

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

July 27, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Request for Authorization to Enter into a Memorandum of Agreement (MOA) Between the City and County of Honolulu (City) and the State of Hawaii, Department of Land and Natural Resources (DLNR), to Plan, Design and Construct Drainage Improvements in the Lualualei Flats/Puhawai Stream Area

Chapter 179 of the Hawaii Revised Statutes, entitled the Flood Control and Flood Water Conservation, directs the DLNR to coordinate the programs and activities of all agencies of the State, in conformance with the objectives of the statewide flood control program.

The City owns and maintains various roadways, bridges and drainage-ways in the Lualualei Flats / Puhawai Stream area, including Puhawai Road where the construction of a culvert replacement project which may include roadwork, and drainage improvements and possible bridge construction are proposed.

This MOA will establish the roles and party responsibilities for the planning, design and construction of the improvements in the Lualualei Flats/Puhawai Stream area. The DLNR agrees to direct funding, appropriated by Act 164, 2011 SLH, Item H-5, to the City for the project. This funding shall be a maximum of \$2,000,000 or the combined actual cost of design and construction, whichever is less. An additional \$2,000,000 has been appropriated by the 2012 Legislature and upon allotment may be included under an amendment to this MOA. The City shall be responsible for the planning, design, and construction of the drainage improvements. A draft of the proposed MOA is attached as Exhibit 1.

RECOMMENDATION:

That the Board of Land and Natural Resources approve the following:

1. Authorize the Chairperson to enter into a MOA between the City and the State of Hawaii, DLNR to establish the roles and party responsibilities for the planning, design and construction of the improvements in the Lualualei Flats/Puhawai Stream area, subject to the review by the Department of the Attorney General.
2. Authorize the Chairperson terminate, renegotiate, amend, or modify the terms of the subject MOA between the City and the State of Hawaii, DLNR, subject to the review by the Department of the Attorney General.

Respectfully submitted,


CARTY S. CHANG
Chief Engineer

APPROVED FOR SUBMITTAL:


WILLIAM J. AILA, JR., Chairperson

ITEM L-6

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 potential scope of 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, if any, in its sole discretion, provided that the Project scope does not exceed 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 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 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 exceed \$2.0 million, the City agrees that it shall be responsible for any additional funds necessary to complete the study, 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 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).

7. 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.

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: _____