



State of Hawaii  
**Department of Transportation**

US DEPARTMENT OF TRANSPORTATION

Maritime Administration  
Port Infrastructure Development Program (PIDP)

Kapalama Container Terminal – Gaining  
Regenerative and Efficient Energy Needs Project

## **Appendix D: Memorandum of Understanding**

Please find supporting documentation at this link:  
<http://www.kctinfo.com/learn/updates/>

MEMORANDUM OF UNDERSTANDING BETWEEN HAWAII STEVEDORES, INC.  
AND  
STATE OF HAWAII DEPARTMENT OF TRANSPORTATION – HARBORS  
DIVISION

This binding Memorandum of Understanding ("MOU") sets forth certain terms relating to the State of Hawaii, Department of Transportation, Harbors Division ("DOTH") and Hawaii Stevedores, Inc. ("HSI") and the application for grant funds pursuant to the Maritime Administration of the United States Department of Transportation ("MARAD") 2022 Port Infrastructure Development Program ("PIDP") grant program. The parties understand and agree that this MOU is a binding agreement between them as of May 13, 2022 (the "Effective Date"), subject to Paragraph 10(g) below.

WHEREAS, DOTH as a division of the Department of Transportation of the State of Hawaii is an "Eligible Applicant" pursuant to the MARAD Notice of Funding Opportunity dated February 23, 2022, for the PIDP grants under the Infrastructure Investment and Jobs Act;

WHEREAS, HSI, as a private entity applicant with DOTH, has requested that DOTH include in an application to MARAD for a PIDP grant certain infrastructure improvements and equipment procurements generally described on Exhibit A attached hereto that HSI proposes to be built and deployed at the Kapalama Container Terminal facility which is currently being developed by DOTH of which a portion has been approved for use as HSI's primary container terminal operation in Honolulu, Hawaii (collectively, the "HSI Improvements");

WHEREAS, as DOTH is the lead entity applicant and HSI is private entity applicant, this is a public-private-partnership with the source of non-federal share match funds originating from private funds provided by HSI and there will be no state matching funds, except that any state funds currently committed by the State of Hawaii for the construction of the Kapalama Container Terminal facility may be included in the overall project description.

WHEREAS, DOTH and HSI have determined that the HSI Improvements will: (1) improve the safety, efficiency, and reliability of the loading and unloading of goods, the movement of goods, operational improvements (including improvements to port resilience), and environmental and emissions mitigation measures; (2) support economic vitality in the State of Hawaii and trade with the continental United States; (3) address climate change and environmental justice impacts; (4) advance equity and opportunity for all; and (5) leverage Federal funding to attract non-Federal sources of infrastructure investment; and

WHEREAS, DOTH has agreed to include the HSI Improvements in the PIDP application and DOTH and HSI desire to memorialize their understanding with respect to this joint application.

The DOTH and HSI hereby covenant and agree with each other as follows:

1. Obligations of HSI: HSI shall have the following obligations during the Term of this MOU:

(a) HSI shall provide to DOTH the information necessary to include in the application to MARAD in connection with the PIDP grant request for the HSI Improvements on a timely basis (but in no event later than May 13, 2022) to allow DOTH to submit the grant application by May 16, 2022, and shall provide any and all other information and documents and assume any and all responsibilities required of or appropriate to a joint applicant for such application.

(b) HSI shall engage and pay for the services of Build Momentum, Inc. ("Momentum") to assist with the preparation of the information required to be submitted to MARAD in connection with the HSI Improvements and to provide grant management services, including processing reimbursements from the grant to the appropriate party, in support of all required administrative activities for the duration of the HSI Improvements, and post-construction close-out reporting and assurance monitoring reports, as required.

(c) HSI shall comply with and abide by all applicable codes, rules, laws, and regulations—including the Buy America Act—pertaining to the hiring of subcontractors, procurement of materials and equipment, and construction, installation, and commissioning of such as set forth in the PIDP application for the HSI Improvements. HSI shall be responsible for drafting any Buy America Act U.S. DOT waiver requests.

(d) HSI shall be financially responsible for guaranteeing all private match share commitments of HSI as set forth in the PIDP application for the HSI Improvements.

(e) HSI commits to achieving the goals proposed in the grant application to: (1) improve the safety, efficiency, and reliability of the loading and unloading of goods, the movement of goods, operational improvements (including improvements to port resilience), and environmental and emissions mitigation measures; (2) support economic vitality in the State of Hawaii and trade with the continental United States; (3) address climate change and environmental justice impacts; (4) advance equity and opportunity for all; and (5) leverage Federal funding to attract non-Federal sources of infrastructure investment.

(f) Without limiting any other provision herein, HSI shall meet and provide to DOTH on a timely basis all reporting and invoicing activities as required by MARAD and the PIDP throughout the duration of the HSI Improvements.

(g) HSI, at its sole cost and expense, shall be responsible for the preparation of all permitting and environmental documentation and compliance with any and all federal, state, and

county laws, reviews, and approvals, including chapter 343, Hawaii Revised Statutes ("HRS"), and the National Environmental Policy Act, applicable with respect to the HSI Improvements.

2. Obligations of DOTH: DOTH shall have the following obligations during the Term of this MOU:

(a) Subject to DOTH timely receiving from HSI all necessary information to include in the application as provided above, DOTH shall include the HSI Improvements in its grant application to MARAD for the 2022 PIDP grant program and submit the final approved application package to MARAD by May 16, 2022, at 11:59 p.m. EDT; provided, however, that notwithstanding any other provision in this MOU, DOTH does not represent or warrant to HSI that the DOTH will receive a 2022 PIDP grant based upon its grant application to MARAD.

(b) DOTH shall, as the lead entity applicant, coordinate with HSI and Momentum for meetings and timely reporting and invoicing activities as required by MARAD and the PIDP throughout the duration of the HSI Improvements.

(c) DOTH shall coordinate with HSI to evaluate and, where appropriate, pursue additional discretionary grant funding opportunities and other financial incentives to continue developing additional project phases that further reduce emissions, increase resiliency, and support economic development at the Kapalama Container Terminal.

3. Term of Agreement: The term of this MOU shall commence on the the Effective Date, and, if the PIDP application results in a grant being awarded by MARAD, shall run for five (5) years from the date of contracting with MARAD for the grant (the "Term"). This MOU shall terminate in the event that the PIDP application does not result in a grant being awarded to DOTH and HSI for the HSI Improvements.

4. Record-Keeping; Reporting and Invoicing: Without limiting any other provision herein, HSI shall issue and process all required reports and invoices in connection with the HSI Improvements and maintain adequate record of all transactions and activities of the project. DOTH shall review, approve if appropriate, and submit all required reports and invoices in connection with the HSI Improvements as required by the PIDP and applicable federal and state laws and regulations.

5. Default: Should either party claim the other defaulted under this MOU, the party alleging breach shall give written notice to the other party of the nature of the alleged breach and action needed to cure. The party receiving such notice to cure shall have a period of thirty (30) days to cure; and if such cure is not either accomplished or diligently prosecuted during such thirty-day period the party giving notice of breach shall have the right to terminate this MOU. Upon any termination of this MOU, DOTH obligations under this MOU, including submitting requests for MARAD grant funds for the HSI Improvements, shall cease with DOTH having no further obligations under the MOU.

6. Force Majeure: Neither HSI nor DOTH shall be responsible for any delays, losses, damages, costs or failure to perform any of their respective obligations under this MOU which arise directly owing to act of God, act of public enemy, governmental orders, political disturbances, war, hostile actions, pandemic, epidemic, labor disorders, disputes or shortage of labor, strike or lockout or stoppage or restraint of labor from whatever cause or other difficulties within the workforce, fire, flood, intentional or malicious acts of third persons or any organized opposition, civil commotion and other contingencies, similar or dissimilar to the foregoing, beyond the reasonable control of the affected party. Lack of funds or inability to obtain financing shall not be an event of "force majeure."

7. Confidential Information: This MOU shall be kept confidential subject to and in accordance with chapter 92F, Hawaii Revised Statutes.

8. Relationship: The parties are independent contractors. Neither party has, nor shall either party hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the other party. HSI is an independent contractor and is not an employee, servant, agent, partner or joint venture of DOTH. HSI, in the performance of the work under this MOU, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of employees, sub-contractors, including procurement of materials and leases of equipment.

9. Indemnity. HSI shall release, hold harmless, indemnify, and defend, with counsel acceptable to DOTH in its sole discretion, DOTH, and the State of Hawaii's directors, officers, agents, elected officials, boards, and employees, and their respective successors and assigns, from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death or damage, including without limitation, claims for property damage, personal injury, or loss or death of persons, whenever such loss, injury, death, or damage arises out of, is connected with, or related to: (a) representations made by HSI relating to DOTH's application to MARAD for a PIDP grant; (b) occurrences or incidents relating to the HSI Improvements; (c) the exercise of the rights and obligations provided herein; or (d) any failure on the part of HSI to perform in accordance with the terms and conditions of this MOU. This provision shall survive the expiration or earlier termination of this MOU.

10. Miscellaneous:

(a) Law and Jurisdiction. The parties hereby agree that this MOU shall be governed by Hawaii law. They further agree that they shall attempt to settle amicably all controversies, claims and/or disputes which may arise between them in the course of the application of this MOU or the interpretation of its provisions, and, if they cannot do so, then the parties agree that any and all disputes shall be brought in the state court in Honolulu, Hawaii.

(b) No Waiver. No waiver of any breach of this MOU or of any of its provisions shall be effective unless such waiver is made in writing, nor shall any such waiver be deemed a waiver of any other or subsequent breach thereof.

(c) Successors in Interest. This MOU shall apply to and be binding upon the heirs, successors, executors and administrators of the parties hereto, all of whom shall be jointly and severally liable hereunder as to the respective party.

(d) Notices. Whenever notice is to be given by any party to the other party under this MOU, such notice shall be made by any one of the following methods: personally; by overnight courier service from which proof of delivery can be obtained, via next business day delivery, delivery charges prepaid; or by registered or certified mail, return-receipt requested. Notices shall be deemed received (a) if personally delivered or via overnight courier, upon date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the business day following delivery to the party to whom the notice is addressed; (b) if mailed, two (2) business days after deposit in the U.S. mail. Any party may change its address and other noticing information by giving the other party written notice of such change in accordance with this paragraph. All notices shall be sent to the addresses set forth below:

If to HSI:

Hawaii Stevedores, Inc.  
1601 Sand Island Parkway  
Honolulu, HI 96819

Attn: Randy Grune, Managing Director

With a copy to:

The Pasha Group  
4040 Civic Center Drive  
San Rafael, CA 94930

Attn: Michael Johnson, General Counsel

If to DOTH:

Department of Transportation  
Harbors Division  
79 S. Nimitz Hwy  
Honolulu, Hawaii 96813  
Attn: Neil Takekawa, Harbors  
Administrator

(e) Assignment. HSI shall not be entitled to assign any of its rights and obligations under this MOU without DOTH's prior written consent; provided, however, that DOTH's consent shall not be required for any transfer by HSI to a Successor Corporation or Related Corporation (as those terms are defined below). A "Successor Corporation" means a corporation, limited liability company, partnership, or other business entity into or with which HSI is merged or consolidated or to which all or substantially all of the assets and goodwill of HSI are transferred, which entity assumes substantially all of the liabilities of HSI and has a net worth (determined in accordance with generally accepted accounting principles) at least equal to the net worth of HSI immediately prior thereto. "Related Corporation" means a corporation, limited liability company, partnership or other business entity, which, directly or indirectly, is owned by or under common ownership with HSI. The provisions of this MOU shall be binding and inure to the benefit of the parties and their respective successors and permitted assigns.

(f) Entire Agreement. This MOU supersedes all and any prior written and verbal agreements between the parties as to its subject matter and represents the sole agreement between the parties as to the subject matter of this MOU. Any amendments and/or modifications hereof shall only be affective in so far as same is agreed in writing between the two parties.

(g) Approvals. This Agreement is subject to approval by the Deputy Director Harbors Division and the Director of the Department of Transportation.

(h) No Third-Party Beneficiaries. No third-party beneficiaries are intended by this MOU, and the terms and provisions of this MOU shall not give rise to any right in third parties to enforce the provisions of this MOU.

(i) DOTH Payment. To the extent any payment (or reimbursement) is required from DOTH, DOTH shall pay the same to the extent permitted by law and provided that funds are appropriated and allotted to DOTH for the purpose of such payment (or reimbursement) by the Director of the Department of Budget and Finance.

(j) 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. Signed signature pages may be transmitted via e-mail or other digital imaging method, and any such signature shall have the same legal effect as an original.

The parties, through their authorized representatives, enter into this binding Memorandum of Understanding as of May 13, 2022.

DIRECTOR  
STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

HAWAII STEVEDORES, INC.

By: 

Name: Jade T. Butay

Title: Director of Transportation

By: \_\_\_\_\_

Name: George Pasha, IV

Title: Chief Executive Officer

APPROVED AS TO FORM

  
Deputy Attorney General

\_\_\_\_\_  
Name: Marjorie Lau



The parties, through their authorized representatives, enter into this binding Memorandum of Understanding as of May 13, 2022.

DIRECTOR  
STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

HAWAII STEVEDORES, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: George Pasha  
Name: George Pasha, IV  
Title: Chief Executive Officer

APPROVED AS TO FORM

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Name:

## Exhibit A

### Infrastructure Improvements and Equipment Procurement

Component	Capital or Planning	Fuel Type	Quantity	Function	Component Group
Grant Administration	--	--	1	Task 1 Grant Administration	Grant Administration
Facility Resilience Plan	Planning	--	1	Facility Plan	3) Planning
Facility Security Plan	Planning	--	1	Security Systems	3) Planning
Inter-Island Barge Transloading Plan	Planning	--	1	Terminal Operating Systems	3) Planning
Terminal Electrification Plan	Planning	--	1	Facility Plan	3) Planning
Top Handler	Capital	Diesel	12	CHE	2) Ops & Infrastructure
UTR / Yard Tractor	Capital	Diesel	15	CHE	2) Ops & Infrastructure
15-ton Forklift	Capital	Electric	1	CHE	2) Ops & Infrastructure
5-ton Forklift	Capital	Electric	1	CHE	2) Ops & Infrastructure
Chassis	Capital	--	1200	CHE	2) Ops & Infrastructure
Pickup Truck	Capital	Electric	8	Terminal Vehicle	2) Ops & Infrastructure
Tour Van	Capital	Electric	1	Terminal Vehicle	2) Ops & Infrastructure
Personnel Vehicle	Capital	Electric	9	Terminal Vehicle	2) Ops & Infrastructure
Ship-to-Shore Crane	Capital	Electric	5	STS	2) Ops & Infrastructure
STS Crane Move	Capital	--	5	STS	2) Ops & Infrastructure
STS Crane OCR	Capital	--	5	STS	2) Ops & Infrastructure
STS Crane LED Lighting	Capital	--	5	STS	2) Ops & Infrastructure
STS Re-Drive	Capital	Electric	5	STS	2) Ops & Infrastructure
150+-kW EVSE	Capital	Electric	5	Microgrid / CHE Charging	2) Ops & Infrastructure
≤19-kW EVSE	Capital	Electric	24	Microgrid / Terminal Vehicle Charging	2) Ops & Infrastructure
Micro-Grid Battery System	Capital	--	1	Microgrid	1) Microgrid
Generator Back-up	Capital	CNG	1	Microgrid	1) Microgrid
100 kW WindWall STS Crane	Capital	--	5	Microgrid	1) Microgrid
Terminal Building Solar Power (5 buildings)	Capital	--	1	Microgrid	1) Microgrid
Weigh in Motion Scales	Capital	--	1	Gate Equipment	2) Ops & Infrastructure
Optical Character Recognition (OCR)	Capital	--	1	Gate Equipment	2) Ops & Infrastructure

Paperless Pedestals	Capital	--	1	Gate Equipment	2) Ops & Infrastructure
RFID Tags/Inspection System	Capital	--	1	Gate Equipment	2) Ops & Infrastructure
Transportation Worker Identification Card (TWIC) Readers	Capital	--	1	Gate Equipment	2) Ops & Infrastructure
Customs Radiation Portal Monitor (RPM) Inspection System	Capital	--	1	Gate Equipment	2) Ops & Infrastructure
Closed Circuit TV (CCTV) System	Capital	--	1	Security Systems	2) Ops & Infrastructure
Security Systems	Capital	--	1	Security Systems	2) Ops & Infrastructure
Cyber Enhancements	Capital	--	1	Security Systems	2) Ops & Infrastructure
Cybersecurity Systems	Capital	--	1	Security Systems	2) Ops & Infrastructure
Watchtower Control Systems (Command Module)	Capital	--	1	Security Systems	2) Ops & Infrastructure
Terminal Operating Systems	Capital	--	1	Terminal Operating Systems	2) Ops & Infrastructure
Building Fixtures, M&R, Furniture, Workstation Relocation	Capital	--	1	Facilities	2) Ops & Infrastructure
Security / Master Key Program	Capital	--	1	Facilities	2) Ops & Infrastructure
In-House Engineering	Capital	--	1	Administration	General Ops / Grant Administration
General Internal Expenses	Capital	--	1	Administration	General Ops / Grant Administration
Consulting	Capital	--	1	Administration	General Ops / Grant Administration
Workforce Development & Labor	Capital	--	1	Administration	General Ops / Grant Administration
Local Tech Support / IT	Capital	--	1	Administration	General Ops / Grant Administration