

**FEDERAL FACILITY COMPLIANCE AGREEMENT
BETWEEN THE U. S. MARINE CORPS, MARINE CORPS BASE HAWAII
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

I. SCOPE AND PURPOSE

- 1) The express purpose of the undersigned Parties in entering into this Federal Facility Compliance Agreement (FFCA or Agreement) is to further the goals of the Clean Water Act (CWA or Act), 33 U.S.C. §§ 1251-1388. It is the objective of all provisions and obligations of this FFCA to cause the Permittee, the U.S. Marine Corps, Marine Corps Base Hawaii (MCBH), Kaneohe Bay, to come into and remain in full compliance with all applicable federal, state, and local laws and regulations governing the discharge of pollutants into waters of the United States at the U.S. Marine Corps Base Hawaii Municipal Separate Storm Sewer System (MS4 or MCBH MS4 or Facility), located on the Mokapu Peninsula of windward Oahu in Kaneohe and Kaneohe Bay, Oahu, Hawaii, as required by Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

II. JURISDICTION

- 2) The U.S. Environmental Protection Agency, Region 9 (EPA) and MCBH enter into this FFCA pursuant to the CWA, 33 U.S.C. §§ 1251-1388 and Executive Order No. 12088, to achieve and maintain compliance with the CWA.

III. PARTIES

- 3) The Parties to this FFCA are EPA and MCBH.
- 4) MCBH officers, agents, contractors, servants, employees, successors, assigns, and all persons, departments, agencies, firms, and corporations in active concert or participation with them will take all necessary steps to ensure compliance with the provisions of this FFCA. MCBH shall give written notice of this FFCA to any prospective successor in interest. At least ninety (90) calendar days prior to transfer of ownership or operation of

ENCLOSURE (1)

Marine Corps Base Hawaii FFCA

the Facility, MCBH shall give written notice of such transfer or change in ownership or operation to EPA at the address given in Paragraph 43.

- 5) The undersigned representatives of each Party to this FFCA certify they are fully authorized by the Party they represent to enter into the terms and conditions of the FFCA and to execute and legally bind that Party to it.

IV. DEFINITIONS

For purposes of this FFCA, the terms below mean the following.

- 6) “Annual Report” shall mean the applicable Annual Report in Part G (Reporting Requirements) of the current Hawaii Department of Health (DOH) National Pollutant Discharge Elimination System (NPDES) Permit HI S000007 (Permit).
- 7) “Critical Deficiency”, as defined in the 2016 MCBH Storm Water Management Plan (SWMP), means a compliance deficiency that poses an immediate risk of discharge of pollutants to a storm drain municipal separate storm and sewer system, surface waters or State waters.
- 8) “Environmental Compliance Coordinators” or “ECCs” are MCBH personnel designated as environmental liaisons between their activity and the Environmental Compliance and Protection Division (ECPD); they act as the first responder in the event their facility has a spill or other environmental compliance issue. While the ECC team is primarily comprised of military personnel, MCBH civilian personnel may act as ECCs; representatives from the housing management group appoint civilian personnel, as an example. ECPD personnel use ECCs as primary points of contact when passing on training and compliance information to individual units. All units are required to have a designated ECC and an alternate. Some ECCs participate as Cross Functional Team members of the MCBH Environmental Management System. ECPD spill response personnel also participate as ECC Team trainers and meeting participants.

Marine Corps Base Hawaii FFCA

- 9) “Illicit Connection”, as defined in the 2016 MCBH SWMP, means an unauthorized connection of a pipe carrying something other than storm water to a storm water system.
- 10) “Illicit Discharge”, consistent with 40 C.F.R. § 122.26(b)(2), means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to an NPDES permit and discharges resulting from firefighting activities.
- 11) “Major Deficiency”, as defined in the 2016 MCBH SWMP, means a deficiency that is a significant issue that could result in the discharge of pollutants to the storm drain system, surface waters or State waters.
- 12) “MCBH Storm Water Personnel” whose job duties relate to implementing the MS4 program at the Facility is defined as the Storm Water Team under the Environmental Protection and Compliance Division.
- 13) “Minor Deficiency”, as defined in the 2016 MCBH SWMP, means a deficiency that does not pose a threat of discharge of untreated storm water or pollutants to the storm drain system, surface waters, or State waters, but a deficiency that is not in direct conformance with the SWMP.
- 14) “Municipal Separate Storm Sewer System” or “MS4”, for purposes of this FFCA and consistent with 40 C.F.R. § 122.26(b)(8) and 40 C.F.R. § 122.26(b)(16), means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the United States, in this case the Permittee, and designed for collecting or conveying stormwater, but is not a combined sewer system and is not a Publicly Owned Treatment Works, and is not defined as a “large” or “medium” municipal separate storm sewer system. “Small” MS4s include systems similar to separate storm sewer systems in municipalities, such as systems at military bases, as

Marine Corps Base Hawaii FFCA

applicable here.

