

**Cooperative Agreement  
between the  
U.S. Army Corps of Engineers, Wilmington District,  
and  
Friends of the Mountains-to-Sea Trail, Inc.**

This Cooperative Agreement is for the mutual benefit of both parties and is between the United States Army Corps of Engineers, Wilmington District, Falls Lake (hereinafter referred to as the "Corps") and Friends of the Mountains-to-Sea Trail, Inc., a North Carolina Corporation (hereinafter referred to as "FMST"), acting through the Executive Director of the Board of Directors or the Board's designee.

This agreement replaces the Cooperative Agreement between the United States Army Corps of Engineers, Wilmington District and the FMST dated March 6<sup>th</sup>, 2013.

WITNESSETH:

WHEREAS, The Corps operates the Falls Dam and Lake project, in Wake Forest, North Carolina, for the congressionally authorized purposes of public recreation, flood damage reduction, water supply, water quality, and fish and wildlife enhancement; 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, FMST has as its purpose to build and maintain the North Carolina Mountains-to-Sea-Trail (NCMST) across the state of North Carolina including the portion approximately 60 miles long on Corps property at Falls Lake, to promote hiking as an outdoor recreational opportunity and to protect and maintain public lands that the NCMST travels on; and,

WHEREAS, The Corps operates its programs for the benefit of the public. The public requires information and facilities for the safe and appropriate use of Corps projects. This information is 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 Falls Lake; and,

WHEREAS, The Corps and FMST mutually recognize there are significant public benefits to a visitor center and other facilities which promote a public awareness of Falls Lake and its recreational opportunities, including the NCMST. In addition, both parties mutually recognize the benefit to both the Corps and FMST of having the Falls Lake visitor center be a central promotion point for the entire NCMST.

WHEREAS, FMST 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 United States Code (USC) 2328) 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 FMST to provide, and FMST agrees to provide, the hereinafter described contributions to include volunteer services, equipment, materials, supplies, and funds for the benefit of the visiting public and the Corps missions at Falls Lake.

2. CORPS RESPONSIBILITIES

A. Timely Review and Approval.

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

B. Use of Government facilities

I. Should FMST, as part of its cooperative activities, require the use of Corps facilities at Falls Lake the Corps agrees, that in recognition of the services FMST is contributing to the public, to provide at no cost to FMST such facilities, utilities, janitorial services, and routine and general maintenance when incidental to the normal operation of the facility by the Corps.

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

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

3. FMST RESPONSIBILITIES

A. Corporate Requirements.

1. FMST's Articles of Incorporation and By-Laws shall comply with the requirements of the state(s) in which FMST is incorporated. Non-profit 501(c)(3) status must be maintained in accordance with state and Federal laws. FMST 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 501(c)(3) status is not maintained.

3. FMST 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 FMST in connection with activities under this Agreement.

4. FMST 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. FMST may offer volunteer services, contributed funds, materials, supplies, and personal property which support the mission of the Corps to manage recreation facilities and natural resources, the project, and the NCMST. This includes assisting, planning, designing, implementing and conducting interpretive and educational programs, activities, and exhibits.

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

3. FMST may with the prior written approval of the lessee and in full compliance with the lease and existing MOA, independently and/or in cooperation with other partners plan and carry out special events on government property at Falls Lake leased to other agencies.

4. FMST may cooperate with the Corps in the following activities:

a. Planning and carrying out public activities and events.

b. Assist in developing, producing, and review of 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 Falls Lake and/or the NCMST.

c. Assist in the sponsorship and coordination for professional workshops, training opportunities, and special events.

#### C. Sales Option

1. As part of this Agreement, FMST may operate a sales area at the Falls Lake Visitor Assistance Center on a continuous or intermittent basis.

2. FMST is hereby authorized to sell and/or distribute interpretive and educational and promotional items such as publications, maps, audiovisual aids, crafts, and other objects directly related

to the interpretive and educational themes of the project, region, Corps, and NCMST. The Corps may request FMST to sell specific items of interpretive value.

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

4. FMST will sell only items that are appropriate and of high quality. FMST will not sell any item that has not been approved by the District Commander or his/her authorized representative. FMST 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 his/her authorized representative.

5. FMST 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. FMST will display the sales items in good taste and in keeping with the general design and decor of the sales area.

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

#### D. Fiscal Management.

1. FMST 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. FMST 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 FMST activities for the year.

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

#### 4. JOINT RESPONSIBILITIES.

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

1. FMST may, at the discretion of its Board of Directors, loan materials and/or donate services to the Corps. The Corps reserves the right to accept or decline without obligation, any service, or loan by FMST.

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

## B. Personnel

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

2. FMST 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.

3. Corps employees may not 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 FMST in any matter relating to the Corps, or the terms of this Agreement. However, if FMST has a membership program, Corps personnel may join and participate in membership activities in their personal capacity.

4. The Corps will orient all FMST personnel, staff and/or volunteers with regard to Corps rules, regulations, and requirements, particularly with regard to the project and facilities, safety, and appropriate emergency procedures. FMST 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. FMST employees, or volunteers may not wear the Corps uniform, or items of clothing that resemble the uniform. Employees and volunteers of FMST, when working at duties that bring them into contact with the public, will wear visible identification that identifies them as a FMST 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 the FMST 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 Directors of FMST.

## 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 and the FMST reserve the right to terminate the agreement, or any part thereof, at any time upon written notice. Prior to giving such notice, the parties will meet 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 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 Agreement in no way obviates the responsibilities of the Corps or FMST as may be required by a real estate instrument. In situations where FMST 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. FMST agrees that all its activities shall be conducted in accordance with all applicable laws and regulations, both state and Federal.

IN WITNESS WHEREOF, Friends of the Mountains-to-Sea Trail, Inc. has caused this agreement to be executed this 17 day of November, 2023.

By: Brent Laenz

Brent Laurenz  
Executive Director, Friends of the Mountains-to-Sea Trail

Corporate Seal

IN WITNESS WHEREOF, The Corps has caused this agreement to be ratified this 20<sup>th</sup> day of November, 2023.

By: 

Brad A. Morgan  
COL, U.S. Army  
District Commander