

**PARTNERSHIP AGREEMENT
FOR TECHNICAL, PLANNING AND ENGINEERING ASSISTANCE
BETWEEN THE DEPARTMENT OF THE ARMY AND THE
MINNESOTA DEPARTMENT OF NATURAL RESOURCES
FOR THE LOWER SAINT LOUIS RIVER, DULUTH HARBOR, MN
AREA OF CONCERN (AOC)**

THIS AGREEMENT is entered into this 2nd day, of November, 2020, by and between the Department of the Army (hereinafter called the “Government”) represented by the District Engineer executing this Agreement, and the Minnesota Department of Natural Resources (MNDNR) (hereinafter called the “Sponsor”), represented by the MNDNR Commissioner or his designee executing the Agreement.

WITNESSETH, that:

WHEREAS, Section 401 of the Water Resources Development Act of 1990 (Public Law 101-640), as amended authorizes the Secretary of the Army to provide technical, planning and engineering assistance to States and local governments in the development and implementation of Remedial Action Plans (RAP) for Areas of Concern (AOC) in the Great Lakes identified under the Great Lakes Water Quality Agreement of 1978 and requires the non-Federal interests to contribute, in cash (contributed funds) or by providing in-kind contributions or services, thirty-five (35) percent of the cost of such assistance; and

WHEREAS, the Lower Saint Louis River Duluth Harbor, Minnesota has been identified as an Area of Concern under the Great Lakes Water Quality Agreement of 1978, which includes Duluth, MN and Superior, WI; and

WHEREAS, the Sponsor has identified the need for technical, planning, and engineering assistance as described in the Scope of Work (Appendix A) attached to this Agreement. The services will assist in developing and implementing the Remedial Action Plan for the St. Louis River Area of Concern (AOC); and

WHEREAS, the Sponsor has the authority and capability to provide a cash contribution or in-kind contributions or services; hereinafter set forth, and is willing to participate in the cost sharing and financing of the services in accordance with the terms of this Agreement; and

WHEREAS, the Sponsor has received funding that may only be used for work in the St. Louis River as appropriated by the Minnesota State Legislature from the Outdoor Heritage Fund, M.L. 2017, Ch. 91, Art. 1, Sec. 2, subd. 5(f); and

WHEREAS, the Sponsor is willing to deposit funds, in cash and perform certain work; hereinafter known as in-kind services, as defined in Article I.5 of this Agreement and contribute these in-kind services, as described in Appendix D. The total cash contribution and in-kind services described in Appendix C is equal to thirty-five (35) percent of the preliminary cost estimate, as credit toward its share of the cost of the Government’s technical, planning and engineering assistance; and

WHEREAS, the Government is authorized to accept and expend funds received from the Sponsor to assist in the development and implementation of the Remedial Action Plan for the St. Louis River Area of Concern.

NOW THEREFORE, the parties agree as follow:

ARTICLE I - DEFINITIONS

For the purpose of this Agreement:

1. The term, technical, planning and engineering assistance costs, shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Technical, planning and engineering assistance costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.
2. The term, phase, shall mean the time period for conducting an agreed amount of work based on available Federal funding.
3. The term, Scope of Work (SOW), means a description of the work to be performed, as shown in Appendix A. The SOW will be attached to this Agreement and not be considered binding on either party and is subject to change by the Government, in consultation with the Sponsor.
4. The term, fiscal year, shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.
5. The term, in-kind service (s), shall mean a service, to be provided by the Sponsor, which is compatible, as determined by the Government, with the technical assistance being provided under this Agreement. The in-kind services, described in Appendix D, are fixed fee items. The dollar value of the services, shown in Appendix C, is based on the Sponsor's proposal that has been reviewed and approved by the Government.
6. The term, negotiated costs, shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the SOW.
7. The term, Preliminary Cost Estimate and Cost Apportionment, shall mean a preliminary estimate of costs and the estimated Federal and non-Federal share of costs and/or in-kind services for the technical, planning, and engineering assistance established by the Government for which cash payments are to be made to the Government, and/or in-kind services are to be provided as a credit toward cash payment. The Preliminary Cost Estimate and Cost Apportionment may change subject to negotiations. All such cash payments from the Sponsor shall be made by Electronic Funds Transfer (EFT) for the full amount of the phase in accordance with procedures established by the Government.

