

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF GAUTIER, MISSISSIPPI
FOR
DESIGN AND CONSTRUCTION ASSISTANCE
FOR THE
JACKSON COUNTY, MISSISSIPPI, GAUTIER WATER TREATMENT PLANT
EXPANSION PROJECT

THIS AGREEMENT is entered into this 22nd day of April, 2021, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Mobile District (hereinafter the "District Commander") and the City of Gautier, Mississippi (hereinafter the "Non-Federal Sponsor"), represented by its City Manager.

WITNESSETH, THAT:

WHEREAS, the provision of design and construction assistance for the non-Federal project for the Jackson County, Mississippi, Gautier Water Treatment Plant Expansion Project at Gautier, Mississippi was authorized by Section 219(c)(5) of the Water Resources Development Act of 1992, Public Law 102-580, as amended;

WHEREAS, the Government will provide design and construction assistance by undertaking increment(s) of work, as defined in Article I.A. of this Agreement;

WHEREAS, Section 219(b) of the Water Resources Development Act of 1992, Public Law 102-580, as amended, specifies applicable cost-sharing requirements; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "increment of work" means design and construction of features, as generally described in a Letter Report, and approved by the Division Commander for the South Atlantic Division. The initial increment of work consists of the design and construction of a Nanofiltration Water Treatment Plant, as generally described in the Letter Report, approved by the Division Commander for the South Atlantic Division, on March 29, 2021. Each additional increment of work, if any, will be described in a separate Letter Report, which will specify the amount of Federal funds available for such work.

B. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of an increment of work and cost shared. The term includes, but is not necessarily limited to: the Government's costs of engineering, design, including preparation of Letter Reports and conducting environmental compliance activities, and construction; the Government's supervision and administration costs; the Non-Federal Sponsor's creditable costs for providing real property interests, relocations, and in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Coordination Team to discuss significant issues and actions; audits; betterments; or the Non-Federal Sponsor's cost of negotiating this Agreement.

C. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

D. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

E. The term "in-kind contributions" means those services or materials provided after the date of approval of the Letter Report for the increment of work by the Non-Federal Sponsor that are identified as being integral to an increment of work, and approved in writing, by the Division Commander for South Atlantic Division (hereinafter the "Division Commander"). To be integral, the material or service must be part of work that the Government would otherwise need to undertake for the increment of work. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for an increment of work.

F. The term "betterments" means a difference in design or construction of an increment of work that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that work.

G. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall design and construct each increment of work using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the

Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations. The amount of Federal funds for each increment of work is limited to the amount identified in the Letter Report for that increment of work, with the Non-Federal Sponsor responsible for all costs in excess of that amount.

B. The Non-Federal Sponsor shall contribute for each increment of work at least 25 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of each increment of work.

2. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. The Non-Federal Sponsor shall begin operation and maintenance as functional portions of such work are completed. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. After considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its minimum 25 percent cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.

4. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.

5. If all Federal funds available for an increment of work will be exhausted prior to completion of such work, the Government shall notify the Non-Federal Sponsor of the full amount of funds required to complete the increment of work, and the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI within 60 days of such notification or shall complete such work as in-kind contributions in accordance with paragraph B.2. above.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount available for each increment of work may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for each increment of work, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of an increment of work is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsor in writing. The Non-Federal Sponsor is responsible for operation and maintenance of such increment of work, at no cost to the Government.

F. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the increment of work. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

G. In addition to the ongoing, regular discussions of the parties, the Government and the Non-Federal Sponsor may establish a Coordination Team to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsor's costs for participation on the Coordination Team shall be included in construction costs for cost-sharing purposes.

H. The Non-Federal Sponsor may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor must provide funds sufficient to cover the costs of the betterments in advance of the Government performing the work. No later than 60 calendar days of receiving written notice from the Government of the costs of betterments, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Mobile (K5)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of each increment of work. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of such work, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of such work. The Non-Federal Sponsor shall ensure that real property interests provided for such work are retained in public ownership.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of each increment of work and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for such work.

C. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests

required for construction, operation, and maintenance of each increment of work. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of each increment of work for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate and maintain each increment of work in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND CREDIT FOR IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of real property interests and relocations, and the costs of in-kind contributions provided by the Non-Federal Sponsor and determined by the Government to be required for each increment of work, except that only the value of real property interests the Non-Federal Sponsor acquires from private owners and in-kind contributions the Non-Federal Sponsor provides after the date of approval of the Letter Report for the increment of work are eligible for credit. Any publicly owned real property interests or real property interests owned by the Non-Federal Sponsor on the date of approval of the Letter Report for the increment of work and required for that increment of work will be provided by the Non-Federal Sponsor at no cost to the Government and without credit or reimbursement.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. Only the value of real property interests acquired from private owners after the date of approval of the Letter Report for an increment of work are eligible for credit. The Non-Federal Sponsor shall obtain, for each creditable real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor after the date of approval of the Letter Report for an increment of work shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the date of approval of the Letter Report for an increment of work, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60

calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the date of approval of the Letter Report for an increment of work, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred in acquiring any real property interests from private owners required pursuant to Article III for an increment of work after the date of approval of the Letter Report for such work. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of an increment of work. Only relocations performed after approval of the Letter Report for an increment of work are eligible for credit.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Mississippi would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in construction costs for an increment of work and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to that work.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for any in-kind contributions performed prior to the date of approval of the Letter Report for an increment of work; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

c. Although design performed by the Non-Federal Sponsor prior to approval of the Letter Report for an increment of work is not creditable as in-kind contributions under this Agreement, the Non-Federal Sponsor, at no cost to the Government, may voluntarily provide such design to the Government. The Government, in its sole discretion, may accept, modify, or reject such design, or any portion thereof, for use in constructing that increment of work. Prior to commencement of review by the Government of such design, the Non-Federal Sponsor shall provide a written certification and warranty to the Government that such design is free from any legal encumbrances and use restrictions, including but not limited to, any intellectual property rights and outstanding licensing requirements.

4. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for the value of real property interests, relocations, and in-kind contributions that exceeds 25 percent of construction costs for each increment of work or real property interests that were previously provided as an item of local cooperation for a Federal project.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs for the initial increment of work are projected to be \$3,820,000, with the amount of Federal funds available for such work limited to \$2,500,000. The Non-Federal Sponsor's share of construction costs for the initial increment of work is projected to be \$1,320,000, which includes creditable real property interests and relocations projected to be \$0, creditable in-kind contributions projected to be \$0, and the amount of funds required to meet its minimum 25 percent cost share projected to be \$1,320,000. The Letter Report for each additional increment of work will include information on the Federal funds available for the increment of work and the Non-Federal Sponsor's share of construction costs for such work. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. For each increment of work, the Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs by delivering a check payable to "FAO, USAED, Mobile (K5)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon completion of each increment of work, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate design or construction.

B. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

C. In the event of termination, the parties shall conclude their activities relating to design and construction and conduct a final accounting in accordance with Article VI.E. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to

pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

D. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, or operation and maintenance of any work under this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - 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 the parties. Each party shall pay an equal share 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 X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the

Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

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. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - 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 delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

City Manager
The City of Gautier
3330 Highway 90
Gautier, Mississippi 39553

If to the Government:

District Commander
Mobile District
Post Office Box 2288
Mobile, Alabama 36628

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

ARTICLE XIII - 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 XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

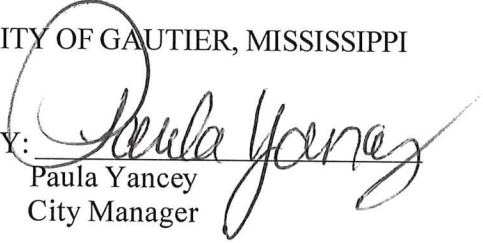
Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

