

COOPERATIVE AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS
AND
THE CITY OF CULLMAN, ALABAMA

DACW62-97-H-0020

ARTICLE I-PURPOSE AND AUTHORITY

This Cooperative Agreement ("CA") is entered into by and between the United States Army Corps of Engineers ("Corps") and the City of Cullman, Alabama ("Cullman") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of Cullman services in the design of the Cullman Duck River Water Supply Dam, Cullman, Alabama, and related land acquisition activities. The authority for this CA is 40 U.S.C.App.106(7) (revived by Public Law 102-377), 31 U.S.C. 6305, and the terms of a Memorandum of Agreement ("MOA"), dated December 30, 1996, between the Appalachian Regional Commission ("ARC") and the Department of Army, in which the ARC transferred \$4,622,000 to the Nashville District to furnish design and related land acquisition services for the Cullman Duck River Water Supply Dam in-house, by contract or with agreement with Cullman.

ARTICLE II-RESPONSIBILITIES OF CULLMAN

A. Using its normal administrative procedures and practices, Cullman agrees to perform the work identified in Appendix 1, "Scope of Work". The cost of such work is estimated to be \$2,603,000. Within 30 days after the effective date of this agreement, and updated periodically thereafter, Cullman will submit a work schedule on how it intends to accomplish its share of the work.

B. Cullman will submit monthly invoices in a manner required by the Corps, based upon costs incurred.

C. Within 60 days after completing all work under this agreement, Cullman will prepare and submit to the Corps a final report summarizing all work performed under this CA and total cost incurred in sufficient detail to permit a reasonable review of expenditures.

ARTICLE III. RESPONSIBILITIES OF THE CORPS

The Corps will reimburse Cullman for its costs of

providing the services in Article II, that are consistent with applicable ARC guidelines. Reimbursement will be made as costs are incurred, based on certified invoices submitted by Cullman and approved by the Corps. Reimbursement will not exceed the \$2,603,000, unless both parties agree to revise the Project Management Plan current budget. All reimbursements incurred prior to the effective date of this agreement will be invoiced and paid as soon as possible generally following the above procedures; i.e., invoices will be based on monthly intervals and actual costs incurred. The total cost of all work performed by the Corps under its MOA with ARC, including work performed under this CA, shall not exceed \$4,622,000.

ARTICLE IV-ADDITIONAL WORK

It is the intent of both parties that a future MOA will be executed that will define each party's role in the completion of additional design services, related land acquisitions, and construction of the Cullman Duck River Water Supply Dam. If, prior to the execution of a future MOA, Cullman desires the Corps to perform work that would cause the total costs to exceed \$4,622,000, Cullman may request the Corps to perform such work and Cullman shall be responsible for all costs incurred by the Corps that exceed \$4,622,000. Prior to the Corps incurring such additional costs, Cullman shall make funds available to the Corps in the amount of the estimated additional costs. Such funds must be on deposit with the Corps. Nothing in this agreement shall obligate the Corps to incur costs in excess of the amount of funds provided.

ARTICLE V-REAL ESTATE

A. The acquisition of all real estate interests, including the relocation of impacted utilities, shall be the responsibility of Cullman. The Corps may provide assistance to Cullman in the acquisition process.

B. The Corps will provide Cullman the real estate requirements for the project and recommended standard estates to be utilized. Deviations from these standard estates will be agreed to by both parties in advance of use.

C. Reimbursement for real estate will be based on the fair market value of the lands, easements, and rights-of-way. In order to be reimbursed for costs incurred in acquiring such interests, Cullman shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to Cullman and the

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Corps. The appraisal must be prepared and reviewed in accordance with applicable state rules of just compensation.

Payments in excess of the appraised fair market value, unless by condemnation, will be documented and approved, if justified in advance, by the Corps. Any condemnations will be undertaken in the appropriate state court. Reimbursement will be in accordance with Article III. Documentation for real estate reimbursement will consist of copies of appraisals, deeds, and documentation, if needed, supporting payment in excess of fair market value.

D. Cullman shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Dam, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and ~~shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.~~

E. In the event it is discovered that hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.) exist in, on, or under any lands, easements, or rights-of-way to be acquired, Cullman and the Corps shall provide prompt written notice to each other. Should Cullman determine to continue, Cullman shall be responsible, as between the Corps and Cullman, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. These costs will not be included in any reimbursement to Cullman. Further, as between the Corps and Cullman, Cullman shall be considered to be the operator for purpose of CERCLA liability.