ARTICLE II - OBLIGATIONS OF PARTIES

1. The Government, using Sponsor contributed funds and/or in-kind services and Congressionally appropriated funds, shall provide the required technical, planning, and engineering assistance, substantially in compliance with the SOW for each phase as attached

in Appendix A and in conformity with applicable state and federal laws and regulations and mutually acceptable standard of engineering practice. The Sponsor, using non-Federal funds, shall provide in-kind services substantially in compliance with the SOW attached as Appendix A and in conformity with applicable state and Federal laws and regulations and mutually acceptable standards of engineering practice.

2. The Government shall contribute sixty-five (65) percent of the total cost of providing the technical, planning and engineering assistance as specified in the Preliminary Cost Estimate and Cost Apportionment for the comprehensive assistance as shown in Appendix B. The Sponsor shall contribute thirty-five (35) percent of the total cost, in cash and/or in-kind services as specified in Preliminary Cost Estimate and Cost Apportionment for the comprehensive assistance as shown in Appendix B, of the technical, planning and engineering assistance set forth in the SOW. Total cost of the assistance is currently estimated at \$800,000 as specified in Appendix B.
3. For each phase of assistance, the Government shall contribute sixty-five (65) percent of the total cost of providing the technical, planning and engineering assistance and the Sponsor shall contribute thirty-five (35) percent of the total cost, in cash and/or in-kind services. The Preliminary Cost Estimate and Cost Apportionment for the current phase are shown in Appendix C.
4. No Federal funds may be used to meet the Sponsor's cost share of technical, planning and engineering assistance costs under this Agreement unless such Federal funds have been appropriated for such purpose and the Federal agency providing the funds verifies in writing that such funds are authorized to carry out the technical, planning and engineering assistance.
5. The award and administration of any contract with a third party for services in furtherance of this Agreement, which obligates Federal appropriations, shall be exclusively within the control of the Government.
6. Before a party to this Agreement may bring suit in any court concerning any issues relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other form of nonbinding alternative dispute resolution mutually acceptable to the parties. The respective parties will bear their own costs.
7. At any time by mutual consent of the parties, this Agreement and/or SOW may be amended in writing and include signatures by the appropriate authorities of the respective parties.
8. This Agreement shall terminate at the completion of those technical, planning and engineering assistance activities identified in the SOW; or, this Agreement may be terminated before completion upon agreement of the respective parties.
9. If the parties agree to terminate before completion, the Government shall prepare a final accounting of the costs for technical, planning, and engineering assistance provided, which display: (1) costs incurred by the Federal Government; (2) cash contributions and/or in-kind contribution or services by the Sponsor; and (3) disbursement by the Government of all funds. Subject to the availability of funds, within ninety (90) days after the final accounting, the Government shall reimburse the Sponsor for non-Federal cash contributions that exceed

the Sponsor's required share of the total costs. Within ninety (90) days after the final accounting, the Sponsor shall provide the Government any cash contributions required to meet the Sponsor's required share of the total costs of the technical, planning, and engineering assistance provided, as provided in Article II, paragraph 2.

10. In the event that any (one or more) of the provisions of this Agreement is found to be invalid, illegal, or unenforceable, by a court of competent jurisdiction, the validity of the remaining provisions shall not in any way be affected or impaired and shall continue in effect until the Agreement is completed.
11. This Agreement shall commence on the date the last signatory signs this Agreement (the "Commencement Date").
12. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared but shall be included in calculation the Federal Participation Limit. The Sponsor's costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared and shall be paid solely by the Sponsor without reimbursement or credit by the Government.