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

DEPARTMENT OF THE ARMY

CITY OF GAUTIER, MISSISSIPPI

BY: _____
Sebastian P. Joly
Colonel, U.S. Army
District Commander

BY: _____
Paula Yancey
City Manager

DATE: 22 April 2021

DATE: 4/20/21



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SOUTH ATLANTIC DIVISION
60 FORSYTH STREET SW, ROOM 10M15
ATLANTA, GA 30303-8801

CESAD-PDP

29 March 2021

MEMORANDUM FOR Commander, U.S. Army Corps of Engineers, Mobile District,
(CESAM-PM-C/Mr. Peter Taylor), 109 St. Joseph Street, Mobile, AL 36602

SUBJECT: Approval of Section 219 Environmental Infrastructure Letter Report for
Jackson County, Mississippi, Gautier Water Treatment Plant Expansion Project

1. Reference Mobile District, CESAM-PM-C memorandum (Approval of Section 219 Environmental Infrastructure Letter Reports for Jackson County, Mississippi—Cities of Gautier, Mississippi and Ocean Springs, Mississippi), November 2020.
2. Section 219 of the Water Resources Development Act of 1992 and subsequent amendments authorizes the Environmental Infrastructure Program for design and construction assistance in Jackson County, Mississippi. The City of Gautier, Mississippi is the non-Federal sponsor for the Gautier Water Treatment Plant Expansion Project in Jackson County.
3. South Atlantic Division completed a thorough review of the Section 219 Letter Report, with the final version for approval received 24 March 2021. I approve the Letter Report (enclosed) for design and construction assistance for the Jackson County, Mississippi Gautier Water Treatment Plant Expansion Project.
4. The Project Partnership Agreement (PPA) must be submitted for my approval as set forth in the instructions for the Section 219 model agreement dated 22 June 2020. After approval, the District Commander, Mobile District is authorized to execute the agreement.
5. The point of contact for this action is Mr. David Bauman at (404) 562-5202 or David.J.Bauman@usace.army.mil.

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JASON E. KELLY, PMP
Colonel, EN
Commanding

**Letter Report for
Environmental Infrastructure Assistance Program
Section 219 of WRDA 1992**

**Design and Construction Assistance for
Jackson County, Mississippi,
Gautier Water Treatment
Plant Expansion Project**

PROJECT AUTHORIZATION. The project is authorized by Section 219(c)(5) of the Water Resources Development Act (WRDA) of 1992, as amended by technical corrections in Public Law 106-109; Section 331 of WRDA 1999; Section 5158 of WRDA 2007, and Section 352(b)(6) of WRDA 2020 as follows: “JACKSON COUNTY, MISSISSIPPI. – Provision of an alternative water supply, projects for stormwater and drainage systems, and projects for the design, installation, enhancement, or repair of sewer systems for Jackson County, Mississippi.”

The authorization of appropriations for construction assistance is provided in Section 219(e)(1), as amended by Section 504 of WRDA 1996; technical corrections in Public Law 106-109; Section 5158, and Section 352 as follows: “AUTHORIZATION OF APPROPRIATIONS FOR CONSTRUCTION ASSISTANCE. – There are authorized to be appropriated for providing construction assistance under this section – (1) \$57,500,000 for the project described in subsection (c)(5).”

A compilation of the above cited WRDA provisions is provided in Appendix A.

EXPENDITURE HISTORY. Federal and Non-Federal expenditure history and the remaining Federal amount available before the authorized Federal appropriations limit is reached is shown in Table 1.



