

COOPERATIVE AGREEMENT BY AND BETWEEN THE
UNITED STATES ARMY ENGINEER DISTRICT, DETROIT
AND THE LAKE SUPERIOR MARINE MUSEUM ASSOCIATION,
A MINNESOTA NONPROFIT ASSOCIATION

THIS COOPERATIVE AGREEMENT is made and entered into by and between the United States Army Corps of Engineers, Detroit District, hereinafter referred to as the Corps, and the Lake Superior Marine Museum Association, a Minnesota nonprofit Association, hereinafter referred to as the Association.

WITNESSETH, THAT:

WHEREAS, this Cooperative Agreement shall be executed in duplicate original;

WHEREAS, this Cooperative Agreement is made and entered into for the mutual benefit of the Corps and the Association;

WHEREAS, the Lake Superior Maritime Visitor Center (the "Visitor Center") is owned by the United States of America, and is managed by the Corps;

WHEREAS, the Visitor Center is located on real estate owned, operated and maintained by the Corps known as the Duluth/Superior Harbor water resources project ("the Real Property"), the Visitor Center and the Real Property together being hereinafter referred to collectively as "the Project";

WHEREAS, the Corps accomplishes goals such as natural resource management, interpretation, public recreation, and visitor services at the Project;

WHEREAS, the Corps achieves one of its operational goals by providing public recreation at the Visitor Center through public education and visitor services, which includes a wide range of activities, programs and events;

WHEREAS, the Association is a nonprofit Association organized and existing under and pursuant to the laws of the State of Minnesota; is organized exclusively for charitable and educational purposes under and pursuant to the laws of the State of Minnesota and section 501(c)(3) of the Internal Revenue Code of the United States of America; and is in good standing with the Office of the Secretary of State, State of Minnesota;

WHEREAS, the Association has Section 501(c)(3) nonprofit tax status with the Internal Revenue Service and the taxing authorities of the State of Minnesota;

WHEREAS, the Corps and the Association mutually recognize there are significant national public benefits to a visitor center (or other facility) at the Project which uses interpretive techniques and supports the Corps' goals for education, perpetuation of national pride, preservation of national heritage, safety, and enjoyment of the people of the United States.

WHEREAS, one of the Association's corporate purposes is to cooperate with the U.S. Army Corps of Engineers so as to acquire, preserve and exhibit marine artifacts, and to present programs pertaining to the Lake Superior and to disseminate such information to the general public through Visitor Center

attendance, newsletters and meetings and to achieve the above with growing membership of involved citizens who will provide financial resources through their membership; and

WHEREAS, the Association has the authority to assist the Corps in its presentation to the public of the natural, cultural, historical and project related features of the Project and the maritime industry of Lake Superior through programs, exhibits and materials;

WHEREAS, the Corps has the authority, pursuant to the Federal Water Recreation Act, Public Law 89-72; the National Historic Preservation Act, as amended, Public Law 89-665; the National Environmental Policy Act, Public Law 91-190; the Archeological Resource Protection Act, as amended, Public Law 96-95; to provide Natural Resources Management programs, activities and interpretive functions;

WHEREAS, the Corps wishes to accept, and the Association wishes to provide the hereinafter described services to the visiting public at the Project;

NOW, THEREFORE, the parties agree as follows:

1. The Corps authorizes the Association to provide, and the Association agrees to provide the interpretive, educational, and maintenance services as hereinafter described to the visiting public and the Corps.

2. CORPS RESPONSIBILITIES.

- a. Timely Review and Approval. The Corps agrees to timely review and approve or disapprove the Association proposals, programs, special events, exhibit design, suggestions and other activities in which the Association might wish to engage in at the Project.

- b. Use of Government Facilities.

- i. The Association, may, as part of its cooperative activities, occasionally request the use of the Corps' facilities at the Project. Requests for special use shall be made in writing or email to the Area Engineer or his/her authorized representative stating the duration of the event and its purpose. Special use will be approved or disapproved within 30 days. If approved the Corps agrees to provide at no cost to the Association such facilities, utilities, janitorial services and routine and general maintenance when incidental to the normal operation of the facility by the Corps.

