



RESOLUTION

AUTHORIZING (1) THE RECEIPT AND EXPENDITURE OF MONIES FOR THE SAND ISLAND PROCESS CONTROL LABORATORY FUNDED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND (2) THE DIRECTOR OF DEPARTMENT OF ENVIRONMENTAL SERVICES TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT FOR DESIGN AND CONSTRUCTION SERVICES FOR THE SAND ISLAND PROCESS CONTROL LABORATORY PROJECT

WHEREAS, U.S. Department of Defense ("DOD") facilities currently discharge to the Sand Island WWTP and the DOD will be expanding their facilities and housing and increasing their flows; and

WHEREAS, the U.S. Congress appropriated \$250,000 in Federal Fiscal Year 2005 funds for the expansion of the Sand Island WWTP to accommodate future flows from DOD facilities; and

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the Department of Environmental Services ("ENV") have agreed to use the appropriated funds with City matching funds to retrofit an existing room at the Sand Island WWTP as a process control laboratory for evaluating process performance; and

WHEREAS, ENV made formal application for the appropriated funds to EPA on November 21, 2005 (transmittal letter attached); and

WHEREAS, the U.S. Army Corps of Engineers, Honolulu District ("HED") and ENV have drafted a Memorandum of Agreement (attached hereto as Exhibit "A") outlining HED design and construction services for the Sand Island Process Control laboratory; and

WHEREAS, EPA and HED are agencies of the Federal Government; and

WHEREAS, in accordance with Section 1-8.2, Revised Ordinances of Honolulu 1990, as amended, any intergovernmental agreement or amendment thereto which places an obligation on the City, or any department or agency thereof shall require the prior consent and approval of the City Council; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu, that the Director of ENV be authorized to receive and expend monies from EPA for the Sand Island Process Control Laboratory; and

PWED



RESOLUTION

BE IT FURTHER RESOLVED by the Council of the City and County of Honolulu, that the Director of ENV be authorized to enter into an MOA for HED's design and construction services for the Sand Island Process Control Laboratory in substantially the same form as the proposed agreement attached hereto as Exhibit "A", and any incidental or related agreements in furtherance of the MOA; and

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be directed to provide copies of this Resolution to the Mayor, Managing Director, Director of Environmental Services, and the City Director of Budget and Fiscal Services.

INTRODUCED BY
[Handwritten Signature]

COUNCILMEMBERS

DATE OF INTRODUCTION:

JAN 05 2006
Honolulu, Hawaii

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 692-5159 • FAX: (808) 692-5113 • WEBSITE: <http://www.co.honolulu.gov>

COPY

MUFI HANNEMANN
MAYOR



ERIC S. TAKAMURA, Ph.D., P.E.
DIRECTOR

KENNETH A. SHIMIZU
DEPUTY DIRECTOR

IN REPLY REFER TO:
DIR 05-105

November 21, 2005

Grants Management Office (PMD-7)
Policy and Management Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105-3901

Attention: Ms. Martha Villarreal

Gentlemen:

Subject: Application for FY 2005 Appropriation for the Sand Island WWTP
Expansion; R-9 Tracking #05-096

We transmit our final application (original and copy), including a work plan and other required forms for grant award. David Nagamine of my staff has been working with Ms. Susan Polanco de Couet in completing the application and work plan.

The grant will be used to retrofit the existing chlorine evaporator room as a process control laboratory at the Sand Island Wastewater Treatment Plant. Building walls will not be moved therefore no FONSI is required. The City's Department of Planning and Permitting has determined that this project will not require a Shoreline Management Permit. See attached memorandum dated July 27, 2005.

The project will be contracted to the U.S. Army Corps of Engineers (USACE) to design and build the process control laboratory. Estimated cost is \$708,250. We will be matching the \$240,600 EPA grant with \$467,650 in City funds. Because USACE requires funds before they start work, we request all of the grant funds be paid as soon as the grant is awarded.

Grants Management Office (PMD-7)
November 21, 2005
Page Two

If you have any questions, please contact David Nagamine, Special Assistant to the Director, at (808) 692-5150 or email dnagamine@honolulu.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric S. Takamura". The signature is fluid and cursive, written in a professional style.

Dr. Eric S. Takamura, P.E.
Director

Enclosures

cc: WT&D Division
EQ Division
Mayor's Office

MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY AND COUNTY OF HONOLULU
DEPARTMENT OF ENVIRONMENTAL SERVICES
AND
THE U.S. ARMY CORPS OF ENGINEERS
HONOLULU DISTRICT

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Army Corps of Engineers, Honolulu District ("HED") and the City and County of Honolulu, Department of Environmental Services ("DES") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of goods and services by the HED for the Sand Island Process Control Laboratory. Such services may include construction management, engineering and design, construction, technical services to include studies and planning activities, and other planning services. This MOA is entered into pursuant to 31 U.S.C. § 6505 (Intergovernmental Cooperation Act) or 10 U.S.C § 3036(d).