**Jackson
County**

Table 1. Expenditure History

Cost Share	Federal Allocations	Non-Federal Cash	Non-Federal WIK & LERRDs	Unexpended Balance (Federal)	Unexpended Balance (Non-Federal)
CS #498 Big Hill Acres (closed)	\$12,970,695	\$3,772,814	\$551,885	\$0	\$0
CS #535 Water Reclamation	\$3,200,000	\$1,066,667	\$0	\$446,200	\$89,400
Ocean Springs (CS #600)	\$4,000,000 (\$25K is outside the CS)	\$1,380,000	\$0	\$3,960,000	\$1,380,000
Gautier (future CS)	\$2,500,000 (\$25K is outside the CS)	\$0	\$0	\$2,489,401	N/A (no non-Federal funds received to date; awaiting CS agreement)
Total as of 5 Mar 2021:	\$22,670,695	\$6,219,481	\$551,885	\$6,895,601	\$1,469,400
	\$34,829,306	Remaining Authority to reach uninflated Federal Limit			

NON-FEDERAL SPONSOR. The City of Gautier (City), Mississippi is the Non-Federal Sponsor for this project. Gautier has requested assistance from the U.S. Army Corps of Engineers (USACE) to design and construct a nanofiltration treatment unit that will treat the water using newer technology than the existing Ion Exchange Plant.

BACKGROUND. Initial authorization was provided by Section 219(c)(5) of WRDA 1992. In 1998 initial funds were appropriated. The first project for Jackson County (Big Hill Acres) was design assistance that was provided under an agreement for the Environmental Evaluation of the Jackson County Industrial Water Supply, which was executed with the County in October 2001 at a total cost of \$178,697.

Design and construction assistance was provided for the Big Hill Acres Water and Sewer System under an agreement that was executed with Jackson County in December 2012. The project was completed in March of 2017 at a total cost of \$17,295,394.

Design assistance for the Jackson County Water Reclamation Project was provided under an agreement executed with the JCUA in June 2018. The project is active and will continue design efforts during FY2021.

The FY20 allocation for projects under Section 219(c)(5) for Jackson County is \$6,500,000, of which \$2,500,000 is for the Gautier Water Supply Improvements Project.

The City of Gautier is the owner of the public water supply system for Gautier, MS and is responsible for operating and maintaining the public water system. The City has an existing Ion Exchange Water Treatment Plant that is capable of treating 1 million gallons per day (MGD) of water and is located at the public works department on Vancleave Road.

At times, during system regeneration (approximately 4 hours or more per day) of the Ion Exchange Plant, the treated water has a distinct brown tint. The City plans to add a nanofiltration unit as a treatment alternative to the Ion Exchange Plant. Nanofiltration is a relatively new technology for potable water generation that uses a membrane filtration process to remove contaminants. A Nanofiltration Water Treatment Pilot Project was performed at the City's facility, and the results in color removal were deemed successful by City Management and Operations personnel.

DESCRIPTION OF PROJECT (Increment of Work). The Jackson County, Mississippi, Gautier Water Treatment Plant Expansion Project, shown in Figure 1, will consist of the design and construction of a Nanofiltration Water Treatment Plant. The Nanofiltration Treatment Plant will be housed within a new building, on a new concrete pad adjacent to the existing Ion Exchange Plant.

