

Challenge Partnership Agreement

between

The Department of the Army

and

Auburn University Environmental Institute

THIS AGREEMENT, entered into this 13th day of February 2009, by and between the Department of the Army, (hereinafter the "Government"), represented by the Chief of Operations Division, U.S. Army Corps of Engineers, Mobile Engineer District and Auburn University's Environmental Institute, (hereinafter the "Partner"), represented by the Program Director.

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, Watchable Wildlife is becoming a growing hobby for many Alabama residents and visitors, and

WHEREAS, site improvements for butterfly gardens and other Watchable Wildlife, at the Millers Ferry Resource Office located on the Alabama-Coosa River Project, will increase the aesthetics, recreational and educational opportunities for the public, and

WHEREAS, the Partner is interested in promoting and assisting the Government in planning and constructing these gardens, and

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make these butterfly gardens available to the public, and

WHEREAS, the Partner, in order to assist the Government in this project, has voluntarily agreed to provide in-kind services including the designs for the gardens, brochures and interpretive panels and purchase field guides and other research books on butterflies and habitat, and pay a portion of the cost for garden materials, 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 design and construction of the butterfly gardens consisting of the following as generally described in the Butterflies for the Black Belt Project.

- Two butterfly gardens
- Interpretive panels
- One Kiosk

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 Partner shall provide designs for the two gardens, brochures and interpretive panels for the kiosk, purchase field guides and other research books on butterflies and habitat, to be maintained in the Millers Ferry Resource Office, and provide additional funding for materials needed for garden construction.

c. The Government shall approve final plans for the butterfly gardens, brochures, interpretive panels and kiosk, provide materials, tools, equipment and labor to install the

butterfly gardens, kiosk and interpretive panels, and provide on-going maintenance to the gardens, interpretive panels and kiosk,

d. 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 thru f of this Article.

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

f. The Partner shall not use, nor allow the use of, Government-supplied utilities and materials for other than authorized project purposes.

ARTICLE III – METHOD OF PAYMENT

a. The Government shall maintain current records of contributions provided by the Partner and a current projection of total project costs. At least quarterly, the Government shall provide the Partner with a report setting forth all contributions provided to date and the current projection of total project costs, of the components of total project costs, of each party's share of total project costs, and of the Partner's contribution required in accordance with Article II.b. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$22,467.00, and the Partner's contribution required under Article II.b. of this Agreement is projected to be \$9,895.00 . **Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partner.** In the event the Government determines that the Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required.

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.

1. In the event the final accounting shows that the total contribution provided by the Partner is less than its required share of total project costs, the Partner shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Partner's required share of total project costs.

2. In the event the final accounting shows that the total contribution provided by the Partner exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partner no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Partner, the Government shall seek such appropriations as are necessary to make the refund.

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, 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 the Partner fails to fulfill its obligations under this Agreement, the Chief of Operations Division, 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 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.

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 the Partner:	Dennis Block Program Director Auburn University Environmental Institute 1090 South Donahue Drive Auburn, AL 36849
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If to the Government:	William W. Fuller Chief, Operations Division U.S. Army Corps of Engineers Mobile Engineers District P.O. Box 2288 Mobile, AL 36628
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b. Either party 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.

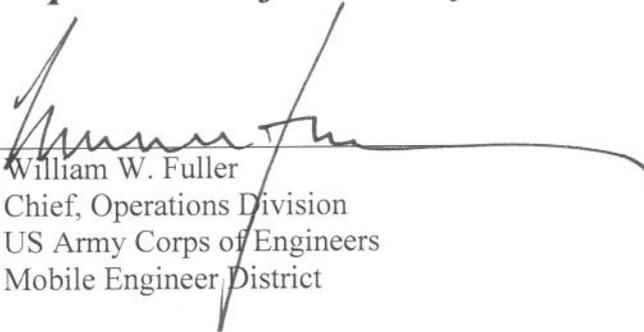
c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed as received by the addressee on the earlier of either the day of its actual receipt or the first business day following seven calendar days after it is mailed.

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 Chief of Operations Division, US Army Corps of Engineers, Mobile Engineer District.

The Department of the Army

BY: 
William W. Fuller
Chief, Operations Division
US Army Corps of Engineers
Mobile Engineer District

DATE: 5 Feb 09

Auburn University Environmental Institute

BY: 
Dennis Block
Program Director
Auburn University Environmental Institute
Auburn University

DATE: 2-10-09

Challenge Partnership Financial Work Sheet

Corps Project Name: Dannelly Reservoir, Alabama River Lakes

Work Project Title: Butterflies for the Black Belt

POC Name: Kimberly Turner-Hawkins

Address: 1226 Powerhouse Road City: Camden State: AL Zip Code: 36726

Telephone: 334-682-4244

Location on Project: Millers Ferry Resource Office

Partner Organization 1: Auburn University Environmental Institute

POC Name: Dennis Block

Address: 1090 South Donahue Drive City: Auburn State: AL Zip Code: 36849

Telephone: 334-844-4132

Proposed start date of work: February 2009

Simple description of work to be accomplished through the partnership: Funding will be used to purchase materials and supplies for the garden including site preparation materials, native butterfly plants, benches, interpretive panels and kiosk. This partnership will help build an educational/interpretive butterfly garden site at the USACE Millers Ferry Resource Office/Visitor Center.

	Corps	Handshake Funds	Partner 1	Partner 2	Partner 3	Total
Salaries	\$3,539	N/A	\$0	\$0	\$0	\$3,539
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$8,928	\$10,000	\$0	\$0	\$0	\$18,928
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$1,444	\$0	\$0	\$1,444
Volunteer Services	N/A	N/A	\$1,561	\$0	\$0	\$1,561
Other (explain in text)	\$0	\$0	\$6,890	\$0	\$0	\$6,890
Total	\$12,467	\$10,000	\$9,895	\$0	\$0	\$32,362
Share of Total Cost	38.5%	30.9%	30.6%	0.0%	0.0%	100%