

SECTION 215 AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF NATCHEZ
FOR CONSTRUCTION OF THE
LEARNED MILL ROAD PORTION OF
AREA 3, NATCHEZ BLUFFS, MISSISSIPPI, PROJECT

THIS AGREEMENT entered into this 12TH day of MAY 1997, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Engineer, and the City of NATCHEZ, Mississippi, (hereinafter referred to as the "Cooperating Agency") acting by and through the Mayor.

WITNESSETH, THAT:

WHEREAS, a bluff stabilization project (hereinafter referred to as the "Authorized Project") for Clifton Avenue, Area 3; Bluff Above Silver Street, Area 6; Bluff Above Natchez Under-the-Hill, Area 7; and Madison Street to State Street, Area 4, at Natchez, Mississippi, was authorized by Section 545 of the Water Resources Development Act of 1996, Public Law 104-303 substantially in accordance with the NATCHEZ Bluff Study Report, September 1985, and Supplement I to the Study Report, June 1990, and Supplement II to the Study Report, December 1993; and

WHEREAS, the Cooperating Agency proposes to perform certain work (hereinafter referred to as the "Proposed Work") which falls within the work required under the Authorized Project; and

WHEREAS, the proposed work is a Natural Resources Conservation Service (NRCS) Emergency Watershed project; and

WHEREAS, performance of such work by the Cooperating Agency will result in a more timely response to meeting the emergency needs at Learned Mill Road, which is located within Area 3 of the authorized Project, restoring critical City services such as fire protection to residents at the base of the bluff and preventing further loss of historically significant property at the top of the bluff, as well as reducing the real threat for loss of life from a major bluff failure; and

WHEREAS, Section 215 of Public Law 90-483, as amended, provides that the Secretary of the Army may enter into an agreement to credit the costs of certain works accomplished by states or political subdivisions thereof which later is incorporated into an authorized project, when it is determined that such credit is in the public interest; and

inclosure

WHEREAS, the Secretary of the Army has determined that providing the Cooperating Agency credit toward the value of required local cooperation for the Authorized Project for the costs of the proposed work to be accomplished pursuant to this Agreement is in the public interest; and

WHEREAS, Section 215 of Public Law 90-483, as amended, limits Federal credit for a single project to no more than \$5,000,000 or 1 percent of total project costs, whichever is greater;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1 - Work to be Accomplished.

(a) Proposed Work. The term "Proposed Work" shall mean work which is eligible for credit under this Agreement and shall consist of the following: the Cooperating Agency shall design and construct approximately 850 feet of a permanent anchored retaining wall system beginning at approximately the intersection of Learned Mill Road and Clifton Avenue, proceeding along the west side of Learned Mill Road to stabilize the bluff below said road; beginning at a point approximately 100 feet north of the intersection of Learned Mill Road and Clifton Avenue and landward (east side) of Learned Mill Road, approximately 300 feet of soil nailing, then changing over to a cantilever knee wall for another \pm 500 feet; approximately 500 feet of combination soil nailing and mechanically stabilized embankment (MSE) wall above (the east side of) Learned Mill Road to stabilize the top of the bluff in the vicinity of the historically significant dwellings at 211 and 213 Clifton Avenue; all generally as described in the attached NATCHEZ Bluffs, Natchez, Mississippi, Project Report, Clifton Avenue - Learned Mill Road, dated January 1997.

(b) Non-Eligible Work. Improvements to Learned Mill Road that are not needed for bluff protection may also be constructed by the Cooperating Agency. This work shall not be eligible for credit under this Agreement. This work may include an asphalt overlay, curb and sidewalk, guardrail, and street lighting.

ARTICLE 2 - Manner of Performing the Proposed Work. The Cooperating Agency shall accomplish the design and construction of the Proposed Work by a single multi-phase contract. The initial phase will include collection of field data, such as site survey and geotechnical investigations, design and preparation of plans and specifications for the Learned Mill Road west side retaining wall system, mobilization and setup of the job office, storage trailers, laydown areas, grading equipment, construction of an all-weather temporary access road, and clearing and grubbing of the west side construction limits. The second phase will include construction of the Learned Mill Road west side retaining wall and design and preparation of plans and

specifications for the improvements above or east of Learned Mill Road (soil nailing, cantilever knee wall, and MSE wall). The final phase will include construction of the stabilization measures on the east side of Learned Mill Road and may include the Non-Eligible Work.