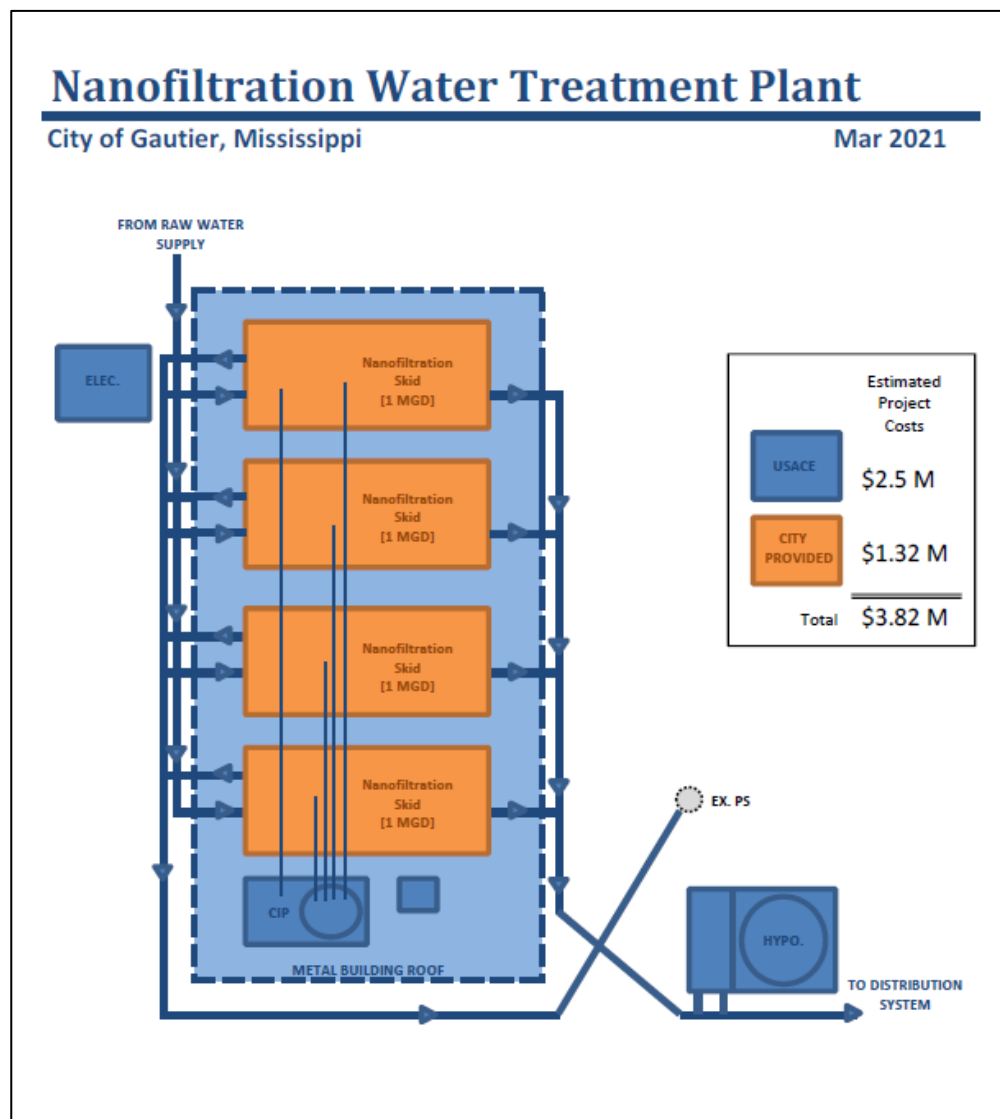
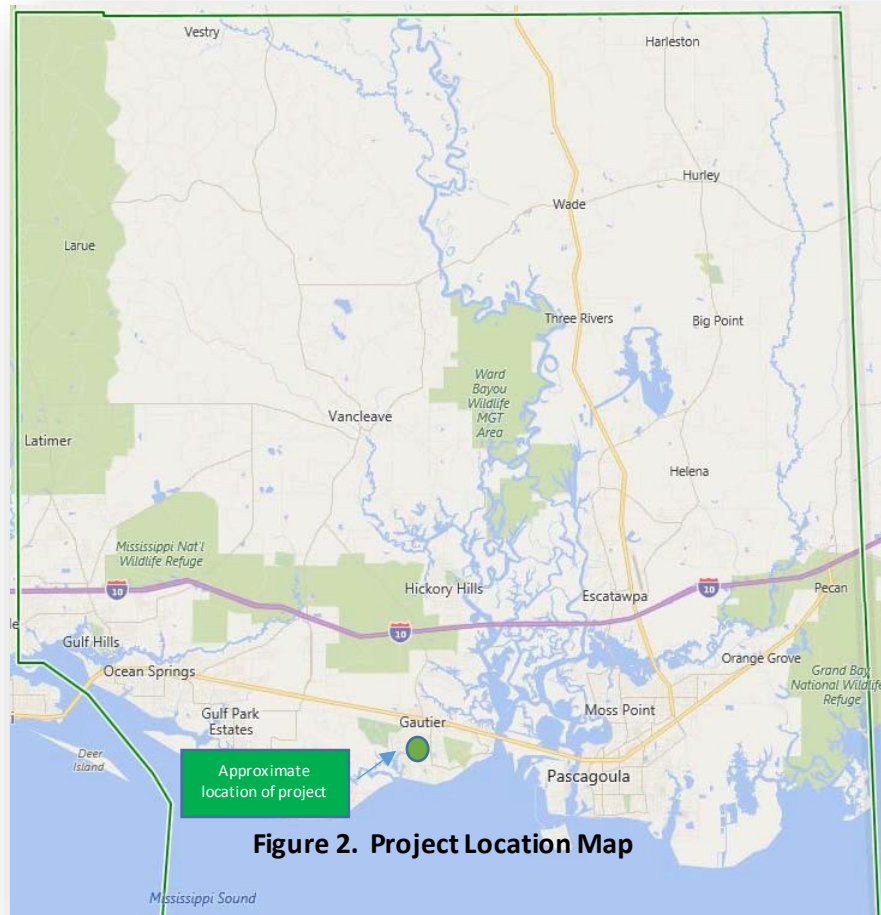


