

COOPERATING ASSOCIATION AGREEMENT BETWEEN THE
U.S. ARMY CORPS OF ENGINEERS AND THE
FRIENDS OF FOSCUE CREEK

This Cooperating Association is for the mutual benefit of both parties and is between the United States Army Corps of Engineers, Mobile District, Black Warrior & Tombigbee Rivers (BWT), (hereinafter referred to as the "Corps") and the Friends of Foscue Creek Association (hereinafter referred to as the "Association"), acting through the Chairman of the Board of Directors or the Board's designee.

WITNESSETH:

WHEREAS, the Corps operates its program for the benefit of the public. The public requires facilities, services and maintenance for the safe and appropriate use of Corps projects. These services are conveyed through a variety of means such as; cleaning of park facilities, operation of essential programs, interpretive services, fee collection, facility security and other services which illustrate the Corps, and its mission and activities in and around Foscue Creek Park and its surrounding community;

WHEREAS, the Corps and the Association mutually recognize there are significant national public benefits to its recreation areas at BWT that services and supports the Corps' goals for education, perpetuation of national pride, provision of quality recreation areas, safety, and enjoyment of the people of the United States;

WHEREAS, the Association has as its purpose the provision for the public's benefit of additional services to enhance the recreational enjoyment of the people of the United States, and the support of the Corps' goals.

WHEREAS, The Association wishes to assist the Corps in its interpretive programs and maintenance service activities. Also, to provide outdoor activities for children in the community and the visiting public that are both educational and informative as well as fun;

WHEREAS, the Association has the authority to assist the Corps in its services to the public of interpretive presentations, maintenance, provision of services, and project related features of the BWT through programs, services, and materials;

WHEREAS, the Corps has authority to accept volunteer services under 33 U.S.C. § 569c and to accept voluntary contributions of cash, funds, materials, and services under section 203 of the Water Resources Development Act of 1992, Public Law 102-580;

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; and

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 enter into leases with non-profit organizations for park and recreational purposes;

NOW, THEREFORE, the parties agree as follows:

1. The Corps authorizes the Association to provide, and the Association agrees to provide, the hereinafter described maintenance services, educational services and/or recreational services to the visiting public and/or the Corps.

2. CORPS RESPONSIBILITIES.

- A. Timely Review and Approval. The Corps agrees to review and give necessary approvals or disapprovals in a timely manner to the Association for any and all proposals, programs, special events, suggestions and other activities that the Association might wish to engage in.

- B. Use of Government Facilities

1. Should the Association, as part of its cooperative activities, require the use of Corps facilities at the Demopolis Resource Management Office and at the Foscue Creek Gatehouse, the Corps agrees, in recognition of the services the Association is contributing to the public, 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.

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

3. A separate ENG Form 4900 instrument will be granted to the Association for the use of government owned property. The instrument will not merge with this Agreement.

3. ASSOCIATION RESPONSIBILITIES.

A. Corporate Requirements.

1. The Association's Articles of Incorporation and By-Laws shall comply with the requirements of the state(s) in which the Association is incorporated. Non-profit 501(c)(3) status must be applied for and maintained in accordance with state and Federal laws. The Association 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 applied for or maintained.

3. The Association 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 the Association or its members, agents or employees in connection with endeavors under this Agreement.

4. 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.

B. Sales Option

1. As part of this Agreement, the Association may operate a sales area on a continuous or intermittent basis.

2. The Association is hereby authorized to sell recreational items and/or service items directly related to day use, campground and recreational themes of the project, region and Corps. The Corps may request the Association to sell specific items of recreational value.

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

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

5. 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.

6. The Association will display the sales items in good taste and in keeping with the general design and decor of the facility and/or recreational site which houses the sales area.

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

8. Revenues that are collected from the Association's activities, memberships, or sales of publications and materials, as part of their Agreement with the Corps, will be used to support the continued operation of the Association and the Corps management effort. The Association will allocate funds collected in coordination with the Operations Project Manager and in accordance with Association's existing by-laws.

C. Fiscal Management.

1. The Association will 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. The Association 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 Association activities for the year.

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

4. JOINT RESPONSIBILITIES.

A. Donation of Interpretive Services or Loan of Materials.

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

2. The Corps will take reasonable precautions to protect items loaned by the Association, but assumes no other responsibility for these items. The Corps will return loaned property or items in a timely manner as agreed upon and set by the Corps and the Association and be reissued if there is a need for a longer period of time.

B. Personnel.

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

2. The Association will provide such personnel as are reasonably necessary to conduct, operate and manage its cooperative activities. This does not preclude Corps and/or contract personnel, during the course of their normal duties, from assisting the Association with nominal duties, including sales and collection of funds. Prior to performance, these activities shall be described in writing and submitted to the District Commander for approval.

3. Corps personnel may not serve in any official capacity for the Association or its governing board, including but not limited to any office of the Association or as an official representative. Corps personnel may assist the Association's governing board in an advisory capacity only. However, if the Association has a membership program, Corps personnel may join and participate in membership activities provided they do not conflict with their responsibilities as a Corps employee or the terms of this Agreement.

4. The Corps will orient all Association 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. 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.

5. Association employees, or volunteers may not wear the Corps uniform, or items of clothing that resemble the uniform. Employees and volunteers of the Association, when working at duties that bring them into contact with the public, will wear visible identification that identifies them as an Association 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 Association 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 Operations Project Manager for the Corps and the Board of Directors of the Association.

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, at any time upon written notice. Prior to giving such notice, the Corps will meet with the Association 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 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 the Association as may be required by a Lease Agreement where the Association leases facilities or areas from the Corps. This Agreement would automatically become null and void with regards to any such leased facilities 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.

D. This Agreement in no way restricts the Corps from entering into agreements with other public or private agencies, organizations, or individuals.

E. This Agreement is entered into for the benefit of the Parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons.

F. Any disputes regarding this Agreement will be resolved by consultation between the Parties at the lowest level possible.

G. This Agreement and all documents and activities pursuant to it shall be governed by the applicable laws, regulations, policies, and procedures of the United States.

H. Performance by the Corps under the terms of this Agreement is subject to the availability of funds and personnel resources.

I. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

J. This Agreement contains the full and complete understanding of the Parties regarding the subject matter of this Agreement. The Parties agree that this Agreement reflects all of the terms and conditions of the matters described herein and no other promises, oral or written, have been made that are not reflected in this Agreement. The Parties further agree that this Agreement supersedes any previous agreements or understandings of the Parties regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the Association has caused this agreement to be executed this

12 day of September, 2017.

FRIENDS OF FOSCUE CREEK ASSOCIATION

By Nancy Vining
Chairperson, Board of Directors

IN WITNESS WHEREOF, The Corps has caused this agreement to be ratified this

28 day of August, 2017.

UNITED STATES ARMY CORPS OF ENGINEERS

By Daniel K. Hamley
Operations Project Manager