



SDMS Doc ID 2024194

LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE COUNTY OF HAWAII
FOR CONSTRUCTION OF THE
ALENAIO STREAM FLOOD CONTROL PROJECT
HILO, HAWAII

THIS AGREEMENT, is entered into this 27th day of April, 19 92, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the COUNTY OF HAWAII (hereinafter referred to as the "Local Sponsor"), acting by and through the Mayor,

WITNESSETH THAT:

WHEREAS, construction of the Alenaio Stream Flood Control Project at Hilo, Hawaii (hereinafter referred to as the "Project" and defined in Article I.a. of this Agreement), was authorized by Section 401(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended; and,

WHEREAS, modification of the Project was authorized by Section 102(k) of the Water Resources Development Act of 1990, Public Law 101-640, as amended; and,

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the Project; and,

WHEREAS, the Local Sponsor qualifies for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R. 241.1-241.6, entitled "Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision"; and,

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean 1,787 feet of rectangular concrete channel, a 200-foot wedge-shaped concrete entrance transition, 832 feet of earth levee, 487 feet of concrete floodwall, 453 feet of cement-rubble-masonry (CRM) floodwall, four bridge replacements, removing one public, one business and six residential structures, incorporating flood plain management regulations on undeveloped areas, and an earth channel connecting the concrete channel to the existing Waiolama Canal, as generally described in the GENERAL DESIGN MEMORANDUM dated March 1990 and approved by the Chief of Engineers on 25 June 1990.

b. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to: all Advanced Engineering and Design (AE&D) costs; Continuing Planning and Engineering (CP&E) costs incurred after October 1, 1985; all Preconstruction Engineering and Design (PED) costs; engineering and design during construction; actual construction costs; costs of relocations of railroad bridges and approaches thereto; supervision and administration costs; costs of contract dispute settlements or awards; and the value of lands, easements, rights-of-way, utility and facility alterations or relocations, and suitable borrow and dredged material disposal areas provided for the Project by the Local Sponsor, but shall not include any costs for betterments, operation, maintenance, repair, replacement, or rehabilitation.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the Project by the Contracting Officer.

d. The term "Contracting Officer" shall mean the U.S. Army Engineer for the Honolulu District, or his designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

f. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of, all alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads, highways, bridges, railroad bridges and approaches thereto, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

g. The term "fiscal year" shall mean one fiscal year of the United States government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

h. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the Project (including relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. To the extent possible the Local Sponsor will be afforded the opportunity to review and comment on modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. When the Government determines that the project or a functional portion of the Project is complete, the Government shall turn the completed Project or functional portion over to the Local Sponsor, which shall accept the Project or functional portion and be solely responsible for operating, maintaining, repairing, replacing, and rehabilitating the Project or functional portion in accordance with Article VIII hereof.

c. As further specified in Article VI hereof, the Local Sponsor shall provide, during the period of construction, a cash contribution of 5 percent of total project costs.

d. As further specified in Article III hereof, the Local Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged material disposal areas, and perform all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project. At its sole discretion, the Government may perform relocations in cases where it appears that the Local Sponsor's contributions will exceed the maximum non-Federal cost share set out in Article VI.f.

e. If the value of the contributions provided under paragraphs c. and d. of this Article represents less than 25 percent of total project costs, the Local Sponsor shall provide, during the period of construction, an additional cash contribution in the amount necessary to make its total contribution equal to 25 percent of the total project costs.

f. No Federal funds may be used to meet the Local Sponsor's share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

g. The Local Sponsor agrees to participate in and comply with applicable Federal flood plain management and flood insurance programs.

h. No less than once each year the Local Sponsor shall inform affected interests of the limitations of the protection afforded by the Project.

i. The Local Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

j. At the request of the Local Sponsor, the Government may, on behalf of the Local Sponsor and in connection with the design or construction of the Project, design and/or construct a betterment or other work that is not a part of the Project. Prior to award of any Government contract involving such betterment or other work, the Local Sponsor shall provide to the Government a cash payment equal to 100 percent of the costs of such betterment or other work by delivering a check payable to "FAO, USAED, Pacific Ocean" to the Contracting Officer representing the Government. The Government shall draw on such payment as necessary to cover contractual and other Government fiscal obligations for such betterment or other work as such obligations are incurred. If at any time during the prosecution of such betterments or other work the Government determines that additional funds will be needed from the Local Sponsor to cover the costs of such betterment or other work, the Government shall so notify the Local Sponsor and the Local Sponsor, no later than 30 days after receipt of such notice, shall make a cash payment to the Government of the necessary amount. After the completion of any such betterment or other work, the Government will perform a final accounting. In the event the cash payment for such betterment or other work is less than the amount required to cover the costs of such betterment or other work, the Local Sponsor shall, no later than 30 days after receipt of written notice, make a cash payment to the Government of whatever sum is needed to cover all costs of such betterment or other work. In the event the cash payment exceeds the amount required to cover all costs of such betterment or other work, the Government shall return any excess cash to the Local Sponsor no later than 90 days after the final accounting. The Local Sponsor shall be responsible for all operation, maintenance, repair, replacement and rehabilitation associated with such betterment or other work in such a manner to insure proper functioning of the Project. The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of such betterment or other work.