ARTICLE II - SCOPE

Under the authority of 10 U.S.C. 3036 (d) the HED may provide assistance only if Federal funding assistance is involved. Goods and services which the HED may provide under this MOA include the HED being the construction contracting agency for the DES, planning, engineering, construction management, technical and design services, and such other related goods or services as may be agreed upon in the future for the renovation of Sand Island Process Control Lab.

Nothing in this MOA shall be construed to require the DES to use the HED or to require the HED to provide any goods or services to the DES, except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between the HED and the DES, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs.

ARTICLE IV – SUPPORT AGREEMENTS

In response to requests from the DES for HED assistance under this MOA, the HED and the DES shall conclude mutually agreed upon written SAs, Those SAs must be on either Engineer Form 4914-R or similar containing the same information as Department of Defense Form 1144. SAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements;
- the amount of funds required and available to accomplish the scope of work as stated above; and
- the DES's fund citation and the date upon which the cited funds expire for obligation purposes;

The following must be addressed in each SA, or in this MOA:

- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;
- procedures for amending or modifying the SA; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA. Upon signature by each party's representative, a SA shall constitute a valid order under the Economy in Government Act. In the case of conflict between this MOA and a SA, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the U.S. Army Corps of Engineers, Honolulu District:

1. The HED shall provide the DES with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.
2. The HED shall identify authorized DES representatives to sign SAs.
3. The HED shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The HED shall provide detailed periodic progress, financial, and other reports to the DES as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures.

5. The HED shall inform the DES of all contracts entered into under each SA.

B. Responsibilities of the City and County of Honolulu, Department of Environmental Services:

1. The DES shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of OMB Circular A-97 or ER 1140-1-211.

2. The DES shall pay all costs associated with the HED's provisions of goods or services under this MOA and shall certify, at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

3. The DES shall ensure that only authorized DES contracting officers sign SAs.

4. The DES shall develop draft SAs to include scope of work statements.

5. The DES shall obtain for the HED all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each SA.

ARTICLE VI - FUNDING

The DES shall pay all costs associated with the HED's provision of goods or services under this MOA. Funds for the services to be provided by the HED shall be provided by delivering a check payable to "FAO, U.S. Army Corps of Engineers, Honolulu District" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government. All funds shall be provided by DES in advance of HED performing any work or incurring any obligations associated with the provision of goods or services under this MOA.

If the HED forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the DES of the amount of additional funds necessary to complete the work under that SA. The DES shall either provide the additional funds to the HED, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under a SA, the HED shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the HED shall return to the DES any funds advanced in excess of the actual costs as then known, or the DES shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the DES's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the HED shall be governed by HED policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the HED shall be resolved in accordance with Federal law and the terms of the individual contract. The HED shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The HED shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The HED shall notify the DES of any such litigation and afford the DES an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the DES and the HED shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget pursuant to Executive Orders 12088 and 12146, as modified by Executive Order 12608, or other entity as may be appropriate.

ARTICLE X - RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the HED's provision of goods or services under this MOA, the HED will accept accountability for its actions, but the DES shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the DES have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the DES's programs before other agencies, departments, and offices shall be the responsibility of the DES. The HED may provide, upon request, any assistance necessary to support the DES's justification or explanations of the DES's programs conducted under this MOA. In general, the DES is responsible for all public information. The HED may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The DES or the HED shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the DES and the HED.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the DES shall continue to be responsible for all costs incurred by the HED under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the DES and the HED.

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF ENVIRONMENTAL
SERVICES

U.S. ARMY CORPS OF ENGINEERS
HONOLULU DISTRICT

DR. ERIC S. TAKAMURA, P.E.
Director

DAVID E. ANDERSON
Lieutenant Colonel
District Engineer

DATE: _____

DATE: _____

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 06-004

Introduced: 01/05/06 By: CHAIR DONOVAN DELA CRUZ (BR)

Committee: PWED

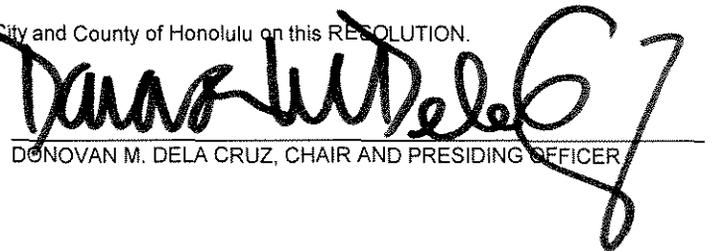
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Links: [RES06-004](#)
[D-0007](#)

PWED	01/11/06	CR-30 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.				
COUNCIL	01/25/06	RESOLUTION AND CR-30 ADOPTED.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		

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.


DENISE C. DE COSTA, CITY CLERK


DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER