

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY AND COUNTY OF HONOLULU, HAWAII
FOR
THE ALA WAI CANAL, HONOLULU, OAHU, HAWAII
GENERAL REEVALUATION STUDY

THIS AGREEMENT is entered into this 30 day of JUNE, 2021, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Honolulu District (hereinafter the "District Commander") and the City and County of Honolulu, Oahu, Hawaii (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the Ala Wai Canal flood risk management project within the City and County of Honolulu, Oahu, Hawaii was authorized by Section 1401 of the Water Resources Development Act of 2018, Public Law 115-270 (hereinafter the "Project");

WHEREAS, during design of the Project, the Government, in consultation with the Non-Federal Sponsor, determined that a general reevaluation study (hereinafter the "Study") is warranted to identify and evaluate additional alternatives and prepare a general reevaluation report that, if appropriate, recommends necessary modifications to the Project;

WHEREAS, notwithstanding Section 105(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2215(a)), which specifies the cost-sharing requirements generally applicable to such studies, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018"), authorizes the Government to conduct the Study at full Federal expense to the extent that appropriations provided under the Investigations heading of the BBA 2018 are available and used for such purpose;

WHEREAS, the Government expended \$4.8 million under the Construction heading of BBA 2018 for design of the Project (hereinafter the "BBA 2018 design costs");

WHEREAS, if a project partnership agreement for the Project, with modifications based on the Study, is subsequently executed, the non-federal share of the BBA 2018 design costs, currently projected to be \$1.68 million, will be recovered pursuant to the terms and conditions of that project partnership agreement; 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.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using BBA 2018 Investigation funds. In the event that there are insufficient BBA 2018 Investigation funds to complete the Study, such completion shall be subject to cost-sharing otherwise applicable to the Study and amendment of this Agreement.

1. The Government shall conduct the Study consistent with the Project Management Plan, which specifies the scope, cost, and schedule for Study activities. In consultation with the Non-Federal Sponsor, the Government may modify the Project Management Plan as necessary.

2. The cost of the Study is limited to \$3 million in Federal funds, unless the Assistant Secretary of the Army (Civil Works) approves an exemption for the Study to exceed \$3 million.

3. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts 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.

B. In addition to the ongoing, regular discussions of the parties in the delivery of the Study, the Government and the Non-Federal Sponsor may establish a Study Coordination Team to discuss significant issues or actions. The Non-Federal Sponsor's costs for participation on the Study Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

C. The Non-Federal Sponsor acknowledges that if a project partnership agreement for the Project, with modifications based on the Study, is subsequently executed, the non-federal share of BBA 2018 design costs, currently projected to be \$1.68 million, shall be recovered pursuant to the terms and conditions of that project partnership agreement.

D. The Non-Federal Sponsor shall not be entitled to any credit or reimbursement for any costs it incurs in performing its responsibilities under this Agreement.

ARTICLE II - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an exemption is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if a Report of the Chief of Engineers, or, if applicable, a Report of the Director of Civil Works, is not signed for the Study within 3 years after the effective date of this Agreement.

B. If the Government determines at any time that BBA 2018 funds made available for the Study are not sufficient to complete the Study, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend the Study

until the parties execute an amendment to this Agreement that provides for cost-sharing of the remaining work.

ARTICLE III - 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.

ARTICLE IV - 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 V - NOTICES

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 certified or registered mail, with return receipt, as shown below. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

If to the Non-Federal Sponsor:

Mayor Rick Blangiardi
City and County of Honolulu, Oahu, Hawaii
530 South King Street
Honolulu, HI 96813

If to the Government:

District Commander
U.S. Army Corps of Engineers, Honolulu District
Bldg. 230, Rm. 121
Fort Shafter, HI 96858-5440

ARTICLE VI - 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.

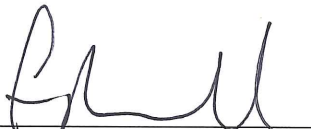
ARTICLE VII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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 AND COUNTY OF HONOLULU,
OAHU, HAWAII

BY: 
ERIC S. MARSHALL, PE, PMP
Lieutenant Colonel, U.S. Army
District Commander

BY: 
RICK BLANGIARDI
Mayor City and County of Honolulu

DATE: 30 JUN 21

DATE: June 30, 2021