

**COOPERATIVE AGREEMENT  
BETWEEN THE  
U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT  
AND THE  
BLEU MOON PRODUCTIONS, INC.**

This Cooperative Agreement is for the mutual benefit of both parties and is between the United States Army Corps of Engineers, Wilmington District, W. Kerr Scott Lake (hereinafter referred to as the Corps) and Bleu Moon Productions, Inc. (hereinafter referred to as BLEU MOON), acting through the Director of the Board of Trustees or the Board's designee.

WITNESSETH:

WHEREAS, the Corps operates the W. Kerr Scott Lake project, for the congressionally authorized purposes of water supply, flood risk management, fish and wildlife enhancement, recreation, and to promote the Corps' missions, which include stewardship of environmental and cultural resources;

WHEREAS, the Corps operates its projects for the benefit of the public. The public requires information and facilities for the safe and appropriate use of Corps projects. This information may be conveyed through a variety of interpretive media such as; programs, exhibits, and displays which rely heavily upon the use of audio visual materials, photographs, models, interactive displays, lectures, artifacts and other materials which illustrate the Corps, its mission and activities in and around the W. Kerr Scott Lake project as well as the archaeological, natural and cultural history of the area; and

WHEREAS, The Corps achieves its operational goals through cooperation with state and local government partners, non-profit organizations, and members of the public using a wide range of activities, programs and events; and

WHEREAS, BLEU MOON is a Section 501(c) (3) non-profit organization created to support tourism in Wilkes County through theatre and film; including the production of the historical drama "Tom Dooley: A Wilkes County Legend"

WHEREAS, BLEU MOON has the authority to assist the Corps in its mission through contributions and carrying out activities and programs;

WHEREAS, The Corps has the authority pursuant to PL 102-580, Water Resources Development Act, 1992 Section 203 (106 Stat. 4838, 33 U.S.C. 2325) to accept contributions to provide for operation and management of recreation facilities and protection and restoration of natural resources at civil works water resource projects.

WHEREAS, the Corps has authority, pursuant to Section 4 of the 1944 Flood Control Act, 16 U.S.C. 460d, to permit the maintenance and operation of recreation facilities at water resource development projects by local interests and may provide out grants to non-profit organizations for park and recreational purposes;

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 89-190; and the Archaeological Resource Protection Act, as amended, Public Law 96-95, to provide Natural Resources Management programs, activities and interpretive functions;

NOW, THEREFORE, the parties agree as follows:

1. The Corps authorizes BLEU MOON to provide, and BLEU MOON agrees to provide, the hereinafter described contributions to include services, equipment, materials, supplies, and funds for the benefit of the visiting public and the Corps missions at W. Kerr Scott Lake.

2. CORPS RESPONSIBILITIES

A. Timely Review and Approval.

The Corps agrees to review and give necessary approvals or disapprovals in a timely manner to BLEU MOON for any and all proposals, programs, special events, suggestions and other activities in which BLEU MOON might wish to engage.

B. Use of Government Facilities, including Park and Natural Resource areas:

1. Should BLEU MOON, as part of its cooperative activities, require the use of Corps facilities at W. Kerr Scott Lake the Corps agrees, that in recognition of the services BLEU MOON is contributing to the public, to provide at no cost to BLEU MOON use of equipment, facilities, utilities, janitorial services, and routine and general maintenance when incidental to the normal operation of the facility by the Corps.

2. Should BLEU MOON require facilities, utilities and services over and above what the government would normally require for operation of the facility, or area used by BLEU MOON, BLEU MOON will reimburse the Corps at an agreed upon, but nominal cost in recognition of the services that BLEU MOON is contributing to the public.

3. Should the need arise, a separate real estate instrument will be granted to the BLEU MOON for the use of government owned real property. The instrument will not merge with the Agreement.

3. BLEU MOON RESPONSIBILITIES

A. Corporate Requirements.

1. BLEU MOON's Articles of Incorporation and By-Laws shall comply with the requirements of the state(s) in which BLEU MOON is incorporated. Non-profit 501(c) (3) status must be maintained in accordance with state and Federal laws. BLEU MOON will make available for inspection, at the request of the Corps, documents demonstrating non-profit status.

2. This agreement will automatically terminate if non-profit status is not maintained.

3. BLEU MOON shall have liability insurance which indemnifies, saves, holds harmless, and defends the United States against all fines, claims, damages, losses, judgments and expenses arising out of, or from any omission, or activity of BLEU MOON in connection with activities under this Agreement.

4. BLEU MOON 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.

#### B. Activities

1. BLEU MOON may offer educational and interpretive services which support the mission of the Corps and/or the project. This includes assisting, planning, designing, implementing and conducting interpretive and educational programs, activities, and exhibits.

2. BLEU MOON may offer contributions which support the Corps missions and programs.

3. BLEU MOON may with prior written approval of the lessee and in full compliance with the lease, independently and/or in cooperation with other partners plan and carry out special events in leased areas on government property at W. Kerr Scott Lake.

4. BLEU MOON will cooperate with the Corps in the following activities:

a. Planning and carrying out public activities and events.

b. Developing and producing interpretive and educational literature, signs, exhibits, materials, and audio-visual aids to increase public understanding and appreciation of the natural, cultural, historical, and man-made features of W. Kerr Scott Lake.