ARTICLE 3 - Review of Designs, Detailed Plans and Specifications.

No construction shall commence under this Agreement until the designs, detailed plans and specifications, and arrangement for prosecution of the Proposed Work have been coordinated with the District Engineer, U.S. Army Engineer District, Vicksburg. Proposed changes in approved designs, plans, and specifications also must be coordinated with the District Engineer in advance of the related construction.

ARTICLE 4 - Inspections. The District Engineer or his designee is authorized to inspect the Proposed Work at any and all times.

ARTICLE 5 - Basis of Credit. Subject to availability of appropriations and subject to the other limitations set forth in this Agreement, the Government shall credit the Cooperating Agency for the costs of the Proposed Work accomplished, including costs of engineering and design, costs of construction, costs of construction management, and other costs incurred by the Cooperating Agency directly related to construction of the Proposed Work, toward the required 25 percent non-Federal share for the authorized Project, a separable element thereof that includes the area of the Proposed Work, subject to the execution of, and in accordance with the terms and conditions of, a Project Cooperation Agreement for the authorized project or separable element.

Credit shall be afforded towards the 25 percent non-Federal share of the Clifton Avenue/Learned Mill Road, Area 3, portion of the Authorized Project. The non-Federal share of Area 3 is presently estimated to be \$1,500,000, and the current estimate of the Cooperating Agency's proportionate financial share of the work described in ARTICLE 1(a) which is subject to credit in accordance with the provisions of this Agreement is \$1,437,000. This amount is an estimate subject to adjustment by the Government. The affording of such credit shall be subject to a technical review by the Government to verify that the work was accomplished in a satisfactory manner and subject to the limitations contained in this Agreement. The amount of credit shall be subject to an audit in accordance with Article 10 of this Agreement to determine reasonableness, allocability, and allowableness of costs. Should the actual creditable amount exceed the 25 percent non-Federal requirement for the Area 3 portion of the Authorized Project, the excess credit shall be applied to future portions of the Authorized Project, if implemented.

ARTICLE 6 - Limitations on Credit.

The Authorized Project must compete with all other proposed construction projects for inclusion in the President's budget. Neither this Agreement nor actions taken as a result of this Agreement shall bind or commit the Administration to request or support funding for the Authorized Project, nor constitute any representation to that effect.

(a) The affording of credit for the Proposed Work performed by the Cooperating Agency shall be subject to the appropriation of funds applicable thereto, and shall not take precedence over other pending work of higher priority at the same or other improvement projects.

(b) Any work undertaken by the Cooperating Agency prior to the effective date of this Agreement shall not be subject to credit pursuant to this Agreement.

(c) No credit shall be given unless and until the District Engineer, U.S. Army Engineer District, Vicksburg, has certified that the work subject to credit pursuant to this Agreement has been performed in accordance with this Agreement and all environmental compliance activities are completed.

(d) This Agreement shall not be construed as either committing the Government to assume any responsibility placed upon the Cooperating Agency or any other non-Federal entity by the conditions of project authorization or any other applicable statute or regulation, or as committing the Government to credit the Cooperating Agency if the Authorized Project is not undertaken or is modified so as to make the work performed by the Cooperating Agency no longer an integral part of the Authorized Project.

(e) Credit shall not be made for any work which does not, in the judgment of the Government, conform to the description set forth in ARTICLE 1(a) above.

(f) The amount of credit to be provided by the Government to the Cooperating Agency shall not exceed the Government's estimate of what the cost of the Proposed Work would be if it were to be accomplished by the Government as a component of the Authorized Project, or the Cooperating Agency's allowable, allocable, and reasonable costs for the Proposed Work, whichever is less.

(g) The amount of credit for which the Cooperating Agency may be eligible pursuant to this Agreement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the Proposed Work is completed and the time that the credit is afforded.

(h) The amount of credit provided by the Government to the Cooperating Agency for the Proposed Work described herein, in combination with any credit or reimbursement provided pursuant to any other Section 215 agreements executed for the Authorized Project, shall not exceed the statutory limitation of five million dollars (\$5,000,000) or 1 percent of total costs of the Authorized Project, whichever is greater.

(i) Credit shall not be afforded for the work described in ARTICLE 1(b) nor for any other betterments designed and constructed by the Cooperating Agency.

