

# CHALLENGE PARTNERSHIP AGREEMENT

Between

THE DEPARTMENT OF THE ARMY

and

The Paul Bunyan Scenic Byway Association

and

JM Plein Consulting

and

The Whitefish Area Lodging Association

and

MN Backyard Birds

and

Crosslake-Ideal Lions

THIS AGREEMENT by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer, U.S. Army Corps of Engineers, St. Paul District, and those entities identified above (hereinafter the "Partners") represented by their respective signatories below.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at the Crosslake Recreation Area which provide recreational opportunities for the public, and

WHEREAS, the construction of an Environmental Interpretive Garden (hereinafter the "Interpretive Garden" or the "Project") at the Crosslake Recreation Area will increase recreational opportunities for the public, and

WHEREAS, the Partners are interested in promoting and assisting the Government in designing and constructing this Interpretive Garden, and

WHEREAS, it is mutually beneficial to the Government and the Partners to work cooperatively to make this Interpretive Garden available to the public, and

WHEREAS, each of the Partners have voluntarily agreed to make contributions (in the form of construction supplies and materials, work-in-kind, or some combination thereof) for the design and construction of the Interpretive Garden, 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 design and construction of the Interpretive Garden, and

WHEREAS, the Government and the Partners have the full authority and capability to perform as hereinafter set forth and intend to cooperate in the design and construction of the Interpretive Garden in accordance with the terms of this agreement;

NOW THEREFORE, the Government and the Partners agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

a. The term "Project" shall mean the transformation of the east lawn near the Crosslake Recreation Area office into an environmental interpretive garden. The project is consistent with and implements recreation and educational opportunities identified in the Master Plan for the Crosslake Recreation Area and is being funded, in part, through the Corps Handshake program. The garden will consist of a winding pathway through a butterfly garden, a house garden for local critters, and a representational "community shared" agricultural garden. The garden area will also provide interactive play areas with opportunities to learn about the Corps of Engineers, water safety, and Paul Bunyan. The pathway will lead to a new doorway providing entry into an existing learning center.

b. The term "total project costs" shall mean all costs incurred by the Government and the Partners directly related to the design and 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 construction supplies and materials, and work-in-kind provided by 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 to contracts awarded by the Government, and the performance of all work on the Project (whether the work is performed

under Government contract, by one or more Partners, by volunteers, or by Government personnel) shall be within the exclusive control of the Government. Nothing in the foregoing sentence shall relieve the Project Partners from their obligations under this Agreement.

b. The Government shall provide oversight of the design and construction of the Project and will contract for the installation of the new entrance door into the Learning Center as well as provide other materials and supplies as outlined in the attached appendix titled "Challenge Partnership Financial Work Sheet."

c. The Partners shall provide equipment, labor, materials and supplies as outlined in the attached appendix titled "Challenge Partnership Financial Work Sheet."

d. The Government shall perform a final accounting to determine the contributions provided by each party to this agreement and to determine whether 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 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 provide each Partner a report setting forth all contributions provided by each party upon completion of the project. Payment for the materials as detailed in the attached "Challenge Partnership Financial Work Sheet" shall be the responsibility of the respective party. A copy of all time sheets showing in-kind service hours and volunteer hours, as well as receipts showing payments associated with design and construction of the Project, shall be provided to the Government to determine total project costs. Total project costs are estimated to be \$103,901. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government or the Partners.

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.

### ARTICLE IV - DISPUTE RESOLUTION

As a condition precedent to any of the parties bringing any suit for breach of the Agreement, that party must first notify the other partner(s) 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 the parties engaged in the dispute. The parties to the dispute shall each divide all costs paid to the third party equally for any and all costs for services provided by such 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 Regulation 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 their independent capacities and no party is to be considered the officer, agent, or employee of another.

b. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives (or purports to waive) any rights that any other party may have to seek relief or redress against such contractor 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 there from.

#### ARTICLE VIII - INDEMNIFICATION

Each Partner shall hold and save the Government free from all damages arising from services it performs or the services, materials and supplies it 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.

#### ARTICLE IX - TERMINATION OR SUSPENSION

a. If at any time any of the Partners, individually or mutually, fails to fulfill its 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 best interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests (including other Partners) 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 any 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 affected Partner elects to terminate this Agreement.

c. In the event that any party elects to terminate this Agreement pursuant to this Article, the Government and the terminating parties shall conclude their mutual activities relating to the Project and proceed to a final accounting in accordance with Article II of this Agreement. Nothing in the foregoing sentence precludes the non-terminating Partners and the Government from proceeding with 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. 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 Partners: Paul Bunyan Scenic Byway Association  
PO Box 401  
Pequot Lakes, MN 56472

JM Plein Consulting  
33883 County Road 39  
Pequot Lakes, MN 56472

Whitefish Area Lodging Association  
PO Box 103  
Pequot Lakes, MN 56472

MN Backyard Birds  
PO Box 765  
Brainerd, MN 56401

Crosslake-Ideal Lions  
PO Box 4  
Crosslake, MN 56442

If to the Government: U.S. Army Corps of Engineers  
Crosslake Recreation Area  
35507 County Road 66  
PO Box 36  
Crosslake, MN 56442

b. A party may change the address to which such communications are to be directed by giving written notice to the other parties 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.

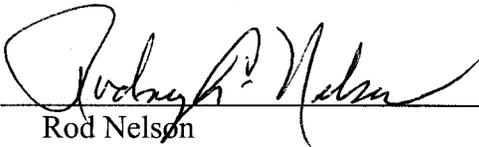
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Government.