- 15) “New Development and Redevelopment Projects” as provided in the Permit means projects that result in a land disturbance of one (1) acre or more, and smaller projects that have the potential to discharge pollutants to the Permittee’s MS4 or have an impact to water quality. MCBH identifies these projects as MILCON and M2R2. The term "MILCON" refers to funds from appropriations provided by a Military Construction and Veterans Affairs and Related Agencies Appropriations Act (or comparable legislation) for military construction as authorized by statute. M2R2 projects are minor construction projects over \$100,000 and major repair projects over \$500,000.
- 16) “Outfall”, as defined at 40 C.F.R. § 122.26(b)(9), means a point source as defined by 40 C.F.R. § 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.
- 17) “Permit” for purposes of this FFCA means Hawaii Department of Health (DOH) National Pollutant Discharge Elimination System (NPDES) Permit HI S000007, including both the current Permit that became effective September 1, 2021 (Permit or 2021 Permit), and its predecessor, with the same permit number, that was effective from October 15, 2014 through August 31, 2021 (Permit or 2014 Permit). When EPA and DOH conducted a Facility audit between September 17, 2020 and October 9, 2020 of certain requirements of the Permit, they evaluated compliance with the then controlling 2014 Permit that expired on September 1, 2021. Accordingly, unless noted otherwise, all references to the Permit in Section V (Findings of Fact and Conclusions of Law) are to the 2014 Permit.

Marine Corps Base Hawaii FFCA

All references to the Permit in Section VI (Compliance Program) are to the current 2021 Permit.

- 18) “Qualified Personnel” are those who are knowledgeable in the principles and practices of industrial storm water controls and pollution prevention, and who possess the education and ability to assess conditions at the industrial facility that could impact storm water quality, and the education and ability to assess the effectiveness of storm water controls selected and installed to meet the requirements of the Permit.
- 19) “Third Party” means a Non-Marine Corps entity; no person or group with existing and/or prior involvement in the development and/or implementation of MCBH’s MS4 Program.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 20) For the purposes of this FFCA, the following constitutes a summary of the findings upon which this FFCA is based. The facts related herein shall not be considered admissions by any Party. This Section contains findings of fact determined solely by the Parties and shall not be used by any person related or unrelated to this FFCA for purposes other than determining the basis of this FFCA.
- 21) Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in accordance with other specified sections of the Act, including Section 402, 33 U.S.C. § 1342.
- 22) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe. Each violation of an NPDES permit, and each discharge of pollutant that is not authorized by an NPDES permit, constitutes a violation of Section 301(a) and 402 of the Act, 33 U.S.C. § 1311(a) and 1342.

Marine Corps Base Hawaii FFCA

- 23) Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires NPDES permits for certain stormwater discharges, including discharges from municipal storm sewers, and includes a requirement to effectively prohibit non-stormwater discharges from storm sewer systems.
- 24) Pursuant to Section 402(b), the State of Hawaii has an EPA-approved NPDES program and issues permits through the Hawaii Department of Health. DOH issued NPDES Permit HI S000007 to MCBH authorizing, subject to the terms and conditions of the Permit, the discharge of storm water from the MCBH MS4 Outfalls into Kaneohe Bay, Nuupia Ponds, Kailua Bay and the Mokapu Drainage Channel. DOH reissued the current Permit to MCBH with an effective date of September 1, 2021. The prior version of this Permit that DOH issued to MCBH under the same permit number was effective on October 15, 2014, and DOH had administratively extended it through August 31, 2021.
- 25) Among other requirements, the Permit establishes baseline Storm Water Management Plan (SWMP) requirements, including specific program conditions for Public Education and Outreach, Public Involvement/Participation, Illicit Discharge Detection and Elimination, Construction Site Runoff Control and Post-Construction Storm Water Management in New Development and Redevelopment. The following provisions of the Permit are relevant to this FFCA:

(1) Part D.1.c: Illicit Discharge Detection and Elimination

- (a) Part D.1.c(2) of the Permit states, “[t]he Permittee shall implement an Outfall Field Screening Plan for observing major and minor outfalls to screen for improper discharges. The plan shall designate priority areas for screening, specify the frequency for screening, and identify the procedures to be followed if a discharge is observed. If any outfall locations are submerged at the time of inspection, the monitoring personnel shall inspect the discharge line (or contributing tributary lines), at the closest location(s) upstream of the

Marine Corps Base Hawaii FFCA

discharge location and outside tidal influence. At a minimum, outfalls in priority areas shall be screened once per permit term.”

(b) Part D.1.c.(8) of the Permit states, “The Permittee shall provide annual training to staff on identifying and eliminating illicit connections, illegal discharges, and spills to its MS4. This training shall be specific to the Permittee’s activities, policies, rules, and procedures.”

(2) Part D.1.d: Construction Site Runoff Control

(a) Part D.1.d(1) of the Permit states “...the Permittee shall develop and submit to the DOH, the following types of manuals for construction projects:

Construction Best Management Practices Field Manual, Maintenance Activities Best Management Practices Field Manual, Storm Water Permanent Best Management Practices Manual”.

(b) Part D.1.d(2) of the Permit states, “...the Permittee shall establish policies to require proposed construction projects to implement BMPs [Best Management Practices] and standards described in the [manuals required by Part D.1.d(1)]”.

(c) Part D.1.d(3) of the Permit states, “... the Permittee shall implement a system to track both private and public construction projects (i.e., contract, in-house, maintenance, and encroachment). This system shall track information on the project (including permit or file number, if available); status of plan review and approval, inspection dates, and if applicable, enforcement actions; and whether the project has applied for coverage under HAR, Chapter 11-55, Appendix C, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Construction Activity...”.

(d) Part D.1.d.(6) of the Permit states “Enforcement – Within one (1) year from

the effective date of this permit, the Permittee shall: (i) Establish policies for enforcement and penalties for those in non-compliance with Part D.1.d.(2) requiring the implementation of standards, and (ii) Develop and implement an Enforcement Response Plan to include written procedures for appropriate corrective and enforcement actions, and follow-up inspections when an inspected project is not in full compliance with its requirements, other permits, and any other applicable requirements under the NPDES permit program”.

