

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
GOVERNMENT OF GUAM
FOR THE
AGANA RIVER, GUAM

THIS AGREEMENT is entered into this 11th day of March, 2020, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Honolulu District (hereinafter the "District Commander") and the Government of Guam (hereinafter the "Non-Federal Sponsor"), represented by the Governor.

WITNESSETH, THAT:

WHEREAS, Section 3179(a)(2) of the Water Resources Development Act of 2007 (Public Law 110-114) authorizes flood control improvements to the Agana River, Hagatna, Guam (hereinafter the "Study");

WHEREAS, notwithstanding Section 105(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2215(a)), which specifies the cost-sharing requirements generally applicable to feasibility studies, Title IV of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116-20, enacted June 6, 2019 (hereinafter "FY 19 Supplemental"), authorizes the Government to conduct the Study at full Federal expense to the extent that appropriations provided under the Investigations heading of the FY 19 Supplemental are available and used for such purpose; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using FY 19 Supplemental funds. In the event that there are insufficient FY 19 Supplemental funds to complete the Study, such completion shall be subject to cost-sharing otherwise applicable to the Study and amendment of this Agreement.

1. The Government shall conduct the Study consistent with the Project Management Plan, which specifies the scope, cost, and schedule for Study activities. In consultation with the Non-Federal Sponsor, the Government may modify the Project Management Plan as necessary.

2. The cost of the Study is limited to \$3 million in Federal funds, unless the Assistant Secretary of the Army (Civil Works) approves an exemption for the Study to exceed \$3 million.

3. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

B. In addition to the ongoing, regular discussions of the parties in the delivery of the Study, the Government and the Non-Federal Sponsor may establish a Study Coordination Team to discuss significant issues or actions. The Non-Federal Sponsor's costs for participation on the Study Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

C. The Non-Federal Sponsor shall not be entitled to any credit or reimbursement for any costs it incurs in performing its responsibilities under this Agreement.

ARTICLE II - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an exemption is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if a Report of the Chief of Engineers, or, if applicable, a Report of the Director of Civil Works, is not signed for the Study within 3 years after the effective date of this Agreement.

B. If the Government determines at any time that FY 19 Supplemental funds made available for the Study are not sufficient to complete the Study, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend the Study until the parties execute an amendment to this Agreement that provides for cost-sharing of the remaining work.

ARTICLE III - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative

dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred.

ARTICLE IV - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE V - NOTICES

Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified or registered mail, with return receipt, as shown below. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

If to the Non-Federal Sponsor:

Governor
Territory of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

If to the Government:

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

ARTICLE VI - CONFIDENTIALITY

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

ARTICLE VII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

GOVERNMENT OF GUAM

BY: Kathy P. Sanborn
KATHRYN P. SANBORN
Lieutenant Colonel, U.S. Army
District Commander

BY: Loude Leon Guerrero
LOURDES A. LEON GUERRERO
Governor


DATE: 11 March 2020

DATE: 3/11/2020

CERTIFICATE OF AUTHORITY

I, Leevin Taitano Camacho, do hereby certify that I am the principal legal officer for the Government of Guam, that the Government of Guam is a legally constituted public body with full authority and legal capability to perform the terms of the Feasibility Cost Sharing Agreement between the Department of the Army and the Government of Guam in connection with Agana River, Guam and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Feasibility Cost Sharing Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Feasibility Cost Sharing Agreement on behalf of the Government of Guam acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 11th day of March 2020.


Leevin Taitano Camacho
Attorney General of Guam
Office of the Attorney General of Guam

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 agreements) 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 31 U.S.C. 1352. 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.



LOURDES A. LEON GUERRERO

Governor of Guam

DATE: 3/11/2020

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, **EDWARD M. BIRN**, do hereby certify that I am the Director of the Department of Administration, Government of Guam (the "Non Federal Sponsor"), that I am aware of the financial obligations of the Non-Federal Sponsor for Agana River, Guam; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Feasibility Cost Sharing Agreement.

IN WITNESS WHEREOF, I have made and executed this certification this

3rd day of March, 2020.



EDWARD M. BIRN

Director

Department of Administration
Government of Guam