ARTICLE III - MAINTENANCE OF RECORDS AND AUDIT

1. The parties shall develop procedures for the maintenance by the Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of six years after the final accounting. The Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.
2. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in total project costs, but shall be included in calculating the Federal Participation Limit.
3. To the extent permitted under applicable Federal laws and regulations the Government shall allow the Sponsor to inspect books, records, documents or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Sponsor, provide to the Sponsor or independent auditors any such information necessary to enable an audit of the Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Sponsor without reimbursement or credit by the Government.

ARTICLE IV – APPLICABLE FEDERAL LAWS AND REGULATIONS

1. In carrying out its obligations under this Agreement, the Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; and 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davison-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act)."

The parties having read and understood the foregoing terms of the Agreement do by their respective signature dated below, hereby agree to the terms hereof.

DEPARTMENT OF THE ARMY:

BY: Scott M. Katalenich Date: 2020.11.02
 11:47:45 -05'00'
 Scott M. Katalenich
 Lieutenant Colonel, U.S. Army
 District Engineer, Detroit District

Date: 2 November 2020

MINNESOTA DEPARTMENT OF
NATURAL RESOURCES:

DocuSigned by:
David P. Olfelt
 850B10991E174F7...
 David P. Olfelt
 Director, Division of Fish and Wildlife
 Minnesota Department of Natural Resources

Date: July 23, 2020

DS CK June 25, 2020 DS BP June 25, 2020

STATE ENCUMBRANCE
VERIFICATION

Individual certifies that funds have been encumbered as
 required by 6A.15 and 16C.05.

DocuSigned by:
Mary Lavelle
 E8D1EBB8991E42E...
 June 24, 2020
 Date: _____

SWIFT Contract/PO # 178932 / 3-172770

COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

DocuSigned by:
PaZong Thao
 5A76479B1B5340E...
 PaZong Thao
 Name: _____

Date: July 29, 2020

DS KM July 24, 2020 ADMIN ID 67453

CERTIFICATION REGARDING LOBBYING

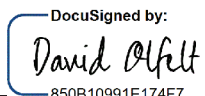
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

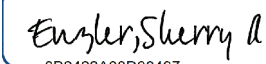
BY: 
850B10991E174F7...
David P. Olfelt
Director, Division of Fish and Wildlife
Minnesota Department of Natural Resources

Date: July 23, 2020

CERTIFICATE OF AUTHORITY

I, Enzler, Sherry A, do hereby certify that I am a legal officer of the Minnesota Department of Natural Resources, that the Minnesota Department of Natural Resources is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Minnesota Department of Natural Resources in connection with the Technical, Planning and Engineering Assistance for the Lower St. Louis River, Duluth Harbor, MN AOC project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the person who has executed this Agreement on behalf of the Minnesota Department of Natural Resources has acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 24 day of July, 2020.

DocuSigned by:

Signature: 8B2422A00D08497...
Sherry Enzler,
General Counsel,
Minnesota Department of Natural Resources

APPENDIX A
SCOPE OF WORK (SOW)
FOR TECHNICAL, PLANNING AND ENGINEERING ASSISTANCE
ASSOCIATED WITH THE REMEDIAL ACTION PLAN FOR THE LOWER SAINT
LOUIS RIVER, DULUTH HARBOR, MN
AREA OF CONCERN (AOC)

TITLE: Technical, Planning and Engineering Assistance Associated With the Remedial Action Plan for the Lower St. Louis River, Duluth Harbor, MN. AOC

CWIS/P2:

COST SHARING: 65% - FED, 35% - NONFED

DATE OF REQUEST JUSTIFICATION: 19 March 2020

PROJECT SPONSOR: Minnesota Department of Natural Resources (MNDNR)

PURPOSE: Provide the technical, planning and engineering assistance under the authority of Section 401 (a) of the Water Resources Development Act of 1990, as amended.

