



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, HONOLULU
FT. SHAFTER, HAWAII 96858-5440

*Rec'd
Nov Fed*

Oct 92

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA AND THE STATE OF HAWAII
FOR
MAUI SECOND COMMERCIAL HARBOR STUDY
ISLAND OF MAUI, HAWAII

THIS AGREEMENT, entered into this 5th day of
October 1992, by and between the UNITED STATES OF
AMERICA, acting through the District Commander, U.S. Army
Engineer District, Honolulu (hereinafter called the
"Government") and the STATE OF HAWAII, acting through the
Director, Department of Transportation (hereinafter called the
"State").

WHEREAS, the Government, by and through the Corps of
Engineers, has expertise in navigation studies and has
previously initiated studies under Section 109 of the Rivers and
Harbors Act of 1960 to investigate the feasibility of providing
a second commercial harbor on the south shore of the island of
Maui; and

WHEREAS, by letter dated October 3, 1991, the State has
requested that the Government conduct a study to investigate the
feasibility of a second commercial harbor for the island of Maui
(hereinafter called the "Study"); and

WHEREAS, the State has the necessary funds to fully finance the requested study, and hereby certifies that such a study cannot be procured reasonably and expeditiously through its ordinary business channels; and

WHEREAS, the Intergovernmental Cooperation Act, 31 U.S.C. 6505, gives the Government authority to provide reimbursable services, including studies, to State and local governments;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

a. "Study Cost" means all disbursements by the Government pursuant to this Agreement. Such costs shall include, but not be limited to, labor charges, direct costs, overhead expenses, supervision and administration costs, and contracts with third parties, and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

b. "Study Period" means the time period for conducting the study commencing with the receipt of funding following the execution of this Agreement and ending when the final report is submitted to the State.

ARTICLE II - SCOPE OF SERVICES

The Government will provide the requested study in accordance with the scope of work and cost proposal attached hereto and incorporated herein as Appendix A.

ARTICLE III - RESPONSIBILITIES OF THE STATE

a. The State will designate the responsible official for coordination of the study.

b. The State will provide funding, in accordance with the terms and conditions of Article IV, to accomplish the study.

c. The State will obtain all permits, easements, and rights of way necessary to accomplish the work herein.

ARTICLE IV - RESPONSIBILITIES OF THE GOVERNMENT

a. The Government, using funds provided by the State, will expeditiously prosecute and complete the requested study in accordance with Appendix A and in conformity with applicable Federal laws and regulations and mutually acceptable standards of engineering practice.

ARTICLE V - FUNDS

a. The State shall pay all costs incident to performance of work under the terms of this Agreement. The State shall deposit funds for the cost of the study with the Government prior to the commencement of work. Such deposit shall be made by cash or check made payable to "Finance and Accounting Office (FAO) U.S. Army Engineer District, Pacific Ocean." These costs are currently estimated at \$150,000. The Corps will not incur or perform work in excess of this amount unless authorized by the State.

b. Upon completion of the study under this Agreement, the Government shall make a final accounting and make adjustments accordingly.

ARTICLE VI - TERM OF THE AGREEMENT

a. The term of this Agreement will not exceed eighteen calendar months from the date of receipt of transferred funds; provided, that prior to such time and upon thirty days written notice, either party may terminate or suspend this Agreement without penalty. This Agreement may be extended for a period not to exceed one additional calendar year upon the mutual agreement of both parties.

b. This Agreement will become effective upon the signature of both parties.

ARTICLE VII - MODIFICATION OF AGREEMENT

a. Any modification or amendment to this Agreement will be made only by written amendment signed by the parties; provided, changes to Appendix A that do not result in additional cost may be agreed to by the parties and documented by revising Appendix A without further written amendment to this Agreement.

ARTICLE VIII - CONFIDENTIALITY AND OWNERSHIP OF MATERIAL

a. All material given to or made available to the Government by virtue of this Agreement, which is identified by the State as proprietary or confidential information, will be safeguarded by the Government and will not be disclosed to any individual or organization without the prior written approval of the State.

b. All information, data, or other material provided by the Government to the State will become the property of the State, and will only be disclosed or released by the Government to any individual or organization to the extent required by law.

ARTICLE IX - DISPUTES

Before any party to this Agreement may bring suit in any court concerning any issues relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other form of non-binding alternate dispute resolution mutually acceptable to the parties.