(j) Credit shall not be afforded except in accordance with the terms and conditions of a Project Cooperation Agreement for the Authorized Project, or for a portion thereof that included the area of the Proposed Work.

ARTICLE 7 - Expiration of Agreement and Completion of Work.

(a) This Agreement shall expire if the Cooperating Agency does not begin the Proposed Work within three years after the effective date of this Agreement.

(b) The Cooperating Agency shall complete the Proposed Work within two years thereafter.

ARTICLE 8 - Prosecution of Work by Contract. In the event the Cooperating Agency prosecutes the Proposed Work described herein by contract, all bids received and the proposed provisions of any contract shall be coordinated with the Government prior to contract award. Any such contract shall contain all of the applicable provisions required by Federal laws and regulations, including but not necessarily limited to, applicable labor and equal opportunity provisions.

ARTICLE 9 - Additional Responsibilities of the Cooperating Agency. The Cooperating Agency shall:

(a) provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Proposed Work; perform or ensure performance of all relocations required for the construction, operation, and maintenance of the Proposed Work; and operate, maintain, repair, replace, and rehabilitate the Proposed Work and the Non-Eligible Work after completion of construction.

(b) Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

of 1970, Public Law 91-646, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Proposed Work, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

(c) No Federal funds may be used to meet the Cooperating Agency's share of the proposed work under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal agency providing the funds.

(d) Hold and save the Government free from damages due to design, construction, operation, maintenance, repair, replacement, and rehabilitation of the Proposed Work, and the Non-Eligible Work, and any betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE 10 - Maintenance of Records and Audit.

(a) Not later than 60 calendar days after the effective date of this Agreement, the Government and the Cooperating Agency shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Cooperating Agency shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Cooperating Agency shall each allow the other to inspect such books, documents, records, and other evidence.

(b) Pursuant to 32 C.F.R. Section 33.26, the Cooperating Agency is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Cooperating Agency and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Cooperating Agency and independent auditors any information necessary to enable an audit of the Cooperating Agency's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be subject to credit in accordance with the terms of this Agreement.

(c) In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Cooperating Agency is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations.

ARTICLE 11 - Federal and State Laws. The Cooperating Agency agrees to comply with all applicable Federal, State and local laws and regulations. In addition, any contract awarded by the Cooperating Agency for the Proposed Work under this Agreement shall include provisions consistent with all applicable Federal laws and regulations, including, but not necessarily limited to, applicable Federal labor and equal opportunity laws and regulations such as the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); Part 3 of Title 29, Code of Federal Regulations; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000e, et seq.).

ARTICLE 12 - Officials Not to Benefit. No member or any delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE 13 - Covenant Against Contingent Fees. The Cooperating Agency warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Cooperating Agency for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to subtract from the credit amount the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 14 - Relationship of Parties. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the authorized representative of the Department of the Army.

THE DEPARTMENT OF THE ARMY

BY: *Gary W. Wright*

GARY W. WRIGHT
Colonel, Corps of Engineers

DATE: 12 May 97

THE COOPERATING AGENCY

BY: *Larry I. Brown*

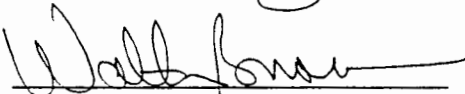
LARRY I. BROWN
Mayor, City of NATCHEZ

DATE: 5/7/97

CERTIFICATE OF AUTHORITY

I, Walter Brown, do hereby certify that I am the principal legal officer of the City of Natchez, that the City of Natchez is a legally constituted public body with full authority and legal capability to perform the terms of this Section 215 Agreement between the Department of the Army and the City of Natchez in connection with the construction of the Learned Mill Road Portion of Area 3, Natchez Bluffs, Mississippi, Project, and that the persons who have executed this Agreement on behalf of the City of Natchez have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 1st day of May 1997.



WALTER BROWN
City Attorney

CERTIFICATION REGARDING LOBBYING

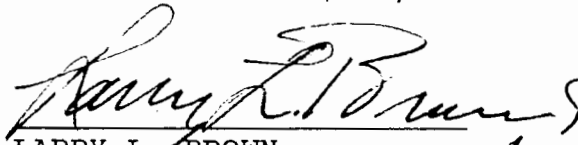
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 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 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.



LARRY L. BROWN
Mayor
City of NATCHEZ

DATE: _____ 5/7/97 _____