The assistance will consist of, but is not limited to, project management, coordination with all agencies involved in the Remedial Action Plan for the AOC, strategic planning, environmental and engineering design and bid specifications, hydrologic modeling, risk assessment, permitting, and monitoring plans.

SCOPE OF WORK: The Department of the Army (Government) and MNDNR (Sponsor) will develop detailed work plans for the Mud Lake site identified in the Remedial Action Plan for the project area (AOC) to be implemented over a two year period. The initial phase of work will establish an overall Project Management Plan, change/adaptive management plan, and a communication plan. Detailed work plans (shown below) will be developed based upon costs and funding and will be accomplished through subsequent work phases. Each work phase will result in products that provide value independent of future phases.

A site specific work plan will be developed for the Mud Lake site. Upon completion, the Government will deliver products of this action to the Sponsor. Reported costs are estimated through the project period. All technical, planning and engineering assistance provided will be in implementation of the St. Louis River AOC remedial action plan.

1. *Mud Lake Site*. The approximately 130 acre restoration site will include restoration of shallow bay habitat, enhancement of hydrologic connection and potential beneficial reuse of excavated materials for clean upland cover or biological medium for other remediation or restoration sites in the AOC. Pre-construction work will consist of investigation of hydrodynamic modeling, methods to restore hydrologic connectivity, consistency and chemical composition of non-native legacy wood waste and other materials, geotechnical investigations, and evaluation of alternatives for shallow bay habitat restoration. These activities will be coordinated with remediation staff at the Minnesota Pollution Control Agency and all other pertinent partners invested in achieving remedial and restoration

outcomes at the site. Facilitate the completion of all tasks that will incorporate stakeholder and partner engagement and build consensus on design concepts. The process will deliver a feasibility analysis, archeological surveys, environmental support, hydrologic modeling, post-project monitoring plan and other design strategies for the project in a sequence determined by the project sponsor. Final design documents will be delivered by September 1, 2021, and costs ready for bid package development by December 31, 2021. Provide technical input in the application for all relevant permits, lease agreements/easements for the project. \$700,000.00

2. *Operational Capacity/Project Management.* In alignment with the management process identified in the July 2013 AOC Remedial Action Plan Update, the Corps will provide project management services including but not limited to: provide a Corps PM Proxy; travel; vertical reporting; quarterly fiscal and program progress reporting; and assistance with integration and critical path determination of AOC activities. The Government will submit semi-annual reports based on expenditures made and work performed in the format prescribed by the Sponsor so that the Sponsor can submit reports for each appropriation as required to the Lessard-Sams Outdoor Heritage Council (LSOHC). Reports must be submitted by January 20 and July 20, of each year. \$30,000.00.
3. *Risk Assessment/Monitoring.* The Corps will provide expert technical support for the review and assessment of risks that may result from movement of in-place sediments and the placement of dredged material for habitat restoration. Proposed dredged material placement options will be reviewed for compliance with Section 404 of the Clean Water Act (CWA) requirements which include assessment of the potential short-term or long-term effects of a proposed discharge of dredged material on the physical, chemical, and biological components of the aquatic environment. Section 404(b) (1) Guidelines requires consideration of cumulative and secondary impacts on aquatic ecosystem structure/function that may result from changes in physical substrate, water circulation, suspended particulate/turbidity, and contaminant concentrations. \$40,000.00
4. *A/E Contracting Services.* The Corps will provide contract procurement consistent with Federal Laws and Army regulations including but not limited to: Scope of Work review; negotiation assistance; proposal review, compliance review, vertical coordination, contract award, and payments approval. \$10,000.00
5. *Contract Administration and Construction Management.* The Corps will provide contract administration including but not limited to: Contractor coordination, compliance and enforcement; issue resolution; Dr. Check's web-based consolidated review process for contractor oversight, quality control and scope of work consultation. \$10,000.00
6. *Contingency.* Funds set aside for USACE to advise and provide technical assistance on items including but not limited to: Unforeseen changes in site conditions such as a flood, storm, or ice events, discovery of an unknown historic item(s); unforeseen changes in commodity prices; unforeseen elements that need characterization or design, unforeseen data gaps, HTRW concerns, contract delays or modifications. \$10,000.00