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of the construction contract.

b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged material disposal areas necessary for construction of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project.

d. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of the lands, easements, and rights-of-way to be included in total project costs and credited toward the Local Sponsor's share of total project costs will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date of the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Local Sponsor has secured prior written approval from the Government of its offer to purchase such interest.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited toward the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior written approval of the Government.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date this Agreement is signed, or at any time after this Agreement is signed, will also include reasonable incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The costs of relocations which will be included in total project costs and credited toward the Local Sponsor's share of total project costs shall be that portion of the actual costs as set forth below, and approved by the Government:

1. Highways and Highway Bridges: Only that portion of the cost as would be necessary to construct substitute bridges and highways to the design standard that the State of Hawaii would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total project costs, nor credited toward the Local Sponsor's share.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local Sponsor will be informed of any changes in cost estimate.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, cash payments required under Article II of this Agreement. Total project costs are currently estimated to be \$13,330,000. In order to meet its share, the Local Sponsor must provide a cash contribution currently estimated to be \$670,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide its required cash contribution in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by 1 July of each year of the estimated funds that will be required from the Local Sponsor to meet its share of total project costs for the upcoming fiscal year.

2. No later than 60 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of total project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction, for the first fiscal year of construction. No later than 30 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the of the required contribution by delivering a check payable to "FAO, USAED, Pacific Ocean" to the Contracting Officer representing the Government.

3. For the second and subsequent fiscal years of project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement. As construction of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 45 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the funds provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

d. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs. In the event the total contribution by the Local Sponsor is less than its minimum required share of total project costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its minimum required share of total project costs.

e. In the event the Local Sponsor has made cash contributions in excess of 5 percent of total project costs and that result in the Local Sponsor's having provided more than its minimum required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the said excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c. of this Agreement.

f. If the Local Sponsor's total contributions under this Agreement (including lands, easements, rights-of-way, relocations, and suitable borrow and dredged material disposal areas) exceed 36 percent of total project costs, the Government shall, subject to the availability of funds for that purpose, refund the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION; MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION

a. After the Government has turned the completed Project, or functional portion of the Project, over to the Local Sponsor, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, in accordance with regulations or directions prescribed by the Government.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of total project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

The Local Sponsor, in acting under its rights and obligations hereunder, agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment 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.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVII - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor which are properly allowable and allocable to performance of any such environmental investigations shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the Local Sponsor shall determine whether to initiate construction, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI.a. of this Agreement.

d. The Local Sponsor and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph c of this Article shall not relieve any party from any liability that may arise under CERCLA.

e. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner so that liability will not arise under CERCLA.

ARTICLE XVIII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

Office of the Mayor
25 Aupuni Street, Room 213
Hilo, Hawaii 96720

If to the Government:

District Engineer
U.S. Army Engineer District, Honolulu
Building 230
Fort Shafter, Hawaii 96858-5440

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

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XIX - CONFIDENTIALITY

To the extent permitted by the law governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XX - SECTION 902 PROJECT COST LIMIT

The Local Sponsor has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes maximum total project costs. For purposes of this Agreement, the Section 902 cost limit is \$14,472,000 as calculated using March 1990 price levels and allowances for future inflation. This

amount shall be adjusted to allow for appropriate increases for inflation and changes in total project costs as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

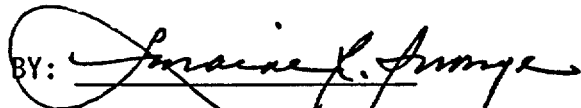
THE COUNTY OF HAWAII

BY:



RALPH V. LOCURCIO
Brigadier General, U.S. Army
Division Engineer

BY:



LORRAINE R. INOUE
Mayor, County of Hawaii

DATE: 27 APR 1992

DATE: April 27, 1992

For and on behalf of the
Assistant Secretary of the
Army (Civil Works)

CERTIFICATE OF AUTHORITY

I, Michael J. Matsukawa do hereby certify that I am the principal legal officer of the County of Hawaii, that the County of Hawaii is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the County of Hawaii in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the County of Hawaii have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification
this 27 day of APRIL 19 92.



MICHAEL J. MATSUKAWA
Corporation Counsel

CERTIFICATION REGARDING LOBBYING

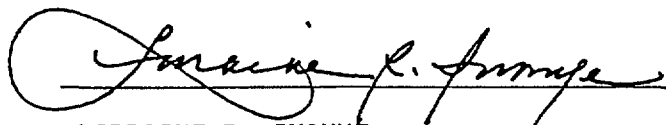
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreement) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



LORRAINE R. INOUE
Mayor, County of Hawaii

Date: April 27, 1992

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On this 27th day of April, 1992, before me personally appeared LORRAINE R. INOUE, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the COUNTY OF HAWAII, a municipal corporation of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of the said County of Hawaii; that the foregoing instrument was signed and sealed in behalf of the County of Hawaii by authority given to said Mayor of the County of Hawaii by Section 5-1.3(g) of the County Charter, County of Hawaii (1991), as amended; and said LORRAINE R. INOUE acknowledged said instrument to be the free act and deed of said County of Hawaii.

Jean Verrus
Notary Public, State of Hawaii
My commission expires: 1/1/93