

Contract Number:

480-97-1002

COUNTERPART OF

OCMULGEE RIVER SWCD

6500-MA-6-6082-94 (300352)

STATE OF GEORGIA;
COUNTY OF BIBB

FLOOD RETARDING STRUCTURE
OPERATION AGREEMENT
FOR

Dam No. 1 Tobesofkee Creek Watershed

THIS OPERATION AGREEMENT ("AGREEMENT"), made this 1st day of July, 1996, by and between the **GEORGIA SOIL AND WATER CONSERVATION COMMISSION** ("GSWCC"), an instrumentality of the State of Georgia, the **OCMULGEE RIVER SOIL AND WATER CONSERVATION DISTRICT** ("District") an instrumentality of the State of Georgia, the **NATURAL RESOURCES CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE** ("Service"), a Department of the United States Government, and the **BIBB COUNTY BOARD OF COMMISSIONERS**, a political subdivision of the State of Georgia ("Operator").

W I T N E S S E T H

WHEREAS, Easements have been granted to the Ocmulgee River Soil and Water Conservation District pursuant to the easement(s) referenced in Exhibit "A attached herto and incorporated herin ("Easement"); and

WHEREAS, the GSWCC has the duty and power to offer assistance to the District in helping it carry out its programs; and

WHEREAS, the GSWCC desires to expend state funds to have specific maintenance performed on the dam and its appurtenant works, more fully described in Exhibit "A" (Premises"), attached hereto and by this reference incorporated herein; and

WHEREAS, the GSWCC has the power to enter into this Agreement to assist and coordinate programs of the District and to secure the cooperation of the service, O.C.G.A.

§ 2-6-27; and

WHEREAS, the District has the power to enter into this Agreement and perform its duties under the Agreement, O.C.G.A. § 2-6-33 (4); and

WHEREAS, the Service requires that it be named a party to any agreement affecting the Premises because it provided funds for the original construction of the dam on the Premises; and

WHEREAS, the Operator wishes to enter into this Agreement because of the benefits it will provide to its residents.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1.

PURPOSE

This Agreement shall constitute the preliminary maintenance agreement for the Premises. Its purpose is to bring the Premises up to date in its maintenance needs, after which time the Premises will be maintained under a more permanent Operation and Maintenance Agreement.

2.

MAINTENANCE

The Operator shall bear the sole responsibility for performing maintenance on the Premises. The specific maintenance required for the Premises is set forth in Exhibit "B", attached hereto and by this reference incorporated herein.

3.

REIMBURSEMENT

3.1 Certification of Maintenance. Upon Operator's completion of those certain maintenance duties set forth in Exhibit "B", the District shall inspect the Premises to evaluate the completion of such maintenance duties. If the District deems the maintenance satisfactory, the District shall provide a certificate of approval to GSWCC. If the District deems the maintenance unsatisfactory, it shall prepare and forward to Operator a written explanation of its finding. Operator then has thirty (30) days from its receipt of this written report to correct any deficiencies in the maintenance work as referenced in the written report. The District shall then re-evaluate the Premises, and the above steps shall continue for up to three (3) thirty (30) day periods, until the maintenance work is found to be satisfactory. A satisfactory rating by the District shall not be unreasonably withheld.

3.2 Reimbursement of Funds. Upon receipt of a satisfactory certification from the District, GSWCC shall pay, within thirty (30) days, EIGHT THOUSAND FIVE HUNDRED (8,500) DOLLARS to Operator as reimbursement for performing maintenance duties set forth in paragraph 3. Such payment shall not be made separately for each specific maintenance duty performed. In addition, no payment shall be made until a satisfactory certification is submitted by the District covering all maintenance duties covered by paragraph 3.

4.
LIABILITY

Operator shall bear the sole risk and responsibility for all liabilities arising from actions of non-parties to this Agreement. Each party to this Agreement, including Operator, shall bear the sole risk and responsibility for all liabilities arising from its negligence or that of its employees.

5.
TERM

All Maintenance duties required to be performed under this Agreement shall be completed no later than May 1, 1997. Operator may continue to perform maintenance duties after this date if an initial satisfactory certification is not obtained. This date may be extended by a writing signed by all parties to this Agreement.

6.
ASSIGNMENT

The Operator may not assign this Agreement without the prior written approval of both the GSWCC and the Service. The Operator may hire third parties to perform any or all of its duties under this Agreement, subject to the written approval of the GSWCC.

7.
MISCELLANEOUS

7.1 Time of Essence. Time is of the essence of this Agreement. Upon its execution, all parties to this Agreement shall promptly commence its undertaking and shall diligently cooperate with each other in the accomplishment thereof.