(3) Part D.1.e: Post-Construction Storm Water Management in New Development and Redevelopment

(a) Part D.1.e(1) of the Permit states, “[t]he Permittee shall revise its standards for addressing post-construction BMPs to LID [Low Impact Development] requirements. Within six (6) months of the effective date of this permit, the Permittee shall submit to the DOH for review and acceptance, a plan for requiring LID in the standards to the MEP [Maximum Extent Practicable], including revisions to the plan review and inspection checklist to include LID.... The standards shall be applicable to all construction projects disturbing at least one (1) acre and smaller projects that have the potential to discharge pollutants to the Permittee’s MS4....”

(b) Part D.1.e(2) of the Permit states, “[f]or design-bid-build projects, the Permittee shall not advertise any construction project nor award any construction contract until the project design has been reviewed and accepted to ensure that appropriate permanent post-construction BMPs, which include LID practices upon adoption into its standards, have been included in the project design and are included in the bid package to ensure compliance with

this part of the permit. For design-build projects, the Permittee shall review and approve the project design the same as for design-bid-build projects prior to implementation. No project shall proceed without the inclusion of appropriate permanent post-construction BMPs unless a waiver is granted by the Permittee based on specific documentation demonstrating that such post-construction BMPs are not feasible. Project documents for projects that will include installation of permanent post-construction BMPs shall also include appropriate requirements for their future continued maintenance.”

- (c) Part D.1.e(3) of the Permit states, “BMP, Operation and Maintenance, and Inspection Database - The Permittee shall implement its Asset Management System to track the frequency of inspections and maintenance of the Permanent BMPs. In addition to the standard information collected for all projects (e.g., project name, owner, location, start/end date, etc.), the database shall also include, at a minimum: Type and number of LID practices; Type and number of Source Control BMPs; Type and number of Treatment Control BMPs; Latitude/Longitude coordinates of controls using Global Positioning Systems and NAD83 or other Datum as long as the datum remains consistent; Photographs of controls; Operation and maintenance requirements; Frequency of inspections; Frequency of maintenance”.

(4) Part B. Discharge Limitations

- (a) Part B.1. of the Permit states “Permittee shall effectively prohibit non-storm water discharges through its separate storm sewer system into State Waters and from its facilities discharging directly to State Waters or through a non-Permittee-owned MS4. National Pollutant Discharge Elimination System

Marine Corps Base Hawaii FFCA

(NPDES) permitted discharges and non-storm water discharges identified in Part B.2 of this permit are exempt from this prohibition.”

(b) Part B.3. of the Permit states “the discharge of pollutants from the Permittee's MS4 shall be reduced to the Maximum Extent Practicable (MEP), consistent with Section 402(p)(3)(B) of the Act.”

(c) Part B.4. of the Permit states “the discharge of pollutants from the Permittee's facilities classified as Industrial in accordance with 40 CFR §122.26(b)(14) shall be reduced to the appropriate discharge limitations subject to the Best Available Technology currently available (BAT)/ Best Conventional Pollutant Control Technology (BCT) discharge requirement, consistent with the Act and other respective federal and state requirements for such facilities.”

- 26) The U.S. Marine Corps Base Hawaii is home to Marine Aircraft Group 24, 3d Marine Littoral Regiment, Marine Forces Pacific Headquarters, U.S. Indo Pacific Command Headquarters, government agencies and many other commands. MCBH provides high quality training support, housing and recreation activities for the Marines, Sailors and their families. Storm water discharges from the MCBH MS4 enter Kaneohe Bay, Nuupia Ponds, Kailua Bay and the Mokapu Drainage Channel from various Outfalls. As provided in the 2021 Permit Rationale at pages 5-7, the current industrial activities conducted at the Facility and the associated Outfalls are provided in *Table 2. Industrial Facilities*. For additional information please see the MCBH Industrial and Commercial Site List and MCBH Industrial Facilities and Drainage Basin Map submitted to EPA in April 2022 at Attachment 1.
- 27) From September 17, 2020 through October 9, 2020 EPA and DOH conducted an audit of certain requirements of the Permit as implemented at the Facility. Observations from the

inspection were summarized in an Audit Report sent to MCBH on December 2, 2020. As documented in the Audit Report and detailed in the Paragraphs below, MCBH violated its NPDES Permit, specifically the implementation of the Illicit Discharge Detection and Elimination Program, the Construction Site Runoff Program, and the Post-Construction Storm Water Management in New Development and Redevelopment Program under Part D of the Permit.