APPENDIX B
FOR TECHNICAL, PLANNING AND ENGINEERING ASSISTANCE
FOR THE LOWER SAINT LOUIS RIVER, DULUTH HARBOR, MN
AREA OF CONCERN (AOC)

- 1. Cost Estimate:** The cost estimate, established by the Government and provided below, is for multi-year assistance of the Corps of Engineers' under the Great Lakes Remedial Action Plan (RAP) Program for the Lower St. Louis River/Duluth Harbor AOC project. The Minnesota Department of Natural Resources (MNDNR) is the non-federal Sponsor. Below is a budgetary estimate of the up-coming project. Actual costs may differ depending on available federal funds at the time of the project.

PRELIMINARY COST ESTIMATE				
Item No.	Work Activity	Federal Share (\$)	Non-Federal Share (\$)	Total Cost (\$)
001	Mud Lake	\$520,000	\$280,000	\$800,000
TOTALS		\$520,000	\$280,000	\$800,000

- 2. In-Kind Services:** There are no in-kind services.

- 3. Cost Apportionment:** The Federal cost responsibility and non-Federal responsibility, are summarized below:

MNDNR (Non-Federal share).....\$ 280,000.00
U.S. Army Corps of Engineers (Federal share).....\$ 520,000.00
Total Federal Share + Non-Federal Share = \$ 800,000.00

APPENDIX C

PRELIMINARY COST ESTIMATE AND COST APPORTIONMENT

- 1. Cost Estimate:** The cost estimate, established by the Government and provided below, is the Corps of Engineers' assistance under the Great Lakes RAP Program to the Lower St. Louis River, Duluth Harbor, MN AOC and the Minnesota Department of Natural Resources (MNDNR), the Sponsor.

PRELIMINARY COST ESTIMATE				
Item No.	Work Activity	Federal Share (\$)	Non-Federal Share (\$)	Total Cost (\$)
001	At the site known as Mud Lake	455,000	245,000	700,000
002	Operational Capacity/Project Management	19,500	10,500	30,000
003	Risk Assessment and monitoring:	26,000	14,000	40,000
004	Contract Administration and Construction Management: Contractor coordination, compliance, and enforcement. Issue resolution. Dr. Check's oversight	6,500	3,500	10,000
005	A/E Contracting Services: Proposal review, compliance review, vertical coordination, payment approval.	6,500	3,500	10,000
006	Contingency: Address unforeseen items as listed in Appendix A	6,500	3,500	10,000
SUB-TOTALS				
TOTALS		\$520,000	\$280,000	\$800,000

- 2. In-Kind Services:** There are no in-kind services.

- 3. Cost Apportionment:** The Federal cost responsibility and non-Federal responsibility, as described in Exhibit A, are summarized below:

The MNDNR (Non-Federal share: cash)	\$ 280,000
The MNDNR (Non-Federal share: in-kind services).....	\$ 0
U.S. Army Corps of Engineers (Federal share).....	<u>\$ 520,000</u>
Total Federal Share + Non-Federal Share =	\$800,000

**APPENDIX D
IN-KIND WORK
FOR THE ST. LOUIS RIVER – DULUTH HARBOR
AREA OF CONCERN (AOC)**

Minnesota Department of Natural Resources (MNDNR) financial match contribution (35% non-federal share) = \$280,000.00

Portion of 35% needed in Cash:

Minnesota Department of Natural Resources
Total Contribution needed: \$ 280,000

In-Kind Services Portion of 35%:

There are no in-kind services.