

**Challenge Cost Sharing Agreement**  
Between  
**The U.S. Army Corps of Engineers, Mobile District**  
And  
**Alabama Department of Conservation and Natural Resources, Division of Wildlife and Freshwater Fisheries**  
And  
**Alabama Tourism Department**

THIS AGREEMENT, entered into this 9<sup>th</sup> day of May, 2011, by and between the Department of the Army (hereinafter the "Government"), represented by The District Commander, U.S. Army Corps of Engineers, Mobile District; and the Alabama Department of Conservation and Natural Resources, Division of Wildlife and Freshwater Fisheries, (hereinafter "ADCNR"), represented by M.N. Pugh; and the Alabama Tourism Department, (hereinafter "ATD"), represented by Kerry Teague. The ADCNR and ATD will hereinafter be referred to as "Partners".

WITNESSETH THAT:

WHEREAS, the Government manages lands and waters on the Black Warrior River in Alabama which includes recreational opportunities for the public, and

WHEREAS, the ADCNR manages, protects, conserves, and enhances the wildlife and aquatic resources of Alabama for the sustainable benefit of the people of Alabama, and

WHEREAS, the ATD is the official travel and tourism agency for the state of Alabama and is interested in educating the people of Alabama as to the beautiful resources to be found here, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively on development of the West Alabama Birding Trail, 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 Project, and

WHEREAS, the Government and the Partners have 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, ADCNR and ATD agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Project" shall mean the designation of sites throughout Bibb, Hale, Greene, Pickens, Tuscaloosa, Marion, Lamar, Fayette, and Walker Counties which will be part of the West Alabama Birding Trail. Six sites will be located on U.S. Army Corps of Engineers property. They are: Forkland Campground, Runaway Branch #2 Park, Lock #5 Park, Jennings Ferry Campground, Old Lock #8 Park, and Rocky Branch Park. The six sites on Corps of Engineers property, as well as the other sites, will be publicized on a project website to attract visitors. Each site will also have a map or guide, site identification signs, roadway directional signs and an interpretive plan and panels to help attract and educate visitors.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partners directly related to execution 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 "Congress"), and with the assistance of 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 work is performed under contract or by the Government personnel) shall be exclusively within the control of the Government.
- b. The Government shall provide for website design and hosting, a map or guide for each site, site identification signs, roadway directional signs and an interpretive plan and panels for each U.S. Army Corps of Engineers site.
- c. ADCNR shall provide in-kind services through staff participation, evaluation, and overall expertise in wildlife observation and land management towards research for possible trail sites.
- d. ATD shall provide project management for the State, and organization, facilitation and management of all State funding secured for the project and inter-department coordination with ADCNR, Alabama Department of Transportation, and Alabama Department of Economic and Community Affairs.
- e. The Government and the Partners 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 and c of this Article.
- f. No Federal funds may be used to meet the Partners 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 Partners shall assist in preparing this worksheet by furnishing the Government with their estimated costs as per the itemized list found therein.

It is understood by all parties that the Partners shall pay costs of their work under Article II and the Government shall pay the costs of its work under Article II 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 and the Partners shall conduct a final accounting and furnish all parties 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 Partners shall assist in preparing with 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 any of the parties 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 dispute resolution with a qualified third party. The parties shall each divide all costs paid to the third party equally for any and all costs for 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 the following: 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 Partners act in an independent capacity and none are to be considered the officer, agent, or employee of the other.
- b. In the exercise of its rights and obligations under this Agreement, no party shall provide, without consent of the other parties, any contractor with a release that waives or purports to waive any rights either of the other parties may have to seek relief or redress against each such other party may have, or for violation of any law.

## ARTICLE VII – OFFICIALS NOT TO BENEFIT

No members of or delegate to the Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

## ARTICLE VIII – INDEMNIFICATION

The Partners shall hold and save the Government free from all damages, including damages to Government-supplied materials and equipment made available for the Partners use beyond normal wear and tear, arising from services the Partners perform or provide for in 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 either of the Partners individually or mutually fails to fulfill their obligations under this Agreement, the Government shall terminate this Agreement or suspend future performance under this Agreement unless it 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 calendar days thereafter any 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 any party elects to terminate this agreement pursuant to this Article, all parties shall conclude their activity relating to the Project.

