



RESOLUTION

AUTHORIZING THE DIRECTOR OF DESIGN AND CONSTRUCTION OF THE CITY AND COUNTY OF HONOLULU OR THE DIRECTOR'S DESIGNEE TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE STATE BOARD OF LAND AND NATURAL RESOURCES FOR PUHAWAI STREAM FLOOD MITIGATION PROJECTS.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, provides that prior City Council's consent and approval is required for an intergovernmental agreement which places an obligation on any department of the City and County of Honolulu ("City"); and

WHEREAS, the State Board of Land and Natural Resources and the City have determined the necessity for a flood mitigation project for Puhawai Stream located in Lualualei on the island of Oahu; and

WHEREAS, the City and the State Board of Land and Natural Resources entered into a Memorandum of Agreement (attached hereto as Exhibit "A" and by reference incorporated herein) dated November 2, 2012, for the Puhawai Stream flood mitigation project ("Project"), pursuant to the \$2,000,000 appropriated by the 2011 State Legislature; and

WHEREAS, in 2012, the State Legislature appropriated an additional \$2,000,000 for the Project which will be transmitted to the City pursuant to the Memorandum of Agreement (attached hereto as Exhibit "B" and by reference incorporated herein); and

WHEREAS, the City will be required to maintain and operate any flood mitigation improvements if implemented; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of the Department of Design and Construction or the Director's designee is authorized to enter into a Memorandum of Agreement with the State Board of Land and Natural Resources, for the Puhawai Stream Flood Mitigation Projects, which is substantially in the form of the draft Memorandum of Agreement attached hereto as Exhibit "B" and by reference incorporated herein; and



RESOLUTION

BE IT FURTHER RESOLVED that the Director of Design and Construction or the Director's designee is authorized to execute any incidental or related agreements and documents in furtherance of the above Memorandum of Agreement, so long as such agreements and documents do not incur additional obligations on the part of the City; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Director of Budget and Fiscal Services, the Director of Design and Construction, and the Chairperson of the State Board of Land and Natural Resources, Attention: Darron K. Agawa, c/o 1151 Punchbowl Street, Room 221, Honolulu, Hawaii 96813.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

April 15, 2014
Honolulu, Hawaii

Councilmembers

EXHIBIT A

MEMORANDUM OF AGREEMENT

VARIOUS LUALUALEI FLATS/PUHAWAI STREAM FLOOD MITIGATION PROJECTS ("Agreement")

This Agreement, executed on the respective dates indicated below, is effective as of the date of the last execution, by and between the BOARD OF LAND AND NATURAL RESOURCES, State of Hawaii (hereinafter referred to as the "State") and CITY AND COUNTY OF HONOLULU, DEPARTMENT OF DESIGN AND CONSTRUCTION, whose principal place of business and post office address is 650 South King Street, 11th Floor, Honolulu, Hawaii 96813 (hereinafter referred to as the "City"), collectively, the "Parties".

RECITALS

Whereas, the residents and businesses in the Lualualei Flats area on the island of Oahu have been historically adversely affected by floods and have requested assistance aid in relief to mitigate flooding.

Whereas, following the floods of 1996, a flood study was funded by the US Army Corps of Engineers (ACOE) and the US Department of Agriculture, National Resource Conservation Service (NRCS) ("1996 ACOE and NRCS Report"). This study identified several problem flood areas and included several proposed flood mitigation alternatives in the Lualualei Flats area. One such area where alternatives were identified is along Puhawai Road.

Whereas, the 2011 Hawaii State Legislature appropriated \$ 2.0 million in CIP funding to the State to address flood mitigation construction projects in the Lualualei Flats / Puhawai Stream areas on the island of Oahu (Act 164, 2011 Session Laws of Hawaii, Item H-5).

Whereas, the State serves as an advocate and coordinator of State-conducted flood mitigation projects, as defined in the Hawai'i Revised Statutes (HRS), Chapter 179.

Whereas, the City owns and maintains various roadways, bridges and drainage-ways in the Lualualei Flats / Puhawai Stream area, including Puhawai Road.

Whereas, the proposed "Project" consists of the planning, design and construction of a culvert replacement and related roadwork and drainage improvements at the Puhawai Road crossing in the Lualualei Flats area, and may include constructing a bridge at the Puhawai road crossing if the City determines that a bridge is warranted.

NOW THEREFORE, the Parties hereby agree as follows:

1. Contribution: The State agrees to direct funding appropriated by Act 164, 2011 SLH, Item H-5, to the City for the Project. The City shall take into consideration the 1996 ACOE and NRCS Report, but shall determine the scope of the Project, provided that the Project scope does not exceed and is consistent with the description of the Project above. The maximum total contribution from the State shall not exceed two million dollars (\$2,000,000) or the combined actual cost of the planning, design and construction of the Project, whichever is less.

2. **Schedule Payment and Submittals:** The State shall transmit funding in an amount substantiated by the required documents to the City within (thirty) 30 days upon written request and satisfactory submittal from the City of the following milestone actions:
 - A. **Planning/Design Contract:** The City shall provide the State with a copy of the award letter to the planning/design consultant for the subject Project, which shall indicate the budgeted amount for this effort including any contingencies, if any. Any necessary supplemental funding for this contract or supplemental contract(s) shall be funded by the State, following satisfactory evidence of such award (i.e. change order or award letter) that establishes the cost for the additional work. The City shall submit to the State monthly status reports by postal or electronic mail that shall cover work completed, work planned in the next month, and Project budget balance. The City agrees to provide to the State three (3) hard copies of all preliminary/draft, and final documents prepared for this Project.
 - B. **Construction:** The City shall provide the State with a copy of the successful construction bid and invoice for the Project for an amount to include contingencies, if any, provided that the amount for contingencies reimbursed by the State shall not exceed 10% of the construction contract. Prior to the start of construction, the City shall submit a copy of the certificate(s) of insurance, identifying the State of Hawaii as an additional insured for the construction of the Project in accordance with Section 6 below. The City shall submit to the State monthly status reports by postal or electronic mail that shall cover a summary of work completed or daily inspection sheets, updated construction schedule, construction funding balance and representative photos of the construction work. The City shall also provide a detailed final accounting of the construction activity to the State no later than 90 days following the date of acceptance.
 - C. **Miscellaneous:** If there is other miscellaneous work for the Project that is required to properly perform this Agreement, the City may invoice the State for such activities, provided appropriate evidence of such expenditure(s) is provided to the State.
3. **Return of Funds:** If the projects do not proceed, any unused funds shall be returned to the State, without interest, as set forth below:
 - A. If for any reason the City is unable to award or complete the Project, the City shall provide written notification to the State detailing the reason(s). Any unused funds shall be promptly returned by the City to the State.
 - B. If, after the final acceptance of the project and City's final payment to the Contractor, there are unused State funds, those unused funds shall be promptly returned to the State.

Any unused funds shall in any event be promptly returned to the State.
4. **Additional Funds:** If the Project exceeds \$2.0 million, the City agrees that it shall be responsible for any additional funds necessary to complete the study, design, and

Memorandum of Agreement for various Lualualei Flats / Puhawai Stream Flood Mitigation Projects

construction of the Project, provided that the City is not obligating itself to perform any work not funded by this Agreement.

5. Permit Applications: The City or its representative shall be responsible for applying for and obtaining all Federal, State and City permit required for the Project and shall comply with all laws applicable to the Project.
6. Access: State, its consultant(s), contractor(s), and any authorized representative of the State shall have the right to access the City's properties during reasonable business hours and upon reasonable notice. Such access shall be coordinated through the City Engineer's office or its designated representatives.
7. Insurance: City agrees that it shall require the planning/design consultant(s) and contractor(s) to name the State as an additional insured on their respective liability insurance certificates. The City shall require the planning/design consultant(s) and contractor(s) to procure, at their own cost and expense, and maintain during the entire period of this Agreement, comprehensive general liability insurance, issued by an insurance company or companies licensed or authorized to do business in the State of Hawaii, with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii Department of Land and Natural Resources (DLNR).
8. Miscellaneous Conditions:
 - A. The City shall be responsible for procurement and contracting of all phases of the project and shall comply with the requirements of the Hawaii Public Procurement Code, HRS Chapter 103D.
 - B. It is expressly understood and agreed that upon completion of any construction work for the projects, the City shall own said improvements and shall be solely responsible for any maintenance or additional improvements to the projects.
 - C. This Agreement shall be governed by the laws of the State of Hawaii.
 - D. This Agreement may be modified only by written amendment to the Agreement and signed by the Parties.
 - E. This Agreement contains all of the agreements and understandings of the Parties.

Memorandum of Agreement for Various Luahalei Flats / Puhawai Stream Flood Mitigation Projects

IN WITNESS WHEREOF, State and the City have executed the Agreement by their signatures on the dates below.

Approved by the Board of Land and Natural Resources at its meeting held on July 27, 2012.

