

ORDINANCE NO. \_\_\_\_\_

BILL NO.   2   (2025)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE HAWAII STATE HISTORIC PRESERVATION OFFICER REGARDING THE DEMOLITION OF THE HISTORIC SPRING HOUSE AND THE LAHAINA PUBLIC LIBRARY IN RESPONSE TO THE 2023 LAHAINA WILDFIRES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The County of Maui and the United States Army Corps of Engineers seek to enter into an agreement regarding the demolition of the historic Spring House and the Lahaina Public Library in response to the 2023 Lahaina wildfires, as described in the Memorandum of Agreement attached as Exhibit “1.”

Section 2.20.020, Maui County Code, provides, “Unless authorized by ordinance, the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.”

SECTION 2. Under Section 2.20.020, Maui County Code, the Council authorizes the Mayor or the Mayor’s authorized representative to execute the Memorandum of Agreement and any amendments consistent with the purpose and scope of the Memorandum of Agreement that do not increase the County’s financial obligation or the agreement’s duration.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

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MICHAEL J. HOPPER  
Department of the Corporation Counsel  
County of Maui  
LF2024-1731  
wai:misc:XXXbill01

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Sheri Lee". The signature is written in black ink and is positioned above a horizontal line.

Upon the request of the Mayor.

# EXHIBIT "1"

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
HAWAII STATE HISTORIC PRESERVATION OFFICER,  
THE UNITED STATES ARMY CORPS OF