Figure 1. Nanofiltration Treatment Plant Diagram

The City of Gautier will purchase the 4 treatment trains (skids) and will store them until ready for installation. USACE will install the skids, install the underground piping, construct the building enclosure and the concrete pad, construct the clean-in-place system, and install the sodium hypochlorite system (disinfection) and the electrical components necessary to run the Nanofiltration treatment trains. This proposed water treatment plant expansion project, as authorized in the USACE 2020 Work Plan for the City of Gautier, is located within Jackson County, in southeastern Mississippi. The project location map is depicted in Figure 1. The project area is within Congressional District No. 4.



This project includes design plans and analysis, construction cost estimates, and Mississippi permit coordination documents as provided by the City of Gautier, and environmental compliance to include NEPA documentation, agency coordination, and identification of state permits. USACE will use the design plans and design analysis provided by the City of Gautier as the basis for design-bid-build contract scope development and project construction. All construction will occur within public rights-of-way of public property already owned by the City of Gautier.

BENEFITS OF THE PROJECT. This project will improve the color of the public drinking water in the City of Gautier. Color is an aesthetic consideration, and the contaminants causing the brownish tinge are not deemed to present a risk to human health. However, people will stop using water from the public water system if it has a color tinge, tastes bad, or smells bad – even if it is safe to drink. The nanofiltration treatment trains are expected to remove a sufficient amount of contaminants causing the water color to be brownish at times so that water does not look dirty and the people who rely on the City’s public water system will have greater confidence in the public drinking water and not unnecessarily use alternative water sources.

FINANCIAL CAPABILITY OF THE NON-FEDERAL SPONSOR. The City of Gautier is a governmental entity responsible for the daily management, operation, and maintenance of City-wide public water systems within its boundaries. The City’s cost share of the project funding will be cash sourced from water and sewer revenue bond proceeds obtained for improvements within the City of Gautier. In accordance with Section 219 of WRDA 1992, as amended, cost sharing is a maximum of 75% Federal and a minimum of 25% non-Federal. Therefore, the City’s share of the project is estimated to be \$1,320,000 in cash which is slightly more than 25% of the non-Federal project cost share.

ENVIRONMENTAL COMPLIANCE. In accordance with the National Environmental Policy Act (NEPA), impacts to the environment from the proposed action and alternatives will be considered. An Environmental Assessment was prepared by the City of Gautier in October 2019. The Mobile District will facilitate any other required environmental coordination as part of the NEPA process. Additionally, the Mobile District Regulatory Division has determined that this project will not discharge into the waters of the United States; therefore, a Department of Army permit will not be required. Any required permits will be in place before the design is accepted and construction is allowed to begin.

COST. The total project cost is estimated to be \$3,820,000. Of this amount, \$2,500,000 in Federal funds have been appropriated in FY2020 and are available for this project. The non-Federal Sponsor is estimated to be paying slightly more than 25% of the project cost share. Table 2 provides a breakdown of estimated expenditures and cost for this project element.