ARTICLE VI-LIABILITY

Cullman shall hold and save the Corps free from all damages arising from the work performed under this agreement, except for damages due to the fault or negligence of the Corps or its contractors.

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ARTICLE VII-PROJECT COORDINATION TEAM

To provide for consistent and effective communication, not later than 30 days after the effective date of this CA, ~~Cullman and the Corps~~ will establish a Project Coordination Team, consisting of representative(s) of ARC, the Nashville District, the Mobile District, and the City of Cullman. The Corps Project Manager shall chair the team. The purpose of the Team will be, among other things, to coordinate all aspects of the work being performed by the parties, to insure that costs that are to be recognized as reimbursable are proper and stay within the amount of funds available for reimbursement, and to prepare a Memorandum of Agreement for completion of the Cullman Duck River Water Supply Dam.

ARTICLE VIII-DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, Cullman and the Corps shall use their best efforts to resolve such dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

ARTICLE IX-MODIFICATION AND TERMINATION

This CA may be modified by written mutual agreement of the parties. Either party may terminate this CA by providing written notice to the other party at least 30 days prior to the effective date of the termination. In the event of termination, Cullman shall continue to be responsible for all costs incurred by the Corps under this CA and for the costs of closing out or transferring any on-going contracts.

ARTICLE X-NONDISCRIMINATION

In connection with performance of work under this CA, Cullman agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. This provision will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. By signing this agreement, Cullman certifies that it is complying with the requirements of: (1) Title VI of the Civil Rights Act of 1964, as implemented by 32 CFR 195, concerning nondiscrimination in activities under this agreement based on race, color, or national origin; and (2) section 504 of the Rehabilitation Act of 1973, as

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implemented by 32 CFR 56, concerning access for people with disabilities in recipient programs and activities, including but not limited to those under this agreement.

ARTICLE XI-EFFECTIVE DATE

This CA shall become effective when signed by both parties.

CITY OF CULLMAN, ALABAMA

Jack Sides
Mayor Jack Sides
City of Cullman, Alabama

U.S. ARMY CORPS OF ENGINEERS

Larry P. Cook
Larry P. Cook
Grant Officer

5/6/97
(date)

5/7/97
(date)

APPENDIX A

SCOPE OF WORK CULLMAN-MORGAN WATER DISTRICT CULLMAN DUCK RIVER WATER SUPPLY DAM PROJECT ENGINEERING STUDIES, EIS, AND PLANS & SPECIFICATIONS AND REAL ESTATE ACQUISITION

GENERAL. The Nashville District Corps of Engineers prepared a report titled "Cullman-Morgan Water District Emergency/Alternative Water Supply Study" in June of 1994 which assessed the water supply needs of the Cullman-Morgan Water District (Cullman), analyzed their existing water supply system, and presented alternatives for future water supply sources. The main goal of the report was to identify an alternative water supply source which will backup the existing supply in the event of an emergency and provide additional water supply to meet the future needs of the Cullman area. A Phase II report completed in November 1995 further developed several of the alternatives identified in the first report and analyzed several additional alternatives not considered in the previous report. Engineering feasibility and cost comparison studies were performed on all alternatives and the report recommended the Duck River (732) reservoir as the best alternative to meet the water supply needs of the Cullman-Morgan Water District. In October 1995, the Cullman-Morgan Water District Board voted to go forward with the design and construction of the Duck (732) dam.

PURPOSE. The purpose of this memo is to establish the scope of work for performing Engineering Studies, producing an Environmental Impact Statement (EIS), developing Plans and Specifications, and initiating real estate acquisition for the Duck River (732) Project. It will also outline the roles and responsibilities of the Corps and the city of Cullman (Cullman) in completing the products mentioned above, and establishes cost for the work Cullman will be reimbursed for under the MOA between the Corps and the Appalachian Regional Commission. A more detailed description of the work outlined in this scope and the spending breakdown can be found in the "Cullman Water Supply Dam Project Management Plan" dated November 1996.

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SCOPE OF WORK

I. CULLMAN RESPONSIBILITIES

1. Engineering Studies. During the Engineering Studies (ES) phase Cullman will be responsible for providing design assistance to the Corps in the form of: right of entries for surveying and subsurface exploration, ground surveying, access for exploration, field layout of drill holes, HTRW evaluations, a water quality model, layout and design of certain structural components, relocations design, and assisting the Corps in land acquisitions studies. This work can be performed by Cullman or their contractor. Right of entries must be obtained prior to any work being performed on private property, therefore this work should occur soon after the ES are initiated. Access for exploration must also occur early in this phase since exploration is one of the first work items. Cullman's survey responsibilities include both ground surveying and ground control. Cullman will be responsible for the design of a 24 MGD pump station and the intake structure for the pump station. If the project's service spillway intake becomes integral with the pump station intake, Cullman will be responsible for its design also. The cost estimate for the ES assumes a combined intake structure. The Corps will be responsible for the service spillway intake if it is separate from the pump station intake and the cost for this design will become a Corps cost. Cullman will also be responsible for layout and design of the pipeline from the new reservoir to the existing treatment plant. The relocation design includes the preliminary Right of Way mapping, evaluation of roadways and utilities affected by the project, and the design of any necessary improvement to affected roadways and utilities. The land acquisition analysis involves determining properties affected by the new project and estimating the cost associated with acquisition or easements involving the affected properties. Once the project layout is known, a Phase-1 Hazardous Toxic Radioactive Waste analysis will be performed by Cullman to verify no toxic waste is present on or near the project site. The final product of the ES will be a report which summarizes all the findings from this study. Cullman will be responsible for assisting the Corps in developing this report. This phase of work will begin just after Notice to Proceed and take approximately 17 months to complete. Cullman's cost for their portion of the ES is estimated to be \$861,000.

2. Environmental Impact Statement. The Corps will have overall responsibility for the Environmental Impact Statement (EIS), but Cullman will be responsible for the data collection and production of the report. This work can be accomplished by contracting it out to the contractor of their choice, or they can request the Corps to perform this work. This phase will include

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performing all work required to ensure environmental compliance, produce an Environmental Impact Statement (EIS), and developing all required permits. This phase will also start immediately. The first step will be the scoping process which involves sending letters describing the project to, and meeting with, interested regulatory agencies and individuals. An EIS will be prepared which summarizes the environmental studies required by law. It also provides a means to inform the public about the project. It will include an evaluation of the project impacts to water quality, fish and wildlife, wetlands, threatened and endangered species, cultural resources, recreation and other socioeconomic factors. A draft EIS will be compiled and distributed for a 60 day review by state and federal agencies, along with any interested private groups or individuals. This report will discuss ways to minimize the project's environmental impacts and the best management practices to be used during construction. The environmental impacts of each alternative evaluated during the first two study phases and the "no action" alternative will also be discussed. After the review period, the review comments will be incorporated into a final EIS and a Record of Decision will be placed on file with the Appalachian Regional Commission. The scope of this phase also includes acquiring all required permits. This phase of work will take approximately 14 months from Notice to Proceed to complete and is estimated to cost \$455,000.

3. Plans and Specifications. This phase includes producing the plans and specifications required to adequately enter into a contractual agreement with the contractor(s) selected to construct the project. The production of the construction plans and specifications will immediately follow completion of the Engineering Studies. The plans are the contract drawings which give a pictorial description of the project, and the specifications are the verbal directions which define required materials and quality. Plans and Specifications (P&S) will be developed for all structural aspects of the project including the dam, spillway, intake structure, pump station, cofferdam, access roads, and utility relocations, but Cullman will only be responsible for producing P&S for the items under their responsibility in the ES. This includes the pump station and intake, the pipeline, and any relocations work which might be included in the contract plans. Near the end of the Plans and Specifications period a final cost estimate will be produced which will be used in the selection of a contractor. Cullman will assist the Corps in the development of this cost estimate. This phase of work will take approximately 17 months to complete and Cullman's share is estimated to cost \$261,000.

4. Property Acquisition. Property acquisition will begin but not be completed under this scope of work. Up to \$848,000 of the

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ARC grant could go towards the purchase of real estate. Cullman will be responsible for all property acquisition. The Corps may assist them by overseeing and advising their contractors working on real estate activities. Work performed under this scope by Cullman will include legal descriptions, title searches, appraisals, and negotiation on selected properties, followed by the purchase of those properties. The acquisition process can begin once the real estate requirements are determined and sufficient work is complete on the EIS to ensure there are no environmental issues which must be resolved prior to acquisition.

5. Project Management. The scope of this item includes Cullman's project management and coordination of the above activities. Cullman's in-house cost are also included in the work item. This activity will run concurrent with the above activities and is estimated to cost \$178,000.

6. Summary of Cullman Cost. Cullman's cost for the activities described above is estimated to be \$2,603,000.

II. Corps Responsibilities

1. Engineering Studies The Corps will be responsible for the overall management and technical quality of the Engineering Studies (ES). They will also be responsible for the following products: mapping, subsurface exploration, soil and rock testing, hydrological and hydraulic analysis, layout and design of the dam and emergency spillway, design of the service spillway, and the preliminary cost estimate on all project features. The Corps will work with Cullman on the land acquisitions studies to determine the real estate requirements for the project. During the ES period, information will be gathered which will help set the final location, size, and type of all physical features of the project. Surveying, mapping, and subsurface exploration will begin immediately after notice to proceed. Rock/soil testing and geological mapping will begin near the end of the exploration work. Once the mapping is complete, a more detailed hydrologic analysis will be performed to better define the reservoir elevations, real estate acquisition lines, and spillway requirements. The Corps will begin layout and design work on the dam and spillway once the top of dam elevation is established, and they will work with Cullman on the design and layout of the intake structure, outlet culvert, pipeline, and pump station. The Corps design work will include slope, seepage and stability analysis of the dam. The Corps will prepare a detailed construction estimate once the designs and land acquisition studies are complete. This estimate will better define Cullman's future funding requirements. The final product of the ES will be a report which summarizes all the findings from this study. The Corps will be responsible for the report, but Cullman will assist

with the write-ups for the products under their responsibility. This phase of work will begin just after Notice to Proceed and take approximately 17 months to complete. The Corps' cost of the ES is estimated to be \$1,135,000.

2. Environmental Impact Statement. The Corps is responsible for Environmental Impact Statement (EIS), but Cullman will prepare the report with the Corps' oversight assistance. Cullman may ask the Corps for additional technical assistance, but for the purposes of this Scope, it is assumed that Cullman and their contractor will perform all data collection and produce the EIS.

3. Plans and Specifications. This phase includes producing the plans and specifications required to adequately enter into a contractual agreement with the contractor(s) selected to construct the project. The production of the construction plans and specifications will immediately follow completion of the Engineering Studies. The Corps will be responsible for producing plans and specifications for all items under their responsibility in the ES. This includes the dam, emergency spillway, service spillway, and cofferdam. They will also be responsible for compiling the final set of P&S. Near the end of the Plans and Specifications period, a final cost estimate will be produced which will be used in the selection of a contractor. The Corps will be responsible for the estimate, but Cullman will assist with estimates for the items under their responsibility. The construction contract can be awarded two to three months after completion of the plans and specs. This work will take approximately 17 months to complete, and the Corps' cost is estimated to \$640,000.

4. Property Acquisition. As stated under Cullman's responsibilities, property acquisition will begin but not be completed under this scope of work. Approximately \$848,300 of the ARC grant will go towards the purchase of real estate. Cullman is responsible for this work, but the Corps may assist in an oversight and advisory role.

5. Project Management. The scope of this item includes the overall management and coordination of the above activities, and overall coordination of the project. The Corps will have the lead on project management during the entire design phase. This includes oversight and programming of all project cost as approved Cullman. The Project Manager will be the liaison between the Cullman and all parties involved in the development of this project. This activity will run concurrent with the above activities and the Corps' cost is estimated to be \$244,000.

6. Summary of Corps' Cost. The Corps' cost for the activities described above is \$2,019,000.

SUMMARY COST. The estimated cost of all activities covered under this scope is \$4,622,000.

SCHEDULE. This work will begin as soon as this CA is approved and it is scheduled to be completed approximately 34 months from the Notice to Proceed.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition:

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted-

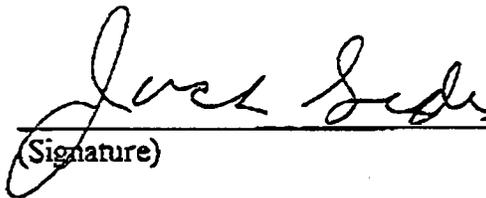
(1) Taking appropriate personnel action against such an employee, up to an ~~including termination, consistent with~~ the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee will insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

CERTIFIED BY:

 May 6, 1997
(Signature) (Date)

JACK SIDES

(Typed Name)

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Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Certified By:

 May 6, 1997

(Signature) (Date)

JACK SIDES

(Type Written Name)

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS

The City of Cullman, Alabama certifies to the best of its knowledge and belief, that it and its principles:

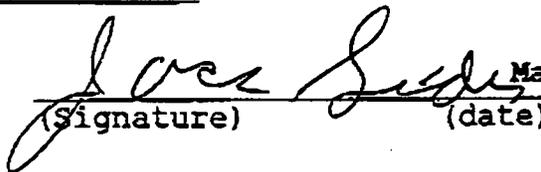
(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

CERTIFIED BY:

 May 6, 1997
(Signature) (date)

JACK SIDES
(Typed Name)

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