

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Engineering Division  
Honolulu, Hawaii 96813

May 24, 2019

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**Authorization to Enter into a Memorandum of Agreement  
with the U.S. Fish and Wildlife Service  
for the Transfer of Act 12 Funding, Hanalei, Kauai, Hawaii**

**BACKGROUND:**

The Hanalei River provides water to the Hanalei National Wildlife Refuge (HNWR) and to the area taro farmers via an irrigation intake structure that is operated by the U.S. Fish and Wildlife Service (USFWS). In 1995, the Hanalei River streambank was breached due to a large flooding event. The breach created a split flow condition which affected the amount of water reaching the diversion structure. The breach occurred at a location owned by the State Department of Land and Natural Resources (DLNR). In 2015, DLNR repaired the breach which restored the flow to the intake structure.

On the weekend of April 14-15, 2018, the island of Kauai experienced extreme rainfall resulting in severe flooding. During this event, DLNR's streambank repair project was severely damaged and multiple new breach locations developed. At the recommendations of DLNR's design consultant, AECOM Technical Services, Inc., it was decided that it would not be feasible to repair the damaged streambank repair project and address all the new breach locations. To maintain an adequate supply of water to the HNWR and the taro farmers, it was recommended that USFWS look into the possibility of relocating their intake structure.

In December 2018, Governor Ige approved the release of \$220,000.00 of Disaster Relief Funds for Kauai from Act 12, SLH 2018 with the intent that it be transferred to USFWS to assess and evaluate alternatives to their intake structure & water diversion system. In order to transfer the monies to USFWS, a Memorandum of Agreement needs to be executed between the State DLNR and USFWS.

A copy of the Draft Agreement, which is subject to change, is attached. Photos and a site plan showing the stream bank repair site & the intake structure are also attached.

**RECOMMENDATION:**

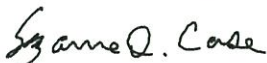
That the Board delegate authority to the Chairperson to enter into the Memorandum of Agreement and authorize the Chairperson to sign necessary documents pertaining to the project, subject to availability of funding and review and approval as to form by the Department of Attorney General.

Respectfully submitted,



CARTY S. CHANG  
Chief Engineer

Approved for Submittal:



SUZANNE D. CASE, Chairperson

ITEM L-1



USFWS Intake Structure

Breach Repair Project



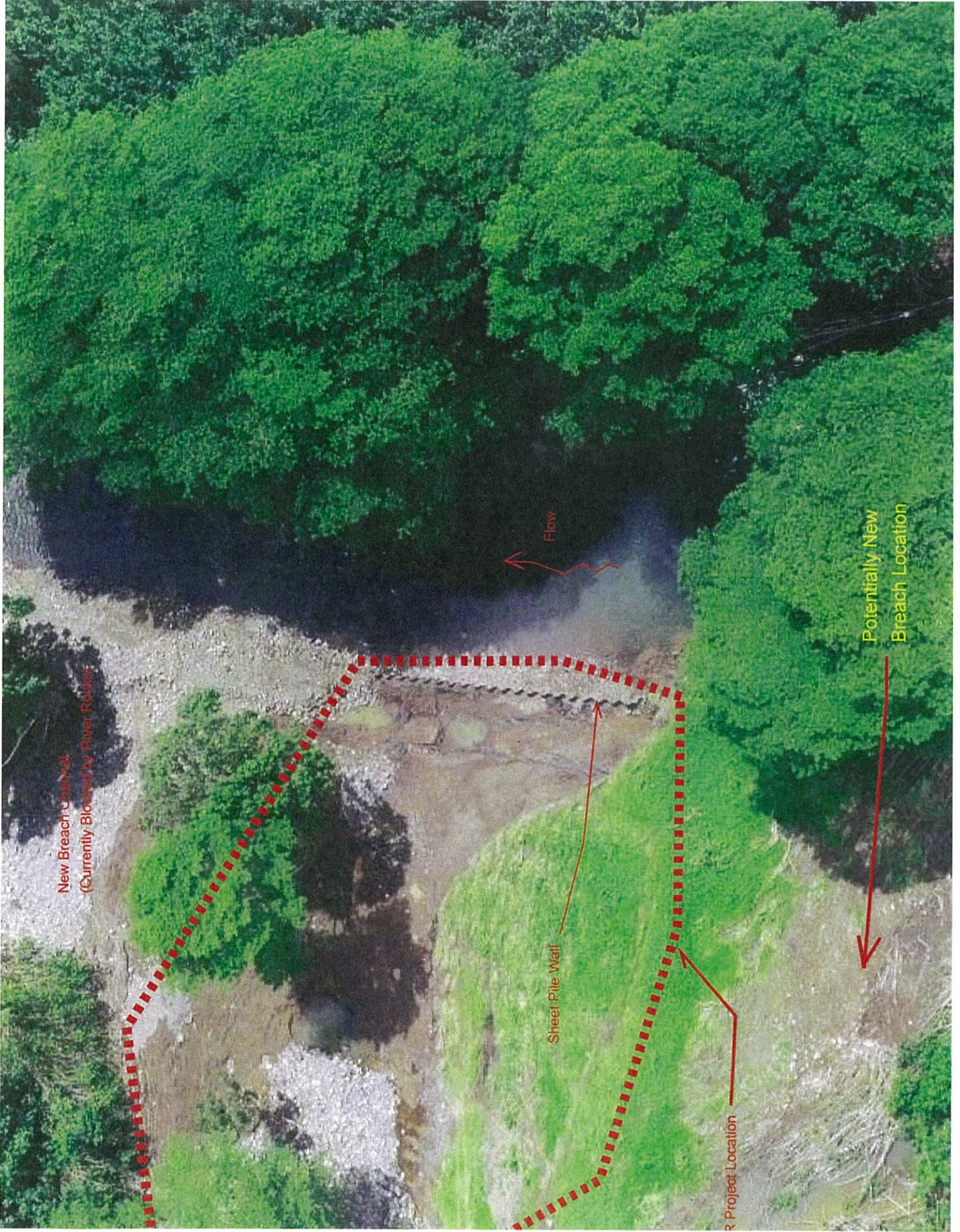
Breach Repair Project – Final Inspection



Breach Repair Project Site – After April 2018 Flooding



USFWS Intake Structure - After April 2018 Flooding



New Breach Channel  
(Currently Blocked by River Rocks)

Flow

Potentially New  
Breach Location

Sheet Pile Wall

Project Location



Intake Structure

Flow

essentially New  
Reach Location

**DRAFT**

**PROJECT AGREEMENT No. 001**

**Memorandum of Agreement**

between

**State of Hawaii**

**Department of Land and Natural Resources**

and the

**United States Fish and Wildlife Service**

for the

**Hanalei Stream Water Diversion Project**

**PURPOSE OF AGREEMENT**

The purpose of this Memorandum of Agreement (“Agreement”) is to establish the roles and responsibilities of the Hawaii Department of Land and Natural Resources (“DLNR”), and the U.S. Fish and Wildlife Service (“FWS”) (hereinafter known as the “Parties.”). The Parties will jointly participate in the Hanalei Stream Water Diversion project (“Project”).

**BACKGROUND**

**WHEREAS**, a total of \$220,000.00 from Act 12, SLH 2018 funds are to be made available to the FWS under this Agreement;

**WHEREAS**, the allocated funds for the Project under this Agreement will be used to provide full A&E design and construction services of the preferred alternative selected from Preliminary Engineering Study of the Hanalei River Intake (study completed under a separate contract). Work will consist of collecting all pertinent data necessary to create full biddable construction design documents, construction solicitation, award, construction inspection, preparation of required environmental permits, cultural clearances and overall project management by the FWS.

The Hanalei River Intake Project is being developed to address historic flooding, sedimentation, bank scouring and general river instability in the vicinity of the existing intake. Recent inspection of the intake has revealed significant eroding of the general bank adjacent and upstream of the structure potentially threatening the integrity of the structure.

**WHEREAS**, it is recognized that the improvements will benefit the FWS and that the FWS is the more appropriate and capable agency for such an undertaking;

**WHEREAS**, it is the mutual desire of the Parties, including parties responsible for the allocation of such funds to undertake and complete the Project;

**WHEREAS**, the FWS is authorized to enter into this agreement to undertake the responsibilities described herein pursuant to the Intergovernmental Cooperation Act of 1968 (31 USC 6505) and the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa; Statute 275);

**NOW THEREFORE**, the DLNR and the FWS do hereby mutually agree as follows:

**ARTICLE I: STATEMENT OF WORK (Obligations, Responsibilities, and Funding)**

A. The DLNR agrees to:

1. Transfer \$220,000.00 in funds to the FWS via check within 45 calendar days upon execution of this Agreement. Check will be made payable to:



U.S. Fish and Wildlife Service  
Check will be delivered to:

U.S. Fish and Wildlife Service  
Division of Budget and Finance  
Attn: Jennifer Anderson  
911 N.E. 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4181

2. Cooperate with the FWS to the extent necessary where the DLNR involvement is required to advance the Project;

B. The FWS agrees to:

1. Coordinate the overall schedule for the Project and facilitate cooperation among the project stakeholders;
2. Receive, expend, and account for all funds transferred from the DLNR for the Project;
3. Return any unused funds to the DLNR within reasonable time, not to exceed 120 calendar days from the DLNR's written acceptance of all work completed by the FWS.

Funds returned to the DLNR shall be by check and made payable to:

State of Hawaii, Department of Land and Natural Resources.

Check shall be delivered to:

Engineering Division  
Kalanimoku Building, Room 221  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

4. Provide a final accounting of funds within 120 calendar days from the DLNR's written acceptance of all work completed by the FWS;
5. Meet, video conference or telephone with the DLNR personnel as necessary, or when requested, within a reasonable time period to discuss status, progress or issues with the Project;
6. Provide a Project Manager and other support personnel to properly administer and manage the Project and funding;
7. Provide all project management, design criteria, technical data, design development, biddable construction documents, contracting and land acquisition (or easements), environmental

permitting, cultural clearances, cost estimates, design/construction schedules and perform community outreach as required;

8. Provide contracting services for solicitation, award and management of construction services from the developed biddable construction documents of the selected preferred alternative;
9. Receive, review and approve payments from Contractors. Progress and final payments will show appropriate quantities and payment amounts in an agreed upon Schedule of Payment;
10. Retain copies of all records for a minimum period of three years from final acceptance of the Project.

C. Responsibility of Parties to Cooperate

The parties to this agreement will be afforded the opportunity, at any time, to inspect, review and comment on work in progress, the financial records, and any other supporting documentation, and to participate in all meetings and field reviews.

**ARTICLE II: OTHER TERMS OF AGREEMENT**

1. This Agreement and the authorizations granted in it shall be effective only after the execution and approval by the Parties to this Agreement.
2. This Agreement shall be in force and effect and shall remain in effect from the date of full execution of this agreement until April 1, 2024, or until all tasked work, including all payment and reimbursement transactions, have been completed, whichever is earlier, to the mutual satisfaction of the Parties.
3. The Agreement may be modified by written consent of the Parties.
4. The Parties will be afforded an opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation.
5. This Agreement is governed by Federal, State or local laws, regulations, and policy.

**ARTICLE III: KEY OFFICIALS AND CONTACTS**

Designated points of contact for the addition of this project are as follows:

For the DLNR:

Mr. Roger Masuoka

Project Manager, Engineering Division  
State of Hawaii Department of Land and Natural Resources  
Kalanimoku Building, Room 221  
1151 Punchbowl Street  
Honolulu, Hawaii 96813  
Phone: (808) 587-0276  
Email: [roger.h.masuoka@hawaii.gov](mailto:roger.h.masuoka@hawaii.gov)

For the FWS Project Officer:

Heather Abbey Tonneson  
Refuge Complex Manager  
Kauai National Wildlife Refuge Complex  
3500 Kilauea Road; P.O. Box 1128  
Kilauea, Hawaii 96754  
Phone: (808) 828-1413, ext 2223  
Email: [heather\\_tonneson@fws.gov](mailto:heather_tonneson@fws.gov)

For the FWS Technical Officer:

Brad Senatra  
Division of Engineering  
U.S. Fish and Wildlife Service, Region 1  
911 N.E. 11<sup>th</sup> Avenue  
Portland, Oregon 97232  
Phone: (503) 231-2089  
Email: [brad\\_senatra@fws.gov](mailto:brad_senatra@fws.gov)

### ARTICLE IV: TERMINATION

This Agreement will terminate when all transfers, expenditures and return of funds are completed and all work associated with this Agreement has been approved by the Parties in writing. Approval by the DLNR will be with regard to facilities that are owned and maintained by the DLNR Approval by the DLNR will be by written notification to the FWS.

In case of the failure on the part of any Party to observe any of the conditions of the Agreement, any affected Party shall notify the other Party of the violation and allow a reasonable time to cure the violation. In the event that the violation is not cured within what the affected Party considers a reasonable time, the affected Party may terminate this Agreement by giving 30 calendar days written notice of termination to the other Party, effective at the end of 30 day period.

If the Buyer (DLNR) cancels the agreement, the Seller (UFSWS) may collect costs incurred prior to the cancellation of the agreement plus any termination costs.

### ARTICLE V: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties.

### ARTICLE VI: LIABILITY

The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent such responsibility is permitted under the law of each respective State. All claims shall be processed pursuant to applicable governing law of each State or pursuant to the Federal Tort Claims Act (Title 28, United States Code, Section 2671, et seq.), as applicable.

### ARTICLE VII: REQUIRED AND STANDARD CLAUSES

1. Nothing in this Agreement shall be constructed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective statutory authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available appropriations. This Agreement is subject to all laws governing Federal procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
2. **NON-DISCRIMINATION:** The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. Section 2000(d), et seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.
3. **ANTI-DEFICIENCY ACT:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the United States or any State to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States or any State in any contract or other obligation for the further expenditure of money in excess of such appropriations.
4. **LOBBY PROHIBITION:** The Parties will abide by the provisions of 18 U.S.C. § 1913 (Lobbying with Appropriated Monies).

**ARTICLE VIII. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE IX. ENTIRE AGREEMENT**

This Agreement and its attachments constitute the entire Agreement and understanding of the Parties with respect to the Project. No oral or other written provisions shall have any force or effect except those contained in a written amendment to this Agreement executed by the Parties.

**ARTICLE X. ATTACHMENTS**

Attachment 1 Final Environmental Assessment

Attachment 2 Reimbursable Agreement: FLH-056-1(45) RA#001, executed \_\_\_\_\_

**DRAFT**

**PROJECT AGREEMENT No. 001**

**IN WITNESS THEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**HAWAII DEPARTMENT OF LAND AND  
NATURAL RESOURCES**

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Suzanne D. Case  
Chairperson

Date

**APPROVED AS TO FORM**

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Deputy Attorney General

Date

**U.S. FISH AND WILDLIFE SERVICE**

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Kevin Forester  
Regional Chief, National Wildlife Refuge System

Date