- d. 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 certified mail, as follows:

If to the Partners:      Alabama Department of Conservation and Natural Resources,  
   Division of Wildlife and Freshwater Fisheries  
   64 N. Union Street, Suite 468  
   Montgomery, AL 36130

   Alabama Tourism Department  
   401 Adams Avenue, Suite 126  
   Montgomery, AL 36103

If to the Government: U.S. Army Corps of Engineers  
   Holt Resource Office  
   P.O. Box 295  
   Peterson, AL 35478

- b. A party may change the address to which such communications are going 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 communications 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.

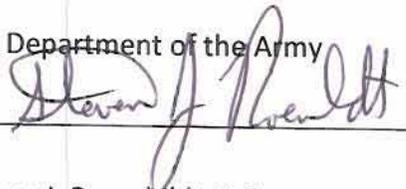
#### ARTICLE XI – CONFIDENTIALITY

To the extent permitted by the laws governing each party, 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, U.S. Army Corps of Engineers, Mobile District.

The Department of the Army

BY:



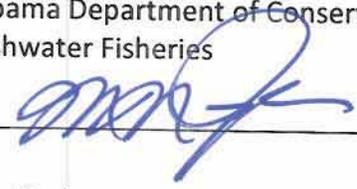
DATE:

27 SEP 11

Steven J. Roemhildt, P.E.  
Colonel, Corps of Engineers  
District Commander  
U.S. Army Corps of Engineers  
Mobile District

Alabama Department of Conservation and Natural Resources, Division of Wildlife and  
Freshwater Fisheries

BY:



DATE:

8/29/11

M.N. Pugh  
Partner 1 Authorized Official

Alabama Tourism Department

BY:



DATE:

8-31-11

Kerry Teaque  
Partner 2 Authorized Official

### Challenge Partnership Financial Work Sheet

Corps Project Name: Black Warrior & Tombigbee/Alabama-Coosa Project

Work Project Title: West Alabama Birding Trail

POC Name: Diane Gruman

Address: 11911 Holt Lock & Dam Rd. City: Peterson State: AL Zip Code: 35478

Telephone: 205-553-9373

Location on Project: Forkland Campground, Runaway Branch #2 Park, Lock #5 Park, Jennings Ferry Campground, Old Lock #8 Park, Rocky Branch Park

Partner Organization 1: Alabama Department of Conservation and Natural Resources, Division of Wildlife and Freshwater Fisheries

POC Name: M.N. Pugh

Address: 64 N. Union Street, Suite 468 City: Montgomery State: AL Zip Code: 36130

Telephone: 334-242-3469

Partner Organization 2: Alabama Tourism Department

POC Name: Kerry Teague

Address: 401 Adams Avenue, Suite 126 City: Montgomery State: AL Zip Code: 36103

Telephone: 334-242-4359

Partner Organization 3:

POC Name:

Address: City: State: Zip Code:

Telephone:

Proposed start date of work: October 2011

Simple description of work to be accomplished through the partnership: Develop several visitor friendly birding and nature viewing areas throughout West Alabama, which will be a part of the Alabama Birding Trail.

Double click on spreadsheet to access data entry fields:

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$1,500	N/A	\$0	\$0	\$0	\$1,500
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$25,000	\$0	\$0	\$0	\$25,000
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A		\$44,118		\$44,118
Personal Property	N/A	N/A	\$0	\$0	\$0	\$0
Volunteer	N/A	N/A	\$0	\$0	\$0	\$0
In-Kind Services	N/A	N/A	\$6,210	\$0	\$0	\$6,210
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$1,500</b>	<b>\$25,000</b>	<b>\$6,210</b>	<b>\$44,118</b>	<b>\$0</b>	<b>\$76,828</b>
<b>Share of Total Cost</b>	2.0%	32.5%	8.1%	57.4%	0.0%	100%

Explanations: The funds contributed by Alabama Department of Conservation and Natural Resources and Alabama Tourism Department, have all been put towards research, planning and development of this project. No funding has been given to the Corps for any purpose.