- ii. Should the Association require facilities, utilities and services over and above that which the Corps would normally expend to operate the Project, the Association will reimburse the Corps with funds, materials or services at an agreed upon, but nominal cost in recognition of the services that the Association is contributing to the public.

- iii. A separate Lease instrument will be granted to the Association for the use of government owned real property at the Project. The instrument will not merge with this Agreement.

iv. The Association may request to install a contributions box at the Visitor Center. A contributions box shall include a sign stating that the funds received go to the Association. The location and physical display of a contributions box is at all times subject to approval by the Corps.

3. ASSOCIATION RESPONSIBILITIES.

A. Corporate Requirements.

i. The Association shall maintain nonprofit tax status in accordance with federal and state laws. The Association's Articles of Association and By-Laws shall comply with the statutory requirements of the State of Minnesota. The Association will make available for inspection, at the request of the Corps, documents demonstrating nonprofit tax status. The Association shall provide the Corps with annual financial statements and tax returns. The Association shall provide the Corps with other financial statements upon request.

ii. This Cooperative Agreement shall automatically terminate if Section 501(c)(3) nonprofit tax status is not maintained by the Association.

iii. The Association shall procure and shall maintain liability insurance which shall indemnify, save, hold harmless, and defend the United States of America against all fines, claims, damages, losses, judgments, and expenses arising out of, or from any omission, or activity of the Association, its directors, officers, employees, invitees, agents, and/or volunteers in connection with activities conducted at the project pursuant to the terms of this Cooperative Agreement. The Association shall require its insurance carrier to furnish a copy of the referenced insurance policy to the Corps, or, if acceptable to the Corps, a certificate of insurance evidencing the procurement of such insurance.

iv. The Association will exercise reasonable care to prevent damage to any Government property used or occupied during its operation and shall, insofar as possible, protect all such property. Any property of the United States of America damaged or destroyed by the Association, in carrying out the terms of this Cooperative Agreement, shall be promptly repaired or replaced at no expense to the Corps and to the satisfaction of the District Commander or his/her authorized representative.

B. Activities and Services.

i. The Association may offer educational and interpretive services which support the Visitor Center and/or the Project. This includes assisting, planning, designing, supporting, implementing and conducting interpretive and educational programs, activities and exhibits at the Visitor Center or the Project with the approval of the Area Engineer or his/her authorized representative.

ii. The Association may offer maintenance or other services which support the mission of the Corps and its recreation program.

iii. The Association will cooperate with the Corps in the following activities:

a. Produce and make available to visitors to the Visitor Center by sale or free distribution, suitable interpretive aids and educational literature to increase the visitors' understanding and appreciation of the natural history, cultural, historical and man-made features of the Duluth/Superior Harbor, Lake Superior, and the Corps of Engineers.

b. Assist the Corps in the development of and improvement of interpretive aids, exhibits, displays, programs and materials at the project.

c. Assist in the sponsorship and coordination of special events and workshops at the Project, which may include the purchase of prizes, giveaways or awards to contest winners.

d. Assist in all practical ways in the interpretive, educational and community programs of the Corps at the Visitor Center or the Project for the benefit of the American public. This could include, but is not limited to, providing an internet connection for technology-based exhibits, providing hardware and/or software for interpretive exhibits on computers or telephones, and installing a ship-watching webcam on the exterior of the Visitor Center. The Association may display images from the ship-watching webcam on its website, however, the Association shall not display the Corps' name or logo on its website without prior approval by the Corps.

e. Acquire specimens and/or objects pertaining to the history, culture, environment or recreational activities of the Duluth/Superior Harbor, Lake Superior or the Corps for the purpose of adding them to the collection, exhibits, or programs at the Visitor Center, and assist in preservation programs of specimens and/or objects acquired for the Visitor Center.

f. Jointly prepare with the Corps an annual action plan for events, activities, displays, and exhibits at the Project. This plan will be reviewed, updated, and signed each year.

C. Sales Conducted at the Visitor Center.

i. As part of this Cooperative Agreement, the Association may operate a sales area at the Visitor Center on a continuous or intermittent basis. All aspects of such sales activities are subject to prior approval by the District Commander or his/her authorized representative.

ii. The Association is hereby authorized to sell and/or distribute interpretive and educational items at the Visitor Center, such as publications, maps, audiovisual aids, crafts and other objects directly related to the interpretive and educational themes of the Visitor Center, the Great Lakes Region and the Corps. The Corps may request the Association to sell specific items of interpretive value. In addition, the Association may request to sell sundry items, such as refreshments, personal safety and convenience items. The Association may install vending machines at the Visitor Center upon approval of the District Commander or his/her authorized representative.

iii. The Association shall order, receive, inventory, stock and otherwise manage all items offered for sale and/or distribution at the Visitor Center.

iv. The Association will not sell any item at the Visitor Center that has not been approved by the District Commander or his/her authorized representative. Prices of said items will be submitted and approved in writing in advance by the District Commander or his/her authorized representative. The Corps will notify the Association of its approval within 30 days of receipt of each request. The Association will only sell items that are of high quality and will sell items at their fair market value.

v. The Association will not sell any original artifacts, sacred items or antiquities to which the Archaeological Resource Protection Act, as amended, would apply, whether or not such items were discovered on lands owned or controlled by the United States of America.

vi. The Association will display the sales items in good taste and in keeping with the general design and decor of the facility which houses the sales area.

vii. The Association sales are restricted to a location in the Visitor Center approved by the Corps, which will be kept clean and presentable at all times.

viii. The Association will operate the sales area at the Visitor Center within the approved hours of operation. The specific hours of operation shall be approved in advance by the District Commander or his/her authorized representative.

ix. The Association shall use net revenues from on-site sales at the Visitors Center for the improvement of exhibits, programs and activities at the Visitor Center or the Project.

D. Fiscal Management.

i. The Association will conduct its fiscal operations in accordance with accepted business practices. This includes using an appropriate funds accountability system, purchase orders, receipts, invoices and inventory records.

ii. The Corps may review the fiscal records of the Association at any time during the term of this Cooperative Agreement.

iii. The Association shall annually submit a complete financial report to the Corps which shall include a written summary of Association activities for the year.

iv. The Association shall use all net revenue generated from the Association's activities at the Visitor Center and the Project, including but not limited to sales activities and monetary contributions received at the Visitor Center, towards the operation and maintenance of the Visitors Center and the Project.

4. JOINT RESPONSIBILITIES.

A. Donation of Interpretive Services or Materials.

i. The Association may, at the discretion of its Board of Directors, loan materials to the Corps. The Corps reserves the right to accept or decline, without obligation, any loan from the Association. The Corps retains the sole right to decide in what manner loaned materials shall be used for display, study or other interpretive uses at the Visitor Center; provided, the Corps shall provide to the Association for review and comment its plan and design for the display of any loaned materials.

ii. The Corps currently possesses and stores materials owned by the Association and loaned by the Association to the Corps at the Project. The Corps and the Association agree to work cooperatively together to generate a written and photographic inventory of all items currently owned by the Association and loaned by the Association to the Corps. The inventory will identify the item(s) being loaned and the duration of the loan. The Corps shall not store or display materials owned by the Association unless the materials are loaned to the Corps in writing.

iii. The Corps will take reasonable precautions to protect materials (including but not limited to historical objects and specimens) loaned by the Association to the Corps. The Corps assumes no other responsibility for these materials.

iv. All materials loaned by the Association to the Corps shall be stored or displayed at the Visitor Center or the Project. The Corps agrees to provide the Association with reasonable access to materials loaned by the Association to the Corps for the purpose of inspecting and cataloging the loaned materials from time to time.

v. The Corps or the Association can terminate a loan of materials at any time. The termination of a loan of materials must be communicated in writing. Upon written notice of a loan's termination, the Corps will return loaned materials not on display to the Association within 30 days of the loan's termination in writing. Materials currently on display will be returned to the Association within 10 days of the materials' removal from an exhibit. Regardless of which party terminates a loan of materials (either the Corps or the Association), the Corps will return the loaned materials to the Association by designating a physical pick-up time at the Visitor Center with an Association employee or volunteer. If the parties fail to communicate the termination of a loan in writing, the Corps' physical return of loaned materials to the Association shall automatically terminate the Association's loan to the Corps with respect to the specific materials returned.

vi. The Association may, at the discretion of its Board of Directors, donate materials or services to the Corps. The Association shall comply with all applicable regulations and policies concerning gifts and donations to the Corps. The Corps will only accept unconditional gifts and donations from the Association in accordance with Army Regulation 1-100, Gifts and Donations, 15 November 1983. Gifts and donations of materials or services may be accepted or declined with no obligation by the Corps.

B. Personnel.

i. The Association and the Corps shall each designate, in writing, a representative and an alternate who will act as points of contact for the purpose of implementing this Cooperative Agreement.

ii. The Association will provide such personnel as are reasonably necessary to conduct, operate and manage its cooperative activities. This does not preclude Corps personnel, during the course of their normal duties, from assisting the association with nominal duties, including sales.

iii. Corps personnel may not serve in a voting capacity on the Board of Directors of the Association, or as Treasurer for the Association. Corps personnel may serve in an advisory capacity on the Board of Directors, or on committees of the Association. If the Association has a membership program, Corps personnel may join and participate in membership activities. However, Corps personnel may not act as the official representative of the Association in any matter relating to the Corps or the terms of this Cooperative Agreement.

iv. The Corps will orient Association personnel, staff and volunteers with regard to Corps rules, regulations and requirements, particularly with regard to the Lake Superior Maritime Visitor Center facilities, safety and appropriate emergency procedures. Association staff and volunteers involved in visitor contact will receive additional orientation in regard to interpretive services. All orientation will be conducted prior to assumption of duties.

v. Association employees or volunteers may not wear the Corps uniform or items of clothing that resemble the Corps uniform. Employees and volunteers of the Association, when working at duties that bring them into contact with the public at the Visitor Center and Duluth Harbor, will wear visible identification that identifies them as an Association employee or volunteer.

5. ASSIGNMENT.

The Association shall not transfer or assign this Cooperative Agreement or any part thereof or interest therein, directly or indirectly, voluntary or involuntary, to any other person or entity.

6. MODIFICATIONS AND AMENDMENTS.

Modifications and amendments to this Cooperative Agreement may be undertaken upon the mutual written consent of the Corps and the Board of Directors of the Association.

7. DURATION.

This Cooperative Agreement shall be effective for five years commencing on the date following the execution of this Cooperative Agreement by the Corps. This Cooperative Agreement shall automatically renew for another five-year period on October 1 of the last year, unless notice of cancellation is given by either the Corps or the Association before the date of renewal. The Corps and the Association each reserve the right to terminate this Cooperative Agreement at any time upon 60-

days written notice. Prior to giving such notice, the parties shall meet to discuss the reasons for such termination.

8. MISCELLANEOUS.

A. The rights and benefits conferred by this Cooperative Agreement shall be subject to the laws of the United States of America governing the Corps of Engineers and to the rules and regulations promulgated thereunder, whether now in force, or hereafter enacted or provided; and the mention of specific restrictions, conditions and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation and control by the Corps.

B. This Cooperative Agreement in no way obviates the responsibilities of the Corps or the Association as established by the Lease Agreement. This Agreement will automatically terminate upon the termination or cancellation of the Lease Agreement.

C. The Association agrees that all its activities shall be conducted in accordance with all applicable laws and regulations, both state and Federal.

IN TESTIMONY WHEREOF, witness the signature of the Association, Lake Superior Marine Museum Association, a Minnesota nonprofit Association, by its duly qualified and elected President, Konnie LeMay (attestation by its Secretary) pursuant to a Resolution duly passed and adopted by the affirmative vote of a majority of the duly qualified and elected members of the Board of Directors of said Association, this 1 day of February, 2021.

LAKE SUPERIOR MARINE MUSEUM ASSOCIATION,
A MINNESOTA NONPROFIT ASSOCIATION

BY:

Konnie LeMay
Konnie LeMay
President

ATTEST:

Elissa Husby
Elissa Husby
LSMMA Secretary

IN TESTIMONY WHEREOF, witness the signature of the Corps, acting by and through the District Commander, United States Army Engineer District, DETROIT, this 18th day of March, 2021.

UNITED STATES ARMY ENGINEER DISTRICT, DETROIT

BY: Scott M. Katalenich

Scott Katalenich
Lieutenant Colonel, U.S. Army Corps of Engineers
District Commander