MCBH Illicit Discharge Detection and Elimination Violations

- 28) As documented in the Audit Report, pursuant to monitoring results MCBH reported through NetDMR, MCBH exceeded the effluent limitations prescribed in Section F.2 of the Permit on more than one-hundred fifty (150) occasions and failed to submit parameter specific data required by the Permit on more than three hundred (300) occasions. MCBH's monitoring schedule, as prescribed in Section Part F.1.b.(3), was not fully implemented until 2017, which is the reason for the majority of missing parameter specific data stated above, occurring during the monitoring period years of 2015 and 2016. DOH informed MCBH in May 2021 of the use of the wrong NODI codes for seventy-three (73) data inputs during the monitoring periods of 2016 to 2020. Since 2017, MCBH has only failed to submit 13 parameter specific data required by the Permit. . The significant lack of required monitoring data during the monitoring periods of 2015 to 2017 as well as the numerous effluent exceedances documented in the Audit Report demonstrate that MCBH failed to detect unauthorized discharges of non-storm water or pollutants from the MS4
- 29) As documented in the Audit Report, MCBH violated Part D.1.c. of the Permit by:
- a) Failing to implement an adequate Outfall Field Screening Plan that designated priority areas for screening, specified the frequency of screening, and included procedures to be followed if a discharge is observed; and

Marine Corps Base Hawaii FFCA

- b) Failing to provide relevant staff with effective Illicit Discharge Detection and Elimination training that was specific to the Facility and MCBH's activities, rules, policies, and procedures.

Construction Site Runoff Program Violations

- 30) As documented in the Audit Report, MCBH violated Part D.1.d. of the Permit by:
 - a) Failing to provide consistent application of the Construction Best Management Practices Field Manual, Maintenance Activities Best Management Practices Field Manual, and the Stormwater Permanent Best Management Practices Field Manual;
 - b) Failing to track all construction projects, especially projects that involve land disturbances smaller than one acre.

Post-Construction Storm Water Management in New and Redevelopment Program

- 31) As documented in the Audit Report, MCBH violated Part D.1.e. of the Permit by:
 - a) Failing to review for appropriate permanent post-construction BMPs of all construction projects that had the potential to discharge pollutants into the MS4 for post-construction storm water management.
 - b) Failing to create and implement an Asset Management System, as required by the Permit, that should have included frequency of inspections, frequency of maintenance, photographs of controls, operation and maintenance requirements, and Latitude/Longitude coordinates of controls.

VI. COMPLIANCE PROGRAM

- 32) MCBH agrees to take any and all necessary steps to comply fully with the Permit. Such steps shall include, but not be limited to, the activities outlined in this Section. To the extent MCBH is able to achieve compliance more expeditiously than the timeframes set forth in this FFCA, MCBH shall do so.

Marine Corps Base Hawaii FFCA

33) Training and Outreach

- a) Employee Survey and Awareness Survey. Beginning on the Effective Date of this Agreement, at least once per calendar year. MCBH Storm Water Personnel shall survey all Environmental Compliance Coordinators (ECC) to assess their knowledge regarding storm water awareness and pollution prevention. Each year MCBH shall ensure that no less than 80% of the ECC's respond to the survey. The results of the survey shall be used to update employee training materials. The results of the survey shall be included in the Annual Report.
- b) Employee, Contractors and Service Members Outreach.
 - i) Beginning on the Effective Date of this Agreement, at least once per calendar year MCBH shall provide information to all employees, contractors, service members stationed at MCBH, and MCBH residents about its storm water pollution prevention program. The information can be in the form of posters, mailings, group emails, social media, and/or workshops. The information shall include: 1) an explanation of MCBH's organizational structure including the responsibilities of MCBH personnel in storm water pollution prevention; 2) MCBH's endorsed BMPs; and 3) a concise and readily understandable definition of an illicit discharge as well as procedures for reporting illicit discharges via the MCBH hotline.
- c) Illicit Discharge Detection and Elimination Program Training
 - i) Beginning on the Effective Date of this Agreement and for the following three years thereafter, MCBH Storm Water Personnel shall receive on an annual basis specialized training from a consultant who meets the Qualified Personnel criteria.
 - (1) Within 30 days after the Effective Date of this Agreement, MCBH shall submit to EPA the name and qualifications of its consultant.
 - ii) The Training shall include, at a minimum:

Marine Corps Base Hawaii FFCA

- (1) procedures to be used when observing Outfalls;
 - (2) procedures to be used to track non-storm water discharges to their source;
 - (3) explanation of MCBH's "illicit discharge" and "illicit connection" definitions;
and
 - (4) an overview and procedures to implement MCBH's most current version of its Enforcement Response Plan required under the Permit.
- d) On an annual basis, MCBH Storm Water Personnel shall provide IDDE training covered in this Paragraph to the ECCs (including spill response and on-base housing personnel). ECCs shall be instructed to disseminate information provided in training to individuals in their organization.
- e) MCBH shall include a summary in the Annual Report about how it complied with this Paragraph including a copy of attendance sign-in sheets for each training.
- 34) **Asset Management System**
- a) MCBH shall develop and maintain a GIS-based Asset Management System, which shall:
 - i) include an inventory of all critical components of the MS4 including hard assets such as the storm drain system, structural controls, and a schedule for recurring inspection, cleaning, and maintenance;
 - ii) include relevant information for each asset class, (e.g. material, size, and condition), as relevant;
 - iii) be capable of generating and tracking work orders for inspection, cleaning, and maintenance and shall be capable of assisting MCBH with prioritization of capital improvement projects;
 - iv) include the location (and name, where known to the Permittee) of all waters of the United States receiving discharges from the Permittee's Outfalls. Each mapped Outfall must be given an individual alphanumeric identifier, which must be noted on

Marine Corps Base Hawaii FFCA

the map. The Outfalls must be located using a geographic position system (GPS) and photographs should be taken to provide baseline information and track operation and maintenance needs over time.

