

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
Minnesota Sea Grant
AND
City of Duluth

THIS AGREEMENT, entered into this ____ day of _____, 2017, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District Detroit, and Minnesota Sea Grant, (hereinafter "Partner One") represented by Dr. John Downing and City of Duluth, a Minnesota Municipal Corporation, (hereinafter "Partner Two").

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at the Lake Superior Maritime Visitor Center and Canal Park (the "LSMVC"), which includes recreational opportunities for the public, and

WHEREAS, the installation of a flag pole and a computer kiosk to notify the public of rip current conditions in the area will promote water safety, and

WHEREAS the Partners are interested in promoting and assisting the Government in providing the public with information on rip currents, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to make a rip current notification system available to the public, and

WHEREAS, the Partners, in order to assist the Government in this project have voluntarily agreed to provide services and materials, 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 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 creation of a rip current notification system on US Army Corps of Engineers property. Rip current notification includes:
 - 1. Government purchase and installation of a flag pole to be incorporated into the rip current notification system. This flag pole will be installed by the beach access on the south eastern parcel of Canal Park. Interpretive panels designed by the Minnesota Sea Grant will be attached to the pole to educate visitors on the flag meanings. The Government will purchase and install the interpretive panels onto the flag pole. Partner Two will use its best efforts to change the flag in accordance with the Duluth Fire Department Manual of Policies, Procedures and Guidelines section 211.03.
 - 2. Government purchase and installation of an informational kiosk within the front entry of the LSMVC to display information located on the parkpointbeach.org website. The Minnesota Sea Grant will design the kiosk and the interpretive panel surrounding the monitor, which will educate visitors about rip currents. The Minnesota Sea Grant will also contribute approximately \$500 worth of supplies to the kiosk display.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partners 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 One, 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 purchase and install an informational kiosk in the LSMVC and a 30' hurricane strength flag pole in Canal Park. The Government will also purchase and install interpretive panels for the flagpole and kiosk.
- c. Partner One shall provide a design for the interpretive panels to be installed on the flag pole in Canal Park. The panels will explain to visitors the meanings of the various flags. Partner One shall also provide a design for the kiosk and interpretive panel in LSMVC which will educate visitors about rip currents. Partner One will contribute approximately \$500 worth of supplies to the kiosk display.

d. Partner Two shall provide the flags for the flag pole in Canal Park. Partner Two shall also use its best efforts to change the flag on the Canal Park flag pole in accordance with the Duluth Fire Department Manual of Policies, Procedures and Guidelines section 211.03. Except for the provision of flags as provided for above and the fulfillment of its obligations under Article VIII below, Partner Two's payment obligations hereunder shall be solely in the form of the provision of in-kind services in the performance of its obligations hereunder.

e. 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 and c of this Article.

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

ARTICLE III - METHOD OF PAYMENT

a. The Government shall maintain current records of contributions provided by the Partners and a current projection of total project costs. At least quarterly, the Government shall provide the Partners 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 Partners' contribution required in accordance with Article II. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$15,550, and Partner One's contribution required under Article II.b. of this Agreement is projected to be \$2,500. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and Partner One.

b. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partners 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 a 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 a 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 one-third 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 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, 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 Partners 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, none of the parties shall provide, without the consent of the other parties, 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

Each Partner and its contractors 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 or damages due to the fault or negligence of third parties.

ARTICLE IX - TERMINATION OR SUSPENSION

a. If at any time the Partners fail to fulfill their 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 Partners, and 60 calendar days thereafter each party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that a 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 a party elects to terminate this Agreement pursuant to this Article, the parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article II of this Agreement.

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. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

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 One: Dr. John Downing
Director
MN Sea Grant
31 West College Street
Duluth, MN 55812

If to the Partner Two: Duluth Fire Department
Attn: Office of the Chief
602 West Second Street
Duluth, MN 55802

If to the Government: Denise K Wolvin
Lake Superior Maritime Visitor Center

US Army Corps of Engineers Detroit District
600 Lake Ave South
Duluth, MN 55802

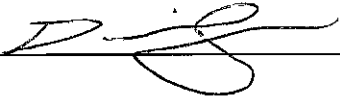
b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

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

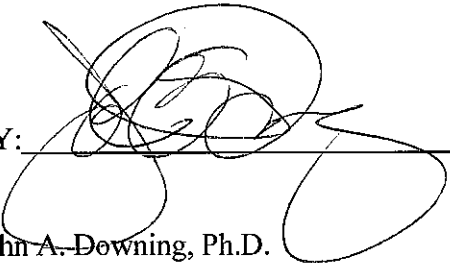
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party. IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Commander of the Detroit District.

The DEPARTMENT OF ARMY

BY:  _____

LTC Dennis P. Sugrue
District Commander
Detroit District

MINNESOTA SEA GRANT

BY:  _____

John A. Downing, Ph.D.
Director
Minnesota Sea Grant

CITY OF DULUTH

By _____
Its Mayor

Attest:

By _____
City Clerk

Approved:

Assistant City Attorney

Countersigned:

City Auditor

Challenge Partnership Financial Work Sheet

Corps Project Name: Lake Superior Maritime Visitor Center

Work Project Title: Rip Current Awareness Project

POC Name: Denise K. Wolvin

Address: 600 Lake Ave South

City: Duluth

State: MN Zip Code: 55802

Telephone: 218 – 788 - 6433

Location on Project: Duluth Ship Canal

Partner Organization 1: Minnesota Sea Grant

POC Name: Jesse Schomberg

Address: 31 West College Street

City: Duluth

State: MN Zip Code: 55812

Telephone: 218 - 726 - 6182

Partner Organization 2: City of Duluth Fire Department

POC Name: Brent Consie

Address: 602 West Second Street

City: Duluth

State: MN Zip Code: 55802

Telephone: 218 - 730 - 4391

Proposed start date of work: April 3, 2017

WORK PLAN

Through this partnership, a rip current flag pole will be installed on the southeast portion of Canal Park informing visitors of potential rip current activity. The flag pole will be consistent with the other poles currently being used within Duluth's Beach Flag Warning System and will be purchased and installed by the Corps. The Minnesota Sea Grant will provide the Corps with a design for the interpretive panels that will be attached to the flag pole in an electronic format. The Corps will manufacture and install the panels onto the flag pole. Partner Two will provide flags for the flag pole and will use its best efforts to change the flag on the Canal Park flag pole in accordance with the Duluth Fire Department Manual of Policies, Procedures and Guidelines section 211.03. .

An informational kiosk will be constructed and installed within the lobby of the Lake Superior Maritime Visitor Center that will display the website parkpointbeach.org and educate visitors about rip currents. The kiosk design will be agreed upon by MN Sea Grant and the Corps. The MN Sea Grant will provide a plan for the kiosk design and the surrounding interpretive panel which will educate the public about rip currents. The Corps will manufacture the kiosk and the interpretive panels and oversee the installation in the lobby of the LSMVC. The MN Sea Grant will contribute approximately \$500 worth of supplies to the kiosk display.

Double click on spreadsheet to access data entry fields:

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Total
Salaries	\$3,000	N/A	\$2,000	\$1,050	\$6,050
Travel	\$0	N/A	\$0	\$0	\$0
Materials and Supplies	\$3,000	\$6,000	\$500	\$0	\$9,500
Equipment Use	\$0	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$0
Volunteer	N/A	N/A	\$0	\$0	\$0
In-Kind Services	N/A	N/A	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0
Total	\$6,000	\$6,000	\$2,500	\$1,050	\$15,550
Share of Total Cost	38.6%	38.6%	16.1%	6.8%	100%