

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE GREENVILLE PORT COMMISSION AND
THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, MISSISSIPPI
FOR FEDERAL ASSUMPTION OF THE OPERATION AND MAINTENANCE OF THE
GREENVILLE INNER HARBOR CHANNEL, MISSISSIPPI

THIS AGREEMENT, is entered into this 14th day of June, 2002, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the U.S. Army Engineer, Vicksburg District, and the GREENVILLE PORT COMMISSION and the BOARD OF SUPERVISORS OF WASHINGTON COUNTY, MISSISSIPPI (hereinafter collectively referred to as the "Non-Federal Sponsor"), acting by and through their presidents.

WITNESSETH, THAT:

WHEREAS, Section 509(a)(5) of the Water Resources Development Act of 1996 (WRDA 1996), PL 104-303, authorizes the Secretary of the Army, subject to certain limitations contained therein, to assume responsibility for the operation and maintenance of the Greenville Inner Harbor Channel, Mississippi (hereinafter the "Project"), that had been constructed by the non-Federal interests;

WHEREAS, non-Federal interests initiated construction of the Project in 1971, widened the channel in 1984, and last performed maintenance dredging in July 2000;

WHEREAS, Federal assumption of operation and maintenance of the Project was recommended in a report titled "Greenville Inner Harbor, Mississippi," prepared by the Vicksburg District, U. S. Army Corps of Engineers, dated August 2001, and approved by the Assistant Secretary of the Army (Civil Works) on October 2, 2001;

WHEREAS, the Assistant Secretary of the Army (Civil Works) has determined that the improvements are economically justified, environmentally acceptable, and consistent with the purposes identified in Section 509(a) of the Water Resources Development Act of 1996;

WHEREAS, the Non-Federal Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the general navigation features of the Project as defined in Article I.B. of this Agreement but shall not include aids to navigation nor the local service facilities.

B. The term "general navigation features of the Project" shall mean the dredging of the existing inner harbor navigation channel that has a length of 6,000 feet and a bottom width of 250 feet to a depth of 67 feet, NGVD, to provide a 9-foot depth during low water and any future dredged or excavated material disposal facilities that may be necessary as reflected in the report "Greenville Inner Harbor, Mississippi," prepared by the Vicksburg District, U. S. Army Corps of Engineers, dated August 2001, and approved by the Assistant Secretary of the Army (Civil Works) on October 2, 2001.

C. The term "District Engineer" shall mean the U. S. Army Engineer for the Vicksburg District.

D. The term "local service facilities" shall mean the facilities that are necessary to realize the benefits of the general navigation features of the Project, as generally described in, and required of the Non-Federal Sponsor by the report "Greenville Inner Harbor, Mississippi," prepared by the Vicksburg District, U. S. Army Corps of Engineers, dated August 2001, and approved by the Assistant Secretary of the Army (Civil Works) on October 2, 2001. The local service facilities are the existing berthing areas, mooring facilities, and public terminal facilities.

ARTICLE II – NON-FEDERAL PROJECT CONSTRUCTION

Construction of the inner harbor navigation channel was initiated in 1971 and completed in 1972 by the Mississippi Power and Light Company in coordination with the Greenville Port Commission and the Board of Supervisors of Washington County, Mississippi. The inner harbor navigation channel was widened from a 150-foot bottom width to 250-foot bottom width by the Greenville Port Commission in 1984, and the Greenville Port Commission last performed maintenance dredging in July 2000.

ARTICLE III - OBLIGATIONS OF THE GOVERNMENT AND
THE NON-FEDERAL SPONSOR

A. The Government, as it determines necessary, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds shall operate and maintain the general navigation features of the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The Government shall be responsible for all financial obligations for operation and maintenance of the general navigation features of the Project. The Government has certified that the existing inner harbor navigation channel was constructed as described in Article I. B. of this Agreement. The Government assumed responsibility of the operation and maintenance of the general navigation features of the Project effective October 2, 2001.

B. Subject to applicable Federal laws and regulations and for so long as the Project remains authorized, the Non-Federal Sponsor, at no cost to the Government, shall provide, operate, maintain, repair, replace, and rehabilitate, at its own expense, all Project features other than those for general navigation, such as the local service facilities, including ensuring dredged depths commensurate with those in related general navigation features in the local service facilities serving the general navigation features of the Project, in accordance with regulations or directions prescribed by the Government. The Non-Federal Sponsor shall be responsible for taking all actions to enable such operation and maintenance.

C. The Non-Federal Sponsor shall ensure that the general navigation features of the Project and local service facilities shall be open to all on an equal basis.

D. The Non-Federal Sponsor shall hold and save the Government free from claims for damages arising from the construction, operation or maintenance of the Project, except damages due to the fault or negligence of the Government or its contractors. The Non-Federal Sponsor shall satisfy its obligations under this Article using any sources of funds that are then legally available to liquidate such obligations. Should the Non-Federal Sponsor determine such available funds are insufficient in amount, the Non-Federal Sponsor shall be obligated to seek such enabling legislation or authority that may be necessary to authorize the Non-Federal Sponsor to raise additional revenue through the issuance of bonds, imposition of taxes, or other revenue measures. This provision does not affect any rights the Government may have independent of this Agreement and in executing this Agreement the Government expressly reserves any rights it may have under such independent sources of law.

E. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of operating and maintaining the general navigation features of the Project. Nothing contained herein, however, shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

ARTICLE IV – DISPOSAL OF DREDGED MATERIAL

The Government and the Non-Federal Sponsor acknowledge that the dredged or excavated material resulting from the Government's performance of its obligations to operate and maintain the general navigation features of the Project will be disposed of in open water pursuant to applicable laws, regulations and permits. Disposal of dredged or excavated material in a confined disposal facility is not contemplated by this Agreement nor is it covered by the terms of this Agreement. Should such conditions arise that require disposal of dredged or excavated material in a confined disposal facility, an amendment to this Agreement will be necessary. This amendment will establish the necessary terms and conditions, including cost sharing and the provision of lands, easements, rights-of-way, and relocations necessary for the borrowing of material and the disposal of dredged or excavated material, as required by applicable laws, regulations and policies.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - HAZARDOUS SUBSTANCES

To the maximum extent practicable, the Non-Federal Sponsor and the Government shall perform their obligations under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE VII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Government and the Non-Federal Sponsor agree to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, PL 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally, or by telegram, or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

President
Greenville Port Commission
P.O. Box 446
Greenville, Mississippi 38702

President
Board of Supervisors of Washington County, Mississippi
910 Courthouse Lane
Greenville, Mississippi 38702

If to the Government:

U.S. Army Engineer District, Vicksburg
ATTN: District Engineer
4155 Clay Street
Vicksburg, Mississippi 39183-3435

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to comply with the obligations required under Article III and VI of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project operation and maintenance expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

C. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Project. If the Government finds that the Project is no longer economically justified or environmentally acceptable, it shall terminate this Agreement. Termination of this Agreement or deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties liability for any obligation previously incurred. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

GREENVILLE PORT COMMISSION

BY: Frederick L. Clapp, Jr.
Frederick L. Clapp, Jr.
Colonel, Corps of Engineers
District Engineer

BY: Phield Parish III
PHIELD PARISH III
President

DATE: 14 Jun 02

DATE: 5/16/02

BOARD OF SUPERVISORS OF
WASHINGTON COUNTY, MISSISSIPPI

BY: Alfred Rankins, Sr.
ALFRED RANKINS, SR.
President

DATE: 6/2/02

CERTIFICATE OF AUTHORITY

I, CHARLES S. TINDALL, do hereby certify that I am the principal legal officer of the Greenville Port Commission that the Greenville Port Commission is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Greenville Port Commission, in connection with the Federal assumption of the operation and maintenance of the Greenville Inner Harbor Channel, Mississippi, and to pay damages, in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Greenville Port Commission have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16 day of May, 2002.



CHARLES S. TINDALL, III

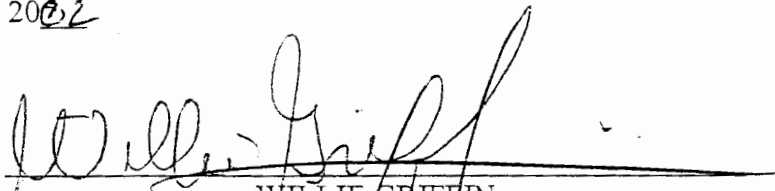
Legal Officer

Greenville Port Commission

CERTIFICATE OF AUTHORITY

I, WILLIE GRIFFIN , do hereby certify that I am the principal legal officer of the Board of Supervisors of Washington County, Mississippi, that the Board of Supervisors of Washington County, Mississippi, is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Board of Supervisors of Washington County, Mississippi, in connection with the Federal assumption of the operation and maintenance of the Greenville Inner Harbor Channel, Mississippi, and to pay damages, in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Board of Supervisors of Washington County, Mississippi, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of June, 2002



WILLIE GRIFFIN
Legal Officer

Board of Supervisors of Washington County, Mississippi

CERTIFICATION REGARDING LOBBYING

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

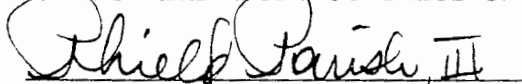
(1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection 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 federally 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 -rants, 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.

GREENVILLE PORT COMMISSION



PHIELD PARISH III

President

DATE: 5/16/02

CERTIFICATION REGARDING LOBBYING

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(2) If any funds other than federally 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.

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BOARD OF SUPERVISORS OF WASHINGTON COUNTY, MISSISSIPPI


ALFRED RANKINS, SR.
President

DATE: 6/3/02