Table 2: Estimated Expenditures and Costs

	Section 219 WRDA 1992 Cost Share (75/25)	FY20 Appropriation Cost Share
Federal Cash:	\$2,865,000	\$2,500,000
Non-Federal Cash:	\$955,000	\$1,320,000
Total Project Cost	\$3,820,000	\$3,820,000

REAL ESTATE. The Non-Federal Sponsor has the responsibility to provide Lands, Easements, Rights-Of-Way, Relocations, and Disposal Areas (LERRD), and the value of any LERRD is included in the total project cost and credited against the required non-Federal share. All lands provided by the Non-Federal Sponsor for implementation of the project shall be valued for crediting purposes in accordance with the applicable rules of just compensation, as specified by the Government.

The project will be constructed on property owned by the City of Gautier. There are three parcels of land that total 0.76 acres with an assessed land value totaling \$120,010.

The planned design will, to the fullest extent possible, incorporate existing utility rights-of-way, easements, and public lands. The Non-Federal Sponsor shall not receive credit for the value of lands, easements, or rights-of-way that are part of the land on which the facility or structure to be improved is located, but any new or additional real estate interest that must be acquired for the project may be credited. At this time, no real estate or permanent easements have been identified for this project.

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R). OMRR&R is a 100 percent non-Federal responsibility.

SCHEDULE. The basic execution schedule for this work is provided below.

29 March 2021	Execute PPA for Design and Construction Assistance (CW130)
29 May 2021	Ready to Advertise (CW400)
29 September 2021	Contract Award (CC800)
12 June 2022	Project Physical Completion (CW450)
23 January 2023	Project Financial Completion (CW470)

APPENDIX A

Compiled Authorization Language – Sec 219 Environmental Infrastructure, Jackson County, Mississippi

1. SECTION 219 AUTHORIZATION, WRDA 1992 **SEC. 219. ENVIRONMENTAL INFRASTRUCTURE.**

(a) IN GENERAL.--The Secretary is authorized to provide assistance to non-Federal interests for carrying out water-related environmental infrastructure and resource protection and development projects described in subsection (c), including waste water treatment and related facilities and water supply, storage, treatment, and distribution facilities. Such assistance may be in the form of technical and planning and design assistance. If the Secretary is to provide any design or engineering assistance to carry out a project under this section, the Secretary shall obtain by procurement from private sources all services necessary for the Secretary to provide such assistance, unless the Secretary finds that--

(1) the service would require the use of a new technology unavailable in the private sector; or

(2) a solicitation or request for proposal has failed to attract 2 or more bids or proposals.

(b) NON-FEDERAL SHARE.--The non-Federal share of the cost of projects for which assistance is provided under this section shall not be less than 25 percent, except that such share shall be subject to the ability of the non-Federal interest to pay, including the procedures and regulations relating to ability to pay established under section 103(m) of the Water Resources Development Act of 1986.

(c) PROJECT DESCRIPTIONS.--The projects for which the Secretary is authorized to provide assistance under subsection (a) are as follows:...

... (5) JACKSON COUNTY, MISSISSIPPI.--Provision of an alternative water supply for Jackson County, Mississippi.

...

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for providing assistance under this section \$30,000,000. Such sums shall remain available until expended.

(e) AUTHORIZATION OF APPROPRIATIONS FOR CONSTRUCTION ASSISTANCE.—

There are authorized to be appropriated for providing construction assistance under this section—

(1) \$20,000,000 for the project described in subsection (c)(5)...

2. AUTHORIZATION AMENDMENTS

The project was authorized for design and construction assistance by Section 219 of the Water Resources Development Act (WRDA) of 1992 (Public Law 102-580) as amended by Section 504 of WRDA 96 (Public Law 104-303), Sections 331 of WRDA 99 (Public Law 106-53), and Section 1(a) WRDA 99 corrections (Public Law 106-109), Section 3103 and 5158 WRDA 2007 (PUBLIC LAW 110-114—NOV. 8, 2007) which state:

“WRDA 1996 - SEC. 504. ENVIRONMENTAL INFRASTRUCTURE.

