

CHALLENGE PARTNERSHIP AGREEMENT
BETWEEN
THE U.S.ARMY CORPS OF ENGINEERS, SOUTH ATLANTIC DIVISION REGIONAL
WATER SAFETY TEAM
AND
Boat U.S.

THIS AGREEMENT, entered into this day of June 24, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer South Atlantic Division Regional Water Safety Team, and Boat U.S. (hereinafter the "Partner").

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters in seven states and 27 lake projects in the Southeast which include recreational opportunities for the public, and

WHEREAS, the Government is interested in promoting water safety, reduce public fatalities, and promote wear of life jackets in the Southeastern States

WHEREAS, a primary objective Government's water safety program is to increase the life jacket wear rate by making them accessible to visitors through the Life Jacket Loaner Program, and

WHEREAS, the Partner, is interested in promoting the wear of life jackets and assisting the Government by supporting the life jacket loaner program

WHEREAS, it is mutually beneficial to the Government and the Partner to work cooperatively to make life jackets available to the public in an effort to reduce public fatalities

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 Corps civil work projects in the South Atlantic Division.

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 maintenance and expansion of the regional Life Jacket Loaner program in the South Atlantic Division by establishing new life jacket loan stations and resupplying existing life jacket loan stations
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to the expansion 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 donated materials provided by the Partners, shall expeditiously implement 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 may purchase new life jackets at a discounted price through Boat U.S. or other sources to maintain existing life jacket loan stations. All Federal Acquisition laws and regulations requiring vendor competition when exceeding the micro-purchase threshold will be followed. Purchases within the micro-purchase threshold will follow FAR 13.202. Life jackets will only be purchased from the partner or other sources where there is a demonstrated need not otherwise satisfied (via contributions or challenge cost-sharing from other sources). The Government will pay all shipping costs to distribute the donated life jacket loaner kits to the participating lakes. The Government shall also provide temporary signs, banners or other media to inform the public about the purpose and intent of the lifejacket loaner program and to acknowledge the partners sponsorship. Recognition of the sponsor will follow the Government's "Donation, Fundraising and Recognition Guidelines" and will take the form of a credit line to acknowledge the partners contribution at each loaner station where the donated jackets are located.

c. The Partner shall provide 40 Life Jacket Loaner Kits (12 life jackets in each kit of varying sizes) to the Government over a two year period commencing on 7/1/2009 and ending on 7/1/2011

d. The Government shall perform a final accounting to determine the contributions provided by all parties to this Agreement and to determine where each has met its obligations under paragraphs b. and c. of this Article.

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

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 \$50,000, and the Partner's contribution required under Article II.b. of this Agreement is projected to be donated materials (life jackets) valued at \$10,000. Such estimates are subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partner.

b. The Partner shall provide the contribution required under Article II.b. of this Agreement in accordance with the following provisions: Not more than 60 calendar days after the signing of the agreement.

c. 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.

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 costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE IV - 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 V - 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, with 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 or action that such other party may have or for violation of any law.

ARTICLE VI - OFFICIALS NOT TO BENEFIT

No member of 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 thereafter.

ARTICLE VII - INDEMNIFICATION

The Partner shall hold and save the Government free from all damages arising from services it performs or provides for the construction, operations, maintenance, repair, replacement, and rehabilitation of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - TERMINATION OR SUSPENSION

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the Division 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. 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.

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 IX - 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: BoatU.S. Foundation
Chris Edmonston, Vice President
147 Old Solomon's Island Road
Suite 513
Annapolis, MD 21401
(703) 461-2878 x8356
FAX: (410) 897-0396
Cedmonston@BoatUS.com

If to the Government: U.S. Army Corps of Engineers
SAD Regional Water Safety Team
Tanya Grant
Hartwell Lake Office
U.S. Army Corps of Engineers
5625 Anderson Hwy.
Hartwell, GA 30643
(706) 856-0323
FAX: (706) 856-0358
tanya.c.grant@usace.army.mil

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.

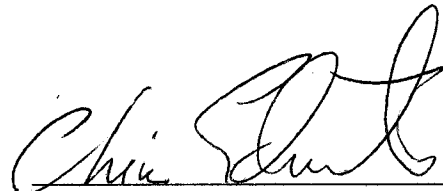
ARTICLE XI - CONFIDENTIALITY

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.

The Department of the Army

Boat U.S.

TODD T. SEMONITE
Brigadier General, US Army
Commanding



CHRIS EDMONSTON
Vice President
Boat U.S.

DATE _____

DATE 6/24/2009