#### C. Sales Option

1. As part of this Agreement, BLEU MOON may operate sales areas on a continuous or intermittent basis in locations approved by the Operations Project Manager.

2. BLEU MOON is hereby authorized to sell and/or distribute interpretive and educational items such as publications, maps, audiovisual aids, crafts, recreational gear, refreshments and other objects directly related to the purposes of the project and the missions of the Corps. The Corps may request BLEU MOON to sell specific items of interpretive value.

3. BLEU MOON shall order, receive, inventory, stock, and otherwise manage all items offered for sale and/or distribution.

4. BLEU MOON will sell only items that are appropriate and of high quality. BLEU MOON will not sell any item that has not been approved by the District Commander or his authorized representative. BLEU MOON will sell items at their fair market value and prices of said items will be submitted and approved in writing, in advance by the District Commander or their authorized representative.

5. BLEU MOON 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.

6. BLEU MOON will display the sales items in good taste and in keeping with the general design and decor of the sales area.

7. BLEU MOON's sales are restricted to locations approved by the Corps, which will be kept clean and presentable at all times.

#### D. Fiscal Management.

1. BLEU MOON shall conduct its fiscal operations in accordance with accepted business practices. This includes the appropriate use of a funds accountability system, purchase orders, receipts, invoices, and inventory records.

2. BLEU MOON shall annually submit (within 135 days following the end of each fiscal year) a complete financial report to the Corps which includes a written summary of BLEU MOON income and expenses.

3. The Corps may review the fiscal records of BLEU MOON at any time during the term of this Agreement.

#### 4. JOINT RESPONSIBILITIES.

##### A. Loan / Donation of Services or Materials.

1. BLEU MOON may, at the discretion of its governing Board, donate materials and/or services or loan items to the Corps. The Corps reserves the right to accept or decline without obligation, any donation or loan by BLEU MOON.

2. The Corps will take reasonable precautions to protect items loaned by BLEU MOON, but assumes no other responsibility for these items. The Corps will return loaned property or items as requested by BLEU MOON.

##### B. Personnel

1. BLEU MOON and the Corps shall each designate, in writing, a BLEU MOON member and a Corps person and alternates who will act as points of contact for the purpose of implementing this Agreement.

2. BLEU MOON 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 BLEU MOON with nominal duties, including sales.

3. Corps employees may not, in their official capacity, serve on the board, either as a voting member or as non-voting member, including as an ex-officio member, or as an officer or trustee of a cooperating association, friends group or other Corps partner organization. However, Corps employees may be appointed as points of contact or liaisons to non-federal partner organizations as part of their official duties when appropriately appointed. Corps personnel may not be appointed as liaisons to organizations in which they are officers or directors. Corps personnel may not act as the official representative of BLEU MOON in any matter relating to the Corps, or the terms of this Agreement. However, if BLEU MOON has a membership program, Corps personnel may join and participate in membership activities in their personal capacity.

4. The Corps will orient all BLEU MOON personnel, staff and/or volunteers with regard to Corps rules, regulations, requirements, particularly with regard to the project and facilities, safety, and appropriate emergency procedures. BLEU MOON 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.

5. BLEU MOON employees, or volunteers may not wear the Corps uniform, or items of clothing that resemble the uniform. Employees and volunteers of BLEU MOON, when working at duties that bring them into contact with the public, will wear visible identification that identifies them as a BLEU MOON employee or volunteer.

#### 5. ASSIGNMENT.

No transfer or assignment of this Agreement or any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made by BLEU MOON unless approved in writing by the Corps.

#### 6. MODIFICATION AND AMENDMENTS.

Modifications and amendments to this agreement in the form of Supplemental Agreements may be made from time to time upon the mutual written consent of the District Commander for the Corps and the Board of Trustees of BLEU MOON.

#### 7. DURATION.

This agreement shall be effective for five years commencing on the day following the ratification of this agreement by the Corps. This agreement will automatically renew for another five year period on October 1 of the last year, unless notice of cancellation is given by either party before the date of renewal. The Corps reserves the right to terminate the agreement, or any part thereof, in 60 days upon written notice. Prior to giving such notice, the Corps will meet with BLEU MOON to set forth the reasons for such termination.

8. MISCELLANEOUS.

A. The rights and benefits conferred by this agreement shall be subject to the laws of the United States governing the U.S. Army Corps of Engineers and to the rules and regulations promulgated there under 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 Agreement in no way obviates the responsibilities of the Corps or BLEU MOON as may be required by a real estate instrument. In situations where BLEU MOON receives a real estate out grant for facilities or areas from the Corps, this Agreement would become null and void upon the termination or cancellation (not planned expiration) of the outgrant.

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

IN WITNESS WHEREOF, Bleu Moon Production, Inc. has caused this agreement to be executed this 5 day of Oct, 20 16

By Robin P. Hamby  
Robin Hamby  
President, Bleu Moon Productions, Inc.

IN WITNESS WHEREOF, The Corps has caused this agreement to be ratified this 26 day of Oct, 20 16

By Kevin P. Landers Sr.  
Kevin P. Landers Sr.  
District Commander