

REQUEST FOR LEGAL SERVICES

Date: January 14, 2020
From: Keani N.W. Rawlins-Fernandez, Chair
Economic Development and Budget Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: David Galazin, Esq.

Subject: AMENDMENTS TO APPENDIX A, GRANTS AND RESTRICTED USE REVENUES - SCHEDULE OF GRANTS AND RESTRICTED USE REVENUES BY DEPARTMENTS AND PROGRAMS FOR FISCAL YEAR 2020 (DEPARTMENT OF PUBLIC WORKS (HAWAII EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF DEFENSE, STATE OF HAWAII, PRE-DISASTER MITIGATION GRANTS)) (EDB-45(10))

Background Data: Please review the attached revised bill, and, if appropriate, approve it as to form and legality. Please send a signed hard copy with your response.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Keani N.W. Rawlins-Fernandez	Contact Person James Krueger (Telephone Extension: 7761)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): January 15, 2020
REASON: For posting on January 17 for the January 24 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ [] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

edb:ltr:045(10)acc01:jgk

Attachment

✓

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF DEFENSE, STATE OF HAWAII FOR PRE-DISASTER MITIGATION GRANT FUNDS (DEPARTMENT OF PUBLIC WORKS)

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The Hawaii Emergency Management Agency, Department of Defense, State of Hawaii (HEMA), is the recipient of a Pre-Disaster Mitigation Program award from the Federal Emergency Management Agency (FEMA). The County of Maui Department of Public Works (DPW) is a sub-recipient of the FEMA grant funds managed by HEMA, through the Hazard Mitigation Grant Program (HMGP), FEMA 4282-DR-HI, and has been awarded \$112,500.30 of the FEMA grant funds, which requires the County of Maui to provide a \$45,547.70 match, as more fully described in Exhibit "1." These grant funds will support DPW's development of a mitigation project entitled "Hardening of Maui County Highways Division Baseyard", which supports long-term strategies to reduce the risks of natural hazards.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor must not enter into any intergovernmental agreement or any amendment to the same that places a financial obligation on the county or any department or agency.

SECTION 2. Council authorization. In accordance with Section

2.20.020, Maui County Code, the Council of the County of Maui authorizes the Mayor to execute the Agreement, and all other necessary documents and amendments relating to the Agreement.

SECTION 3. Effective date. This ordinance takes effect on its approval. All action taken, not inconsistent with the provisions of this ordinance, is ratified, approved, and affirmed.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

edb:misc:045(10)abill01a:jgk

MEMORANDUM OF AGREEMENT

Between

HAWAII EMERGENCY MANAGEMENT AGENCY
DEPARTMENT OF DEFENSE
STATE OF HAWAII

and the

DEPARTMENT OF PUBLIC WORKS
COUNTY OF MAUI

1. This MEMORANDUM OF AGREEMENT (MOA) is effective October 28, 2019 and entered into by and between the Department of Defense, State of Hawai'i, on behalf of its Hawaii Emergency Management Agency, hereinafter referred to as "RECIPIENT," and the County of Maui, Department of Public Works, Highways Division, hereinafter referred to as "SUBRECIPIENT."
2. The purpose of this MOA is to support the project objective of and activities related to the mitigation project entitled "Hardening of Maui County Highways Division Baseyard". The project supports State and County commitments toward long-term strategies to reduce the risks of natural hazards.
3. Period of Performance. This MOA covers the effective date and ends August 15, 2021.
4. Modifications. Any extensions, changes or alterations to the MOA shall be agreed to by both parties in writing before being undertaken and the same shall be evidenced by written amendment to this MOA.
5. Project Budget. The RECIPIENT, through the FEMA Hazard Mitigation Grant Program (HMGP), FEMA 4282-DR-HI shall provide a maximum amount of \$112,500.30 for the project, and the SUBRECIPIENT shall provide the required match of \$45,547.70 through County funds and/or in-kind activities. The SUBRECIPIENT shall maintain accountability of activities that contribute to the use of the RECIPIENT funds. All activities shall be associated with the categories of activities cited in paragraph 2.
6. Subcontracts. If the SUBRECIPIENT subcontracts any or all of the work required under this Agreement, the SUBRECIPIENT agrees to include in the subcontract that the subcontractor is bound by the same terms and conditions of the Agreement with SUBRECIPIENT. A copy of the executed subcontract must be forwarded to the RECIPIENT within ten (10) days of the execution of said contract. Contractual agreement shall in no way relieve the SUBRECIPIENT of its responsibilities to

EXHIBIT "1"


ensure that all funds issued pursuant to this grant be administered in accordance with all state laws, regulations, and requirements. The SUBRECIPIENT may not subcontract any work required by this Agreement to any external individual or entity who participated in the development of the application for the mitigation project covered by this Agreement.

7. This Agreement is entered into and awarded under the Hazard Mitigation Grant Program award. The SUBRECIPIENT certifies compliance with all other applicable rules and regulations regarding State statutes, regulations and guidelines and any and all other provisions of law that are applicable to this award.
8. Nothing in this Agreement shall be construed as an indemnification by one party or another for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this Agreement. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors, or assigns or by third persons, arising out of and during the performance of this Agreement shall be determined according to applicable law. However, SUBRECIPIENT shall require its Contractors to indemnify, defend, and hold harmless the SUBRECIPIENT and the STATE, including any officers and employees, from all claims and actions arising out of the subcontractors' entry onto and activities upon, within, or near the projects as a result of this Agreement.
9. The SUBRECIPIENT shall require its consultants, contractors, and subcontractors (together subcontractors) to procure and maintain during the term of each contract and any extension thereof, from 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-VIII" or other comparable and equivalent industry rating, a policy or policies of general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate. All required policies of Insurance shall name the SUBRECIPIENT and the State of Hawaii, and their elected and appointed officials, officers, and employees as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to SUBRECIPIENT and the STATE. The adequacy of the coverage afforded by the said liability and property damage insurance shall be subject to review by SUBRECIPIENT and the STATE from time to time. The SUBRECIPIENT's subcontractors shall provide SUBRECIPIENT and the STATE with a certificate of insurance evidencing coverage prior to any work.
10. Method of Payment. Payment is made on a reimbursable basis, from the RECIPIENT to the SUBRECIPIENT. If other payment arrangements for costs incurred as a result of this MOA are desired, agreement must be reached after consultation between the RECIPIENT and SUBRECIPIENT.


11. Quarterly Reports. The SUBRECIPIENT is required to submit to the RECIPIENT a quarterly financial and performance report. Report dates are March 30, June 30, September 30, and December 30 of each year. The first report is due on December 30, 2019.
12. Termination. Either party to his MOA shall have the privilege, with or without cause, to terminate this MOA at this time upon written notice given thirty (30) days in advance of such termination. Upon termination, the total amount to be paid to the SUBRECIPIENT shall be determined on the basis of the total work completed up to the date of such termination.

IN WITNESS THEREOF, the parties have executed this MEMORANDUM OF AGREEMENT, which shall be effective as of the date of the last signature hereto.

DEPARTMENT OF PUBLIC WORKS
COUNTY OF MAUI

By 
ROWENA DAGDAG-ANDAYA
Its Director
Date: 10/09/2019


COUNTY OF MAUI

By 
MICHAEL P. VICTORINO
Its Mayor
Date: 10/18/19

APPROVED AS TO FORM AND LEGALITY:


DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui
2019-1204
2019-10-01 MOA between HEMA & DPW

HAWAII EMERGENCY MANAGEMENT AGENCY
DEPARTMENT OF DEFENSE
STATE OF HAWAII (STATE)

By 
THOMAS L. TRAVIS
Administrator
Date: 10/25/19

APPROVED AS TO FORM


Deputy Attorney General