7.2 Notice. Any notice required or permitted to be given by any party hereto shall be deemed delivered if sent

by the U.S. Certified or Registered Mail to each party at the addresses hereinafter shown:

Georgia Soil and Water Conservation Commission
Attn: F. Graham Liles, Jr.
P. O. Box 8024
Athens, Georgia 30603

Ocmulgee River Soil and Water Conservation District
Attn: Dewey L. Maxwell
2944 Stuart Drive
Macon, Georgia 31204

Natural Resources Conservation Service
United States Department of Agriculture
Attn: Earl Cosby
Federal Building, Box 13
355 East Hancock Avenue
Athens, Georgia 30601-2769

Bibb County Board of Commissioners
Attn: Larry G. Justice, Chairman
601 Mulberry Street
P.O. Box 4708
Macon, Georgia 31298

7.3 Georgia Law. This Agreement shall be governed by Georgia Law.

7.4 Right of Entry. For purposes of this Agreement, the Ocmulgee River Soil and Water Conservation District agree(s) to provide rights of ingress and egress to the Premises, consistent with its/their own rights in the property, to the Operator, Services and GSWCC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals by and through their duly authorized officers all on the day and year first stated above.

GEORGIA SOIL AND WATER
CONSERVATION COMMISSION

By: F. Graham Liles, Jr.

Name: F. Graham Liles, Jr.
Title: Executive Director

Attest: Janice L. Marable
Name: Janice L. Marable
Title: Administrative Aide

Signed, sealed and delivered as to
the Georgia Soil and Water Conservation
Commission in our presence:

Janifer K. Johnson
Unofficial Witness

May E. Harness
Official Witness

My Commission Expires: _____

Notary Public, Oconee County, Georgia
My Commission Expires June 22, 1997

OCMULGEE RIVER SOIL AND WATER
CONSERVATION DISTRICT

By: Dewey L. Maxwell
Name: Dewey L. Maxwell
Title: District Chairman

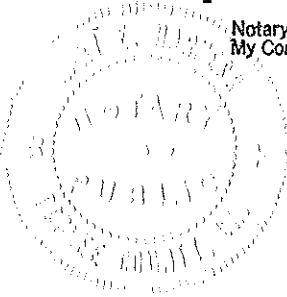
Attest: Charles A. Harman
Name: Charles A. Harman
Title: Supervisor

Signed, sealed and delivered
as to the Ocmulgee River Soil and
Water Conservation District
in our presence:

Charles M. Furbush
Unofficial Witness

Debra Lyles
Official Witness

My Commission expires: My Commission Expires April 12, 1997.



NATURAL RESOURCES CONSERVATION
SERVICE, UNITED STATES
DEPARTMENT OF AGRICULTURE

By: Earl Cosby
Name: Earl Cosby
Title: State Conservationist

Attest: Ann Senter
Name: Ann Senter
Title: Secretary

Signed, sealed and delivered
as to the Natural Resources
Conservation Service, United
States Department of Agriculture
in our presence:

Barbara B. Fletcher
Unofficial Witness

Barbara Ewerson
Official Witness

My Commission expires: 2-18-98

BIBB COUNTY BOARD OF COMMISSIONERS

By: Larry G. Justice
Name: Larry G. Justice
Title: Chairman

Attest: Shelia Thurmond
Name: Shelia Thurmond
Title: Deputy Clerk III

Signed, sealed and delivered
as to the Bibb County Board
of Commissioners in our presence:

Boyd Giff
Unofficial Witness

Nancy D. Baul
Official Witness

My Commission expires: 6-14-96

EXHIBIT "A"

The Premises is known as Floodwater Retarding Structure No. 1, Tobesofkee Creek Watershed Project.

The Premises is represented by a 54 foot high earthen dam. In addition to the earth embankment the Premises also includes an emergency spillway, principal spillway, and release outlet plunge pool. The Premises is constructed on Tobesofkee Creek (approximate 32 deg. 49 min. 12 sec. latitude and 83 deg. 46 min. 18 sec. longitude). The Premises is displayed on the Attachment 1A a portion of the General Highway Map; Bibb County, Georgia; published by Georgia Department of Transportation.

WARRANTY DEEDS have been granted to Bibb County for the Premises (dam) that is further described as being situated on Land Lot Nos. 244 on lands of Pineworth, Incorporated; more particularly described in that certain deed of conveyance dated June 9, 1964, and recorded on June 13, 1964, in Deed Book 930, Page 215 in the Office of the Clerk of Superior Court, Bibb County, Georgia.

The Premises (dam) is further described as being displayed on Attachment 2A; the Reservoir Area Map for Site Number One; USDA, Soil Conservation Service.

Easements are granted to the District by the above parties for or in connection, operation, maintenance and inspection of the following described works of improvement to be located on the above described land; for the flowage of any waters in, over, upon, or through, such works of improvement; and for the permanent storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such floodwater retarding structure.

The location on the ground of the easement herein granted for or in connection with construction, operation, maintenance and inspection of the above described works of improvement is as follows:

A floodwater retarding structure with a sediment pool up to 360.0 feet elevation, mean sea level, and floodwater flowage up to 369.0 feet elevation, mean sea level, as shown on Attachment 2A, which description by reference is incorporated herein.

EXHIBIT B

MAINTENANCE NEEDS

No. 1 Tobesofkee Creek Watershed

| <u>CODE</u> | <u>COMMENT</u> |
|-------------|--|
| V1 | Mow Embankment |
| V2 | Remove Trees and Brush from Embankment |
| W1 | Control Seepage on Downstream Embankment Slope |

ATTACHMENT 2A