ARTICLE X - LIABILITIES

The State will hold and save the Government free from all damages arising from the performance of the work done under this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE XI - RELATIONSHIP OF THE 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 XII - NOTICES

Any written notice required to be given by a party to this Agreement will be deemed to have been duly given if in writing and delivered personally, or mailed by first class (postage prepaid) mail as follows:

If to the State:

Director
Department of Transportation, Harbors Division
State of Hawaii
79 South Nimitz Hwy.
Honolulu, Hawaii 96813-4898

If to the Government:

District Commander
United States Army Engineer District - Honolulu
Building 230
Fort Shafter, Hawaii 96858-5440

Any notice 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 days after it is mailed, as the case may be.

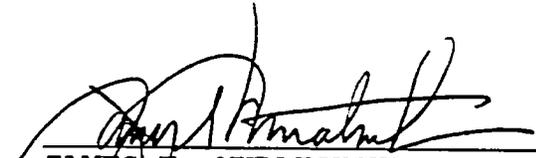
ARTICLE XIII - SEVERABILITY

In the event that any provision of the Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of the remaining terms of this Agreement.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or other elected official, shall be admitted to any share or part of this Agreement, or to any personal benefit that may arise therefrom.

THE UNITED STATES OF AMERICA

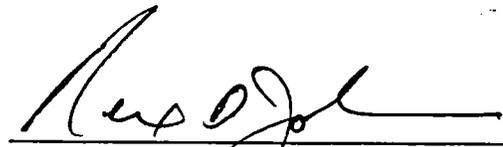


JAMES T. MURATSUCHI
Lieutenant Colonel, U.S. Army
District Commander
Contracting Officer

5 OCT 92

DATE

THE STATE OF HAWAII

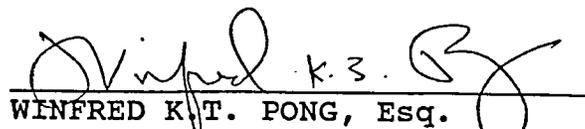


REX JOHNSON
Director of Transportation
State of Hawaii

9/18/92

DATE

Approved as to Form



WINFRED K.T. PONG, Esq.
Deputy Attorney General
State of Hawaii

**APPENDIX A
SCOPE OF WORK
SECOND COMMERCIAL HARBOR FOR MAUI**

1 GENERAL. Kahului Harbor is the island of Maui's only commercial port. A sudden closure of the harbor due to a navigation accident or natural disaster would severely impact Maui as it is entirely dependent upon Kahului Harbor for the shipment of waterborne goods.

The objective of the study is to conduct reconnaissance level investigations to plan and assess alternative second commercial harbor sites.

2 STUDY ACTIVITIES. Study activities shall include the following.

A. Coordination - The State of Hawaii, Department of Transportation, Harbors Division is the responsible agency for coordination of the study. Coordination between the U.S. Army Engineer District, Honolulu, the Department of Transportation, and the County of Maui will be maintained throughout the course of the study.

B. Data Collection and Field Investigations - Data collection and field investigations will be conducted to evaluate the technical, economic, and environmental feasibility of alternative harbor sites.

C. Engineering Studies - Engineering studies shall follow current Corps of Engineers criteria and methodology and shall include reconnaissance level evaluation of the following.

- 1) Alternative second harbor sites.
- 2) Baseline construction cost estimates for feasible alternatives.
- 3) Recommendations for detailed engineering studies.

D. Economics Studies - Economic studies will include reconnaissance level evaluation of the following.

- 1) Current and future usage of Kahului Harbor.
- 2) Economic impacts of a closure to Kahului Harbor.
- 3) Economic benefits of alternative harbor sites.
- 4) Recommendations for detailed economic studies.

**APPENDIX A
SCOPE OF WORK
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E. Environmental Studies - Reconnaissance level environmental evaluation of alternative harbor sites will include the following.

- 1) Water Quality
- 2) Marine Resources
- 3) Terrestrial Resources
- 4) Historical and Archaeological Resources
- 5) Recommendations for detailed environmental studies and coordination.

F. Report Preparation - A draft and final report will be prepared to summarize the study findings as outlined below.

- 1) Authority
- 2) Purpose and Scope of Study
- 3) Description of Study Area.
- 4) Existing Conditions
- 5) Kahului Harbor Closure
 - a. Scenarios
 - b. Economic impacts
- 6) Alternative Second Harbor Sites
 - a. Alternative Sites
 - b. Costs
 - c. Economic Evaluation
 - d. Environmental Impacts
- 7) Interim Contingency Plans
 - a. State of Hawaii, Department of Transportation
 - b. Civil Defense
 - c. County of Maui
 - d. Coast Guard
 - e. Corps of Engineers
 - f. Public utilities

**APPENDIX A
SCOPE OF WORK
SECOND COMMERCIAL HARBOR FOR MAUI**

8) Federal Involvement

9) Additional Studies

- a. Engineering
- b. Economic
- c. Environmental
- d. Public Involvement

10) Conclusions and Recommendations.