Approved as to Form:

STATE OF HAWAII; DEPARTMENT OF LAND AND NATURAL RESOURCES:

By: Cindy V. Young
Cindy V. Young
Deputy Attorney General

By: William J. Aila, Jr.
WILLIAM J. AILA, JR. Chairperson,
Board of Land and Natural Resources

Date: October 31, 2012

Date: NOV 1 2012

Approval Recommended:
Department of Design and Construction

CITY AND COUNTY OF HONOLULU:

[Signature]
By: Its Director

Wilson Hooyang
By: Director of Budget and Fiscal Services

Date: OCT 10 2012

Approved as to Form and Legality:

By: DANIEL W.S. LAWRENCE
Deputy Corporation Counsel

Date: OCT 09 2012

EXHIBIT B

MEMORANDUM OF AGREEMENT

PUHAWAI STREAM FLOOD MITIGATION PROJECTS ("Agreement")

This Agreement, executed on the respective dates indicated below, is effective as of the date of the last execution, by and between the BOARD OF LAND AND NATURAL RESOURCES, State of Hawaii (hereinafter referred to as the "State") and CITY AND COUNTY OF HONOLULU, DEPARTMENT OF DESIGN AND CONSTRUCTION, whose principal place of business and post office address is 650 South King Street, 11th Floor, Honolulu, Hawaii 96813 (hereinafter referred to as the "City"), collectively, the "Parties".

RECITALS

Whereas, the residents and businesses in the Lualualei Flats area on the island of Oahu have been historically adversely affected by floods and have requested assistance aid in relief to mitigate flooding.

Whereas, following the floods of 1996, a flood study was funded by the US Army Corps of Engineers (ACOE) and the US Department of Agriculture, National Resource Conservation Service (NRCS) ("1996 ACOE and NRCS Report"). This study identified several problem flood areas and included several proposed flood mitigation alternatives in the Lualualei Flats area. One such area where alternatives were identified is along Puhawai Road.

Whereas, the 2012 Hawaii State Legislature appropriated \$ 2.0 million in CIP funding to the State to address flood mitigation construction projects in the Puhawai Road/Puhawai Stream crossing on the island of Oahu (Act 106, 2012 Session Laws of Hawaii, Item H-7.02).

Whereas, the State serves as an advocate and coordinator of State-conducted flood mitigation projects, as defined in the Hawaii Revised Statutes (HRS), Chapter 179.

Whereas, the City owns and maintains various roadways, bridges and drainage-ways in the Lualualei Flats / Puhawai Stream area, including Puhawai Road.

Whereas, the potential scope of the proposed "Project" consists of the planning, design and construction of drainage related roadwork improvements at the Puhawai Road crossing in the Lualualei Flats area, and may include constructing a bridge at the Puhawai Road crossing if the City determines that a bridge is warranted.

NOW THEREFORE, the Parties hereby agree as follows:

1. Contribution: The State agrees to direct funding appropriated by Act 106, 2012 SLH, Item H-7.02, to the City for the Project. The City shall take into consideration the 1996 ACOE and NRCS Report, but shall determine the scope of the Project, if any, in its sole discretion, provided that the Project scope is consistent with the description of the Project above. The maximum total contribution from the State shall not exceed two million dollars (\$2,000,000) or the combined actual cost of the planning, design and construction of the Project, whichever is less.
2. Schedule Payment and Submittals: The State shall transmit funding in an amount substantiated by the required documents to the City within (thirty) 30 days upon written request and satisfactory submittal from the City of the following milestone actions:
 - A. Planning/Design Contract: The City shall provide the State with a copy of the award letter to the planning/design consultant for the subject Project, which shall indicate the budgeted amount for this effort including any contingencies, if any. Any necessary supplemental funding for this contract or supplemental contract(s) shall be funded by the State, following satisfactory evidence of such award (ie. change order or award letter) that establishes the cost for the additional work. The City shall submit to the State quarterly status reports by postal or electronic mail that shall cover work completed, work planned in the next quarter, and Project budget balance. The City agrees to provide to the State three (3) hard copies of all preliminary/draft, and final documents prepared for this Project.
 - B. Construction: The City shall provide the State with a copy of the successful construction bid and invoice for the Project for an amount to include contingencies, if any, provided that the amount for contingencies reimbursed by the State shall not exceed 10% of the construction contract. Prior to the start of construction, the City shall submit a copy of the certificate(s) of insurance, identifying the State of Hawaii as an additional insured for the construction of the Project in accordance with Section 6 below. The City shall submit to the State quarterly status reports by postal or electronic mail that shall cover a summary of work completed or daily inspection sheets, updated construction schedule, construction funding balance and representative photos of the construction work. The City shall also provide a detailed final accounting of the construction activity to the State no later than 90 days following the date of acceptance.
 - C. Miscellaneous: If there is other miscellaneous work for the Project that is required to properly perform this Agreement, the City may invoice the State for such activities, provided appropriate evidence of such expenditure(s) is provided to the State.
3. Return of Funds: If the projects do not proceed, any unused funds shall be returned to the State, without interest, as set forth below:
 - A. If for any reason the City is unable to award or complete the Project, the City shall provide written notification to the State detailing the reason(s). Any unused funds shall be promptly returned by the City to the State.