The Department of the Army

By:   
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DANIEL C. KOPROWSKI  
COL, EN  
Commanding

Date: 21 May 2015

Paul Bunyan Scenic Byway Association

By:   
\_\_\_\_\_  
Rod Nelson  
Board Chair

Date: 5/21/15

JM Plein Consulting

By: Mary Plein  
Mary Plein

Date: 5/5/15

Whitefish Area Lodging Association

By: Kathy Moore  
Kathy Moore

Date: 5/7/15

Crosslake-Ideal Lions

By: Scott Gallaway  
Scott Gallaway

Date: 5/5/15

MN Backyard Birds

By: Judd Brink  
Judd Brink  
Owner

Date: 5/8/15

## Challenge Partnership Financial Work Sheet

Corps Project Name: Crosslake Recreation Area

Work Project Title: Environmental Interpretive Gardens

POC Name: Corrine Hodapp

Address: 35507 County Rd 66 PO Box 36      City: Crosslake      State: MN      Zip Code: 56442

Telephone: 651 - 290 -5790

Location on Project: Crosslake Recreation Area Office East Lawn

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Partner Organization 1: Paul Bunyan Scenic Byway Association

POC Name: Rod Nelson

Address: PO Box 401      City: Pequot Lakes      State: MN      Zip Code: 56472

Telephone: 612 - 803 - 7916

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Partner Organization 2: JM Plein Consulting

POC Name: Mary Plein

Address: 33883 County Road 39      City: Pequot Lakes      State: MN      Zip Code: 56472

Telephone: 218 - 543 - 6479

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Partner Organization 3: Whitefish Area Lodging Association

POC Name: Kathy Moore

Address: PO Box 103      City: Pequot Lakes      State: MN      Zip Code: 56472

Telephone: 218 - 963 - 3409

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Partner Organization 4: MN Backyard Birds

POC Name: Judd Brink

Address: PO Box 765      City: Brainerd      State: MN      Zip Code: 56401

Telephone: 218 - 838 - 4784

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Partner Organization 5: Crosslake-Ideal Lions

POC Name: Scott Gallaway

Address: PO Box 4      City: Crosslake      State: MN      Zip Code: 56442

Telephone: 218-927-2125

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Double click on spreadsheet to access data entry fields:

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Partner 4
Salaries	\$7,000	N/A	\$5,000	\$0	\$0	\$0
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$5,000	\$30,000	\$16,971	\$0	\$0	\$175
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$10,000	\$0
Volunteer	N/A	N/A	\$9,020	\$0	\$0	\$135
In-Kind Services	N/A	N/A	\$0	\$600	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$12,000</b>	<b>\$30,000</b>	<b>\$30,991</b>	<b>\$600</b>	<b>\$10,000</b>	<b>\$310</b>
<b>Share of Total Cost</b>	11.5%	28.9%	29.8%	0.6%	9.6%	0.3%

	Partner 5	Partner 6	Partner 7	Partner 8	Partner 9	Partner 10
Salaries	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Materials and Supplies	\$20,000	\$0	\$0	\$0	\$0	\$0
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	\$0	\$0	\$0	\$0	\$0	\$0
Personal Property	\$0	\$0	\$0	\$0	\$0	\$0
Volunteer	\$0	\$0	\$0	\$0	\$0	\$0
In-Kind Services	\$0	\$0	\$0	\$0	\$0	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$20,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Share of Total Cost</b>	19.2%	0.0%	0.0%	0.0%	0.0%	0

	Partner 11	Partner 12	Partner 13	Partner 14	Partner 15	Total
Salaries	\$0	\$0	\$0	\$0	\$0	\$12,000
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$0	\$0	\$0	\$0	#REF!
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$0
Funds Contributed	\$0	\$0	\$0	\$0	\$0	\$20,000
Personal Property	\$0	\$0	\$0	\$0	\$0	\$10,000
Volunteer	\$0	\$0	\$0	\$0	\$0	\$9,155
In-Kind Services	\$0	\$0	\$0	\$0	\$0	\$600
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$103,901</b>
<b>Share of Total Cost</b>	0.0%	0.0%	0.0%	0.0%	0.0%	100%

Explanations:

The Corps will:

The Corps will provide project oversight and the contract that will install the new entrance door into the Learning Center in the Project office building. The handshake funds will be used to purchase supplies and materials for the waterline and solar lighting installation as well as materials for the garden installations and interpretive displays.

The Partner(s) will:

Paul Bunyan Scenic Byway Association: 400 hours of volunteer service towards coordinating with the University of Minnesota, planning, and planting and \$16,971 in supplies and materials.

The Byway has received a \$10,000 grant from the University of Minnesota, Central Regional Sustainable Development Partnership program. These funds will be used to fund college of Design student interns for planning of power and water lines as well as pathways and signage. Remaining funds will be used to purchase supplies and materials.

JM Plein Consulting: \$600 in-kind service developing and maintaining an online blog promoting the gardens and interaction of community with photography, image prep/graphics, copy-writing and online production.

Whitefish Area Lodging Association: \$10,000 for the design, creation and placement of decorative benches that will be installed throughout the project.

MN Backyard Birds: \$175 in supplies and materials for the building of a cardinal bird feeder along with 6 hours of volunteer service to build and install the feeder

Crosslake-Ideal Lions: \$20,000 in funds contributions for completion of the Butterfly Gardens.