Section 219 of the Water Resources Development Act of 1992 is amended by adding at the end of the following “(e) Authorization of Appropriations for Construction Assistance. – There are authorized to be appropriated for providing construction assistance under this section - (1) \$10,000,000 for the project described in subsection (c) (5).”

“WRDA 1999 - SEC. 331. JACKSON COUNTY, MISSISSIPPI

The project for environmental infrastructure, Jackson County, Mississippi, authorized by Section 219(c)(5) of the Water Resources Development Act of 1992 (106 Stat. 4835) and modified by section 505 of the Water Resources Development Act of 1996 (110 Stat. 3757), is further modified to direct the Secretary to provide a credit, not to exceed \$5,000,000, against the non-Federal share of the cost of the project for the costs incurred by the Jackson County Board of Supervisors since February 8, 1994, in constructing the project if the Secretary determines that such costs are for work that the Secretary determines is compatible with and integral to the project.”

“WRDA 1999 CORRECTIONS - SEC. 1(a). ENVIRONMENTAL INFRASTRUCTURE.

(1) in subsection (c), by striking paragraph (5) and inserting the following:

“(5) JACKSON COUNTY, MISSISSIPPI.—Provision of an alternative water supply and a project for the elimination or control of combined sewer overflows for Jackson County, Mississippi.”;

and

(2) Section 219 (e) (1) of the Water Resources Development Act of 1992 (106 Stat. 4835, 110 Stat. 3757) by striking \$10,000,000 and inserting \$15,000,000.”

“WRDA 2007 - SEC. 3103. JACKSON COUNTY, MISSISSIPPI.

(a) MODIFICATION.—Section 331 of the Water Resources Development Act of 1999 (113 Stat. 305) is amended by striking “\$5,000,000” and inserting “\$9,000,000”.

(b) APPLICABILITY OF CREDIT.—The credit provided by section 331 of the Water Resources Development Act of 1999 (113 Stat. 305) (as amended by subsection (a) of this section) shall apply to costs incurred by the Jackson County Board of Supervisors during the period beginning on February 8, 1994, and ending on the date of enactment of this Act for projects authorized by section 219(c)(5) of the Water Resources Development Act of 1992 (106 Stat. 4835; 110 Stat. 3757; 113 Stat. 1494).

“WRDA 2007 – SEC. 5158(2). ADDITIONAL ASSISTANCE FOR CRITICAL PROJECTS.

Section 219 of the Water Resources Development Act of 1992 (106 Stat. 4835; 110 Stat. 3757; 113 Stat. 334; 113 Stat. 1494; 114 Stat. 2763A–219; 119 Stat. 2255) is amended—

(1) in subsection (c)(5) by striking “a project for the elimination or control of combined sewer overflows” and inserting “projects for the design, installation, enhancement, or repair of sewer systems”;

(2) in subsection (e)(1) by striking “\$20,000,000” and inserting “\$32,500,000”; ...

WRDA 2020 – SEC. 352. ADDITIONAL ASSISTANCE FOR CRITICAL PROJECTS.

(a) CONSISTENCY WITH REPORTS.—Congress finds that the project modifications described in this section are in accordance with the reports submitted to Congress by the Secretary under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d), titled “Report to Congress on Future Water Resources Development”, or have otherwise been reviewed by Congress.

(b) MODIFICATIONS.—

(6) JACKSON COUNTY, MISSISSIPPI.—Section 219 of the Water Resources Development Act of 1992 (106 Stat. 4835; 110 Stat. 3757; 113 Stat. 1494; 121 Stat. 1258) is amended—

(A) in subsection (c)(5), by striking “water supply and” and inserting “water supply, projects for stormwater and drainage systems, and”; and

(B) in subsection (e)(1), by striking “\$32,500,000” and inserting “\$57,500,000”.