Memorandum of Agreement for Various Lualualei Flats / Puhawai Stream Flood Mitigation Projects

- B. If, after the final acceptance of the project and county's final payment to the Contractor, there are unused State funds, those unused funds shall be promptly returned to the State.

Any unused funds shall in any event be promptly returned to the State.

- 4. Additional Funds: If Project exceeds \$2.0 million, the City agrees that it shall seek any additional funds necessary to complete the planning, design, and construction of the Project.
- 5. Permit Applications: The City or its representative shall be responsible for applying for and obtaining all Federal, State and City permit required for the Project and shall comply with all laws applicable to the Project.
- 6. Access: State, its consultant(s), contractor(s), and any authorized representative of the State shall have the right to access the City's properties during reasonable business hours and upon reasonable notice. Such access shall be coordinated through the City Engineer's office or its designated representatives.
- 7. Insurance: City agrees that it shall require the planning/design consultant(s) and contractor(s) to name the State as an additional insured on their respective liability insurance certificates. The City shall require the planning/design consultant(s) and contractor(s) to procure, at their own cost and expense, and maintain during the entire period of this Agreement, comprehensive general liability insurance, issued by an insurance company or companies licensed or authorized to do business in the State of Hawaii, with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the State. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State.
- 8. Miscellaneous Conditions:
 - A. The City shall be responsible for procuring, contracting, and managing all phases of the project which shall comply with the requirements of the Hawaii Public Procurement Code, HRS Chapter 103D, and any other applicable laws or regulations.
 - B. It is expressly understood and agreed that upon completion of any construction work for the projects, the City shall own said improvements and shall be solely responsible for any maintenance or additional improvements to the projects.
 - C. This Agreement shall be governed by the laws of the State of Hawaii.
 - D. This Agreement may be modified only by written amendment to the Agreement and signed by the Parties.
 - E. This Agreement contains all of the agreements and understandings of the Parties.

Memorandum of Agreement for Various Luualalei Flats / Puhawai Stream Flood Mitigation Projects

IN WITNESS WHEREOF, State and the City have executed the Agreement by their signatures on the dates below.

Approved by the Board of Land and Natural Resources at its meeting held on _____.

Approved as to Form:

STATE OF HAWAII: DEPARTMENT OF LAND AND NATURAL RESOURCES:

By: _____

By: _____
WILLIAM J. AILA, JR. Chairperson,
Board of Land and Natural Resources

Date: _____

Date: _____

Approval Recommended:
Department of Design and Construction

CITY AND COUNTY OF HONOLULU:

By: Its Director

By: Director of Budget and Fiscal Services

Approved as to Form and Legality:

Date: _____

By: _____

Date: _____

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 14-78, CD1

Introduced: 04/15/14 By: ERNEST MARTIN (BR)

Committee: INTERGOVERNMENTAL
AFFAIRS AND HUMAN
SERVICES

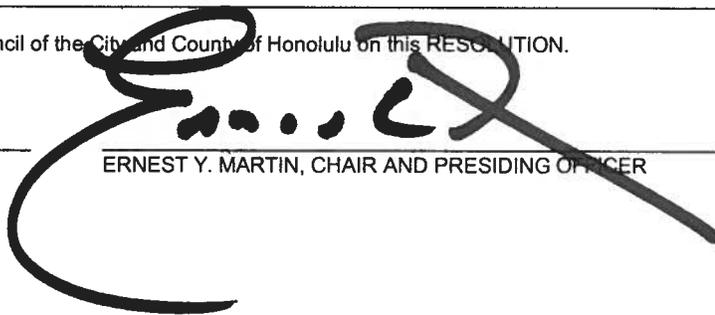
Title: AUTHORIZING THE DIRECTOR OF DESIGN AND CONSTRUCTION OF THE CITY AND COUNTY OF HONOLULU OR THE DIRECTOR'S DESIGNEE TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE STATE BOARD OF LAND AND NATURAL RESOURCES FOR PUHAWAI STREAM FLOOD MITIGATION PROJECTS.

Voting Legend: * = Aye w/Reservations

04/24/14	INTERGOVERNMENTAL AFFAIRS AND HUMAN SERVICES	CR-130 - RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
05/07/14	COUNCIL	CR-130 AND RESOLUTION 14-78, CD1 WERE ADOPTED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER