$0 | \$40,000 |
| Share of Total Cost | 22.5% | 27.5% | 50.0% | 0.0% | 0.0% | 100% |