3. ESTIMATED STUDY COST AND SCHEDULE - The estimated cost to conduct the study is \$150,000. The estimated study period is presented below.

Activity	Months
Data Collection and Field Investigations	2
Engineering, Economic, and Environmental Studies	6
Prepare and Print Draft Report	2
Review of Draft Report	2
Prepare and Print Final Report	2
TOTAL	14

SECOND COMMERCIAL HARBOR FOR MAUI

COST ESTIMATE

30-Jul-92

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Sub-Total</u>	<u>Total</u>
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COORDINATION

Study Manager GS-12	80	hrs	65	5,200	
Hydraulic Engineer GS-12	16	hrs	65	1,040	
Environmental GS-11	16	hrs	47	752	
Archaeologist GS-12	16	hrs	57	912	
Economist GS-11	16	hrs	53	848	
				8,752	\$8,752

DATA COLLECTION

Study Manager GS-12	40	hrs	65	2,600	
Hydraulic Engineer GS-12	40	hrs	65	2,600	
Environmental GS-11	40	hrs	47	1,880	
Archaeologist GS-12	40	hrs	57	2,280	
Economist GS-11	40	hrs	53	2,120	
				11,480	\$11,480

FIELD INVESTIGATIONS

Study Manager GS-12	32	hrs	65	2,080	
Airfare	2	ea	100	200	
Per Diem	4	days	158	632	
Car Rental	4	days	40	160	
				3,072	

Hydraulic Engineer GS-12	24	hrs	65	1,560	
Airfare	1	ea	100	100	
Per Diem	3	days	158	474	
Car Rental	3	days	40	120	
				2,254	

Environmental GS-11	32	hrs	47	1,504	
Airfare	1	ea	100	100	
Per Diem	4	days	158	632	
Car Rental	4	days	40	160	
				2,396	

Archaeologist GS-12	32	hrs	57	1,824	
Airfare	1	ea	100	100	
Per Diem	4	days	158	632	
Car Rental	4	days	40	160	
				2,716	

SECOND COMMERCIAL HARBOR FOR MAUI

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Sub-Total</u>	<u>Total</u>
Economists GS-11	40	hrs	53	2,120	
Economist GS-09	40	hrs	31	1,240	
Airfare	2	ea	100	200	
Per Diem	5	days	158	790	
Car Rental	5	days	40	200	
				<u>4,550</u>	
Cost Engineer GS-12	16	hrs	65	1,040	
Airfare	1	ea	100	100	
Per Diem	2	days	158	316	
Car Rental	2	days	40	80	
				<u>1,536</u>	\$16,524
<u>STUDIES</u>					
<u>Engineering Studies</u>					
Hydraulic Engineer GS-12	320	hrs	65	20,800	
Foundations Engineer GS-12	80	hrs	65	5,200	
Cost Engineer GS-12	80	hrs	65	5,200	
Technical Engineer GS-13	40	hrs	80	3,200	
				<u>34,400</u>	
<u>Economic Studies</u>					
Economist GS-11	320	hrs	53	16,960	
Economist GS-09	240	hrs	31	7,440	
				<u>24,400</u>	
<u>Environmental Studies</u>					
Environmental GS-11	240	hrs	47	11,280	
Archaeologist GS-12	160	hrs	57	9,120	
				<u>20,400</u>	\$79,200
<u>REPORT PREPARATION</u>					
<u>Draft Report</u>					
Study Manager GS-12	160	hrs	65	10,400	
Hydraulic Engineer GS-12	40	hrs	65	2,600	
Environmental GS-11	40	hrs	47	1,880	
Archaeologist GS-12	40	hrs	57	2,280	
Economist GS-11	40	hrs	53	2,120	
Draft Report Reproduction	150	ea	10	1,500	
				<u>20,780</u>	
<u>Final Report</u>					
Study Manager GS-12	100	hrs	65	6,500	
Hydraulic Engineer GS-12	24	hrs	65	1,560	
Cost Engineer GS-12	24	hrs	65	1,560	
Environmental GS-11	24	hrs	47	1,128	
Archaeologist GS-12	24	hrs	57	1,368	
Economist GS-11	24	hrs	53	1,272	
Draft Report Reproduction	150	ea	10	1,500	
				<u>13,388</u>	\$34,168
				TOTAL	\$150,124
				SAY	\$150,000