- v) include a District Area land-use overlay for areas under the Permittee's jurisdiction;
 - vi) identify MCBH Outfalls that discharge to impaired waters; and
 - vii) be fully implemented within 24 months of the Effective Date of this Agreement.
- b) Within thirty (30) Days of the Effective Date of this Agreement, MCBH shall submit to EPA for review and approval, after EPA consults with DOH, a schedule to develop a comprehensive GIS-based storm sewer system map that:
- i) identifies all MCBH assets including inlets, pipes, above ground drainage features, outfalls, post-construction control measures, and the location of industrial activities that drain storm water to the MS4;
 - ii) describes tasks to be completed on a semi-annual basis;
 - iii) discusses the process by which MCBH will ensure that new assets are added to the map; and
 - iv) ensures MCBH has all outfalls and associated drainage features mapped within 18 months of the Effective Date of this Agreement.
- 35) **Illicit Discharge Detection and Elimination Program**
- a) **Outfall Field Screening Plan**
 - i) Within 90 days from the Effective Date of this Agreement, MCBH shall submit to EPA for review and approval, after EPA consults with DOH, an Outfall Field Screening Plan that includes:
 - (1) total number of outfalls that discharge into a receiving water;
 - (2) priority areas for screening;
 - (3) the frequency for screening outfalls based on priority type; and

Marine Corps Base Hawaii FFCA

(4) the procedures to be followed if a discharge is observed, including a provision providing that if a discharge is observed during dry weather the outfall shall be placed in the highest priority screening group and shall be inspected on the most frequent schedule for at least one year.

(5) The Outfall Field Screening Plan must be fully implemented no later than six (6) months of the Effective Date of this Agreement.

b) Storm Sewer System Inspections

i) Within 60 days after receipt of EPA approval of MCBH's Outfall Field Screening Plan, MCBH shall conduct physical inspections of the storm sewer system to identify any dry weather flows, visually observable pollutant indicators (e.g., color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or any other qualitative markers), structural defects, trash and debris accumulation, and any other potential sources of pollutants. At a minimum, MCBH shall inspect all Outfalls that discharge into receiving waters to identify high priority components of the storm sewer system for annual inspections and cleaning. High priority components are locations where there is a greater risk of impact to receiving waters from discharge of pollutants, based on such factors as the types of activities in the sub-watershed or proximity to impaired waters. Newly identified high priority components shall be listed in the Annual Report. In addition to any periodic inspections, MCBH shall conduct maintenance and cleaning as needed.

ii) The results of the ongoing Outfall screening activities prescribed in this Paragraph shall be documented in the Asset Management System as described above.

36) **Construction Site Runoff Control Program**

a) Construction Best Management Practices Field Manual. By September 1, 2022, MCBH shall develop, and submit to EPA for review, a Construction Best Management Practices

Marine Corps Base Hawaii FFCA

Field Manual that meets the requirements of the Permit at Part D.1.d(1) and at a minimum, shall:

- i) be specific to MCBH MS4;
- ii) describe the construction project review and approval process for:
 - (1) In-house Maintenance and Construction;
 - (2) Military Construction; and
 - (3) Contract Maintenance and Construction;
- iii) provide a menu of BMPs approved for use in specific applications;
- iv) describe the construction site inspection process; and
- v) describe procedures for documenting construction sites and inspections into the Asset Management System, which, at a minimum, shall include:
 - (1) track information on the project (including permit or file number, if available);
 - (2) status of plan review and approval, inspection dates;
 - (3) inspection reports and photologs;
 - (4) enforcement actions (if applicable); and
 - (5) whether the project has applied for coverage under HAR, Chapter 11-55, Appendix C, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Construction Activity.

37) **Post-Construction Storm Water Management in New Development and Redevelopment Program**

- a) Storm Water Permanent Best Management Practices Manual. By September 1, 2022, MCBH shall develop, and submit to EPA for review, a Storm Water Permanent Best Management Practices Manual that meets the requirements of the Permit and, at a minimum, shall:
 - i) be specific to MCBH MS4;

Marine Corps Base Hawaii FFCA

- ii) define projects that require post-construction controls in a manner, consistent with Part D.1.e. of the Permit, which includes all projects, of any size, that have the potential to impact water quality;
- iii) describe New Development and Redevelopment construction project review process, including position specific roles and responsibilities, to determine if permanent controls will be required;
- iv) describe the post-construction controls inspection process; and
- v) describe procedures for documenting post-construction BMPs in the Asset Management System, which at a minimum shall include:
 - (1) Type and number of LID practices;
 - (2) Type and number of Source Control BMPs;
 - (3) Type and number of Treatment Control BMPs and Latitude/Longitude coordinates of controls using Global Positioning Systems and NAD83 or other Datum as long as the datum remains consistent;
 - (4) Photographs of controls;
 - (5) Operation and maintenance requirements;
 - (6) Inspection schedule and inspection history;
 - (7) Maintenance schedule and entity responsible for ensuring continued function of the BMP; and
 - (8) Any upsets or malfunctioning of the BMP.
- b) Post-Construction BMP Inspections. MCBH shall conduct and document, at a minimum, annual inspections of all Post-Construction BMP measures to determine if controls and BMPs are in place and functioning properly and if the operation and maintenance plan (see Paragraph 37(d) below) has been fully implemented.
- c) Retrofits of Recently Completed Projects.

Marine Corps Base Hawaii FFCA

- i) Within twelve (12) months of the Effective Date of this Agreement, MCBH shall create an inventory of New Development and Redevelopment projects with ground disturbing activity that have been completed since October 15, 2014.
- ii) The inventory shall identify the name, project identifier, location, total acreage, size of impervious area, total cost, storm sewer system flow pathway and associated Outfall, and description of activity. The inventory shall also describe whether any structural or non-structural post-construction BMPs were installed or implemented. If no such controls were installed, the inventory shall also state that there are no controls.
- iii) MCBH shall evaluate the feasibility of retrofitting with adequate Post-Construction BMPs all projects on the inventory that are lacking post-construction BMPs. MCBH shall develop a ranking system based on water quality improvements, sustainability (i.e., land area), and cost analysis for all projects identified as retrofit candidates.
- iv) Within eighteen (18) months of the Effective Date of this Agreement, MCBH shall, using the ranking system developed pursuant to Subsection iii above, prioritize retrofit projects, and submit a copy of the ranked retrofit projects to EPA for review.
- v) Within twenty-four (24) months of the Effective Date of this Agreement, MCBH shall generate DD Form 1391 project documentation for completing the retrofits for the five highest priority projects as identified in this Section.
- vi) Within ninety (90) days of the completion of each of the five retrofits, MCBH shall provide a final report to EPA, with a courtesy copy to DOH, that includes:
 - (1) the full list of projects that should have been evaluated for post-construction BMPs;
 - (2) a description of the five retrofit projects completed including a summary of the three factors listed in Subparagraph(c)(iii) above; and

Marine Corps Base Hawaii FFCA

- (3) photographs of the retrofit controls after installation.
 - d) Long term Operation and Maintenance of Post-Construction BMPs
 - i) By the Effective Date of this Agreement, MCBH shall ensure that all New Development and Redevelopment projects subject to post-construction control measure requirements have an operation and maintenance plan, monitoring plan where applicable, and a process for verification of ongoing maintenance of installed controls. This information shall also be included in the Asset Management System.
- 38) **Third Party Audit**
- a) Audit Guidelines. The Audits described in the subparagraphs below shall be completed in accordance with EPA's MS4 Program Evaluation Guidance Manual, January 2007. Each Audit shall, at a minimum, include:
 - i) A pre-audit document request and document review;
 - ii) An interview-based evaluation of MCBH's program implementation;
 - iii) An on-site evaluation of MCBH's program implementation; and
 - iv) Proposed corrective actions.
 - b) Audit Reporting. Findings from the Audits shall be reported as follows:
 - i) Any Critical Deficiency findings, along with proposed corrective actions, shall be reported to EPA and DOH within forty-eight (48) hours of identification by the Consultant (as described below) or MCBH personnel, whichever occurs first pursuant to the contact information in Section VIII.
 - ii) Any Major Deficiency findings, along with proposed corrective actions, shall be reported to EPA and DOH pursuant to Section VIII within fourteen (14) days of identification by the Consultant or MCBH personnel, whichever occurs first.
 - iii) A final Audit Report, along with proposed corrective actions, shall be produced within seventy (70) days of completion of the Audit and submitted to EPA, with a

Marine Corps Base Hawaii FFCA

courtesy copy to DOH. The Audit Report shall contain a discussion of all Critical, Major, and Minor findings as well as on-site observations. Where appropriate, a photolog should be included.

- c) Consultant Identification. Within forty-five (45) days of the Effective Date of this Agreement, MCBH shall submit to EPA a letter certifying that funding for this request has been initiated. Within forty-five (45) days of funding approval, MCBH shall coordinate with EPA for selection of a qualified Consultant (Consultant) to conduct an Audit, per the Audit Guidelines below, of the MCBH MS4 program elements. The Consultant must meet the minimum Qualified Personnel requirements.
- d) Consultant On-Boarding. MCBH shall be responsible for contracting with the selected Consultant. Within seventy-five (75) days of the Effective Date of the MCBH/Consultant contract (Contract), the Consultant shall initiate an Audit.
- e) Program Audit Deadlines. The Consultant shall evaluate the MS4 program elements as follows:
 - i) Within six (6) months of the Effective Date of the Contract, the Consultant must complete an evaluation of the MCBH Public Outreach and Education and Public Involvement and Participation programs as required by Section D.1.a of the Permit;
 - ii) Within eight (8) months of the Effective Date of the Contract, the Consultant must complete an evaluation of the MCBH Pollution Prevention/Good Housekeeping program as required by Section D.1.f of the Permit; and
 - iii) Within twelve (12) months of the Effective Date of the Contract, the Consultant must complete an evaluation of the Industrial and Commercial Activities Discharge Management program, as required by Section D.1.g of the Permit.

VII. Review and Approval of Deliverables

- 39) Upon receipt of all submittals subject to EPA review and approval under this FFCA,

Marine Corps Base Hawaii FFCA

EPA, after consultation with DOH, shall in writing: (i) approve the submission; (ii) approve the submission upon specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission. If MCBH does not receive a written response from EPA after ninety (90) days of its submission, then MCBH should assume the submittal is approved.

- 40) If the submission is disapproved in whole or in part pursuant to this Section, MCBH shall, within thirty (30) days or such other time as agreed to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraph. If the resubmission is approved in whole or in part, MCBH shall proceed in accordance with the preceding Paragraph.

VIII. REPORTING AND SAMPLING

- 41) No later than ninety (90) calendar days after the Effective Date of this Agreement, MCBH shall submit a written status report to EPA regarding the implementation status of each element of the Compliance Program as set forth in Section VI and every one hundred eighty (180) days thereafter, as long as this Agreement is in effect. The status reports shall be submitted in addition to any other reporting or certification required under this Agreement or pursuant to law, regulation, or the Permit. The status report shall state and describe the cause of any failure to comply with this Agreement and at a minimum shall include: (1) the deadlines and other milestones which MCBH was required to meet during the reporting period; (2) the progress it made toward meeting them; (3) the reasons for any noncompliance with this Agreement; and (4) a description of any matters relevant to the status of its compliance with this FFCA.
- 42) Notification to EPA of any noncompliance with any provision of this Agreement or anticipated delay in performing any obligation under this Agreement shall not excuse MCBH noncompliance or anticipated delay.

Marine Corps Base Hawaii FFCA

- 43) Unless specified otherwise, when written notification to, or communication with, EPA is required by the terms of this Agreement, it shall be sent via electronic mail (email) to Jamie Marincola of the EPA Enforcement and Compliance Assurance Division at Marincola.JamesPaul@epa.gov with a courtesy copy to the Hawaii Department of Health at cleanwaterbranch@doh.hawaii.gov. Unless specified otherwise, when written notification to, or communication with, MCBH is required by the terms of this Agreement, it shall be sent via email to the following individuals:

MCBH ECPD Storm Water Program Manager, Ms. Whitney Anderson
whitney.anderson@usmc.mil
(808) 257-4359

Chief of Environmental Compliance & Restoration
Mr. Ed Zuelke II
edward.zuelke@usmc.mil
(808) 216-3352

Director, Environmental Compliance & Protection Division
Major Jeffry Hart
Jeffry.hart@usmc.mil
(808) 257-5640

- 44) Each notification or communication required by this FFCA shall be sent by email and will be deemed submitted on the date it is sent. Permittee shall maintain records of each notification or communication for the duration of this FFCA.
- 45) All submissions provided pursuant to this Agreement shall be signed by a duly authorized representative of MCBH as specified by 40 C.F.R. § 122.22, who has personal knowledge of the submission's contents. Each submission shall be admissible as evidence in any proceeding to enforce this FFCA. Each submission shall include the following certification:

Marine Corps Base Hawaii FFCA

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

IX. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

- 46) Compliance with the terms of this FFCA in no way affects or relieves MCBH of its obligation to comply with all applicable requirements of the Act and regulations promulgated thereunder, or other applicable requirements of federal, state, or local law.

X. PERMIT OBLIGATIONS

- 47) This FFCA does not constitute a permit and does not relieve MCBH of any obligation to apply for, obtain, and comply with the existing NPDES Permit for its Facility.

XI. RIGHT OF ENTRY

- 48) EPA, its contractors, and other authorized representatives shall have the right to enter the Facility to conduct any inspection, including but not limited to records inspection, sample testing, or monitoring they believe is necessary to determine MCBH’s compliance with this FFCA.

XII. DISPUTE RESOLUTION

- 49) In the event of any conflict involving violations of this FFCA, EPA and MCBH shall meet promptly and work in good faith in an effort to reach a mutually agreeable resolution of the dispute.

Marine Corps Base Hawaii FFCA

- 50) Except as specifically set forth elsewhere in this FFCA, if a dispute arises under this FFCA, the procedures of this Section shall apply. In addition, during the pendency of any dispute, MCBH agrees that it shall continue to implement those portions of this FFCA which are not in dispute.
- 51) The pendency of any dispute under this Section shall not affect MCBH's responsibility to perform the work required by this FFCA in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's sole discretion, be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this FFCA which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.
- 52) The Parties to this FFCA shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. With respect to EPA, "Project Manager" means EPA Region 9 NPDES Inspector, Jamie Maricola, or any duly identified successor identified in Paragraph 43, above. With respect to MCBH, "Project Manager" means MCBH ECPD Storm Water Program Manager, Ms. Whitney Anderson, or any duly identified successor identified in Paragraph 43, above. The Parties will provide written notification of changes in identified Project Manager.
- 53) Within fourteen (14) business days of receipt of EPA's written notification that MCBH is in violation of a term or condition of this FFCA, submitted via email to the MCBH Project Manager, with a courtesy copy sent via email to the Director, ECPD, Major Jeffrey Hart and the Chief of Environmental Compliance & Restoration, Mr. Ed Zuelke II, as identified in Paragraph 43 above, MCBH shall submit to EPA a written statement of dispute. The statement must set forth the nature of the dispute, MCBH's position with respect to the dispute, and the information MCBH is relying upon to support its position.

Marine Corps Base Hawaii FFCA

MCBH will acknowledge receipt of EPA's written notification immediately by email; however, if MCBH fails to acknowledge receipt within five (5) business days of EPA sending the above-referenced violation notification, it will be deemed as received by MCBH. If MCBH does not provide the written statement of dispute to EPA within this fourteen (14) business day period, MCBH shall be deemed to have agreed with EPA's position with respect to the dispute.

- 54) Upon EPA's receipt of the written statement of dispute from MCBH, the Parties shall engage in dispute resolution among the Project Managers and/or their immediate supervisors. The Parties shall have fourteen (14) business days from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) business day period, MCBH may, within ten (10) business days after the conclusion of the fourteen (14) business day dispute resolution period, submit a written notice to EPA elevating the dispute to the Dispute Resolution Committee (DRC) for resolution. If MCBH does not elevate the dispute to the DRC within this ten (10) business day period, MCBH shall be deemed to have agreed with EPA's position with respect to the dispute.
- 55) The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the DRC, the DRC shall have thirty (30) days to unanimously resolve the dispute. EPA's designated representative on the DRC is the Director, Enforcement and Compliance Assurance Division, EPA Region 9. MCBH's designated representative on the DRC is the MCBH ECPD Director. Delegation of the authority from a Party's

Marine Corps Base Hawaii FFCA

representative on the DRC to an alternate shall be provided to the other Party within seven (7) business days of delegation.

- 56) If unanimous resolution by the DRC is not achieved within this thirty (30) day period, a member of the DRC may, within twenty-one (21) days after the conclusion of the thirty (30) day dispute resolution period, submit a written Notice of Dispute to the Regional Administrator of EPA Region 9 for final resolution of the dispute. In the event that the dispute is not elevated to the Regional Administrator of EPA Region 9 within the designated twenty-one (21) day period, MCBH shall be deemed to have agreed with the original EPA position with respect to the dispute.
- 57) Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the MCBH shall incorporate the resolution and final determination into the appropriate statement of work, plan, schedule, or procedures and proceed to implement this FFCA according to the amended statement of work, plan, schedule, or procedures.
- 58) Resolution of a dispute pursuant to this Section of the FFCA constitutes a final resolution of any dispute arising under this FFCA. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the FFCA.

XIII. FORCE MAJEURE

- 59) MCBH's obligations under the Compliance Program Section of this FFCA shall be performed as set forth in this FFCA unless performance is prevented or delayed by a force majeure event. For purposes of this FFCA, "force majeure" is defined as any event arising from causes beyond the control of MCBH or of entities controlled by MCBH, including but not limited to contractors and subcontractors, which could not be overcome by the due diligence of MCBH or the entities controlled by MCBH, which delays or

Marine Corps Base Hawaii FFCA

prevents the performance of any obligation under this FFCA, including acts of God or war, labor unrest, and any judicial orders which prevent compliance with the provisions of this FFCA. Force majeure shall not include increased costs of performance of any activity required by this FFCA or the failure to apply for any required permits or approvals or to provide all information required in a timely manner, nor shall it include the failure of contractors or employees to perform or the avoidable malfunction of equipment.

- 60) If MCBH is having difficulty meeting its obligations as set forth in this FFCA due to a force majeure event, it shall notify EPA promptly by email of any change in circumstances giving rise to the suspension of performance or the nonperformance of any obligation under this FFCA. In addition, within fourteen (14) days of the occurrence of circumstances causing such difficulty, it shall provide a written statement to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of force majeure. MCBH shall take all reasonable measures to avoid and/or minimize any such delay.
- 61) The burden of proving that any delay is caused by circumstances entirely beyond the control of MCBH shall rest with MCBH.

XIV. MODIFICATIONS

- 62) The requirements, timetable, and deadlines under this FFCA may be modified upon receipt of a timely request for modification and when good cause exists for the requested modification. Any request for modification by MCBH shall be submitted in writing and shall specify: the requirement, timetable, or deadline for which a modification is sought; the length of the extension sought; the good cause for the extension; and any related

Marine Corps Base Hawaii FFCA

requirement, timetable, deadline or schedule that would be affected if the extension were granted.

- 63) Good cause exists for a modification when sought in regard to: a force majeure; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with construction and where MCBH has made a timely and complete request for action from the regulatory agency; and any other event or series of events that the Parties mutually agree constitutes good cause.
- 64) Within twenty-one (21) days of receipt of a request for a modification, EPA shall advise MCBH of its position on the request. If EPA does not concur in the extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

XV. FUNDING


- 65) It is the expectation of the Parties to this FFCA that all obligations of MCBH arising under this FFCA, including any environmentally beneficial projects required, will be fully funded. MCBH agrees to use every legally available mechanism to seek sufficient funding through the MCBH budgetary process to fulfill its obligations under the FFCA.
- 66) The provisions herein shall not be interpreted to require obligations or payment of funds in violations of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this FFCA.
- 67) If funds are not available to fulfill MCBH's obligations under this FFCA, EPA reserves the right to initiate an action against any other person, or to take any action which would be appropriate absent this Agreement.

XVI. GENERAL PROVISIONS

- 68) This FFCA was negotiated and executed by the Parties in good faith to ensure compliance with the law. No part of this FFCA constitutes or should be interpreted or construed as an admission of fact or of liability under federal, state, or local laws, regulations, ordinances, or common law or as an admission of any violations of any laws, regulations, ordinances, or common law. By entering into this FFCA, MCBH does not waive, other than as to the enforcement of this FFCA pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action.
- 69) Terms and conditions of this Agreement changed by an agreed upon modification shall be enforceable as changed.
- 70) If any provision of this FFCA or the applications of this FFCA to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the FFCA shall remain in force and shall not be affected thereby.
- 71) The Effective Date of this FFCA shall be the date on which it is signed by the last signatory.
- 72) The FFCA shall be effective if signed in counterparts.
- 73) In computing any period of time described as “days” herein, all references to “days” refer to “calendar days,” unless stated otherwise. The last day of a time period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- 74) This FFCA shall terminate once MCBH has met all of its obligations herein, as determined by the mutual consent of the Parties and evidenced in writing.
-

Marine Corps Base Hawaii FFCA

FOR U.S. MARINE CORPS BASE HAWAII



Speros C. Koumparakis
Colonel, USMC
Commanding Officer, Marine Corps Base Hawaii

20220721

Date

**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

Date

ATTACHMENT 1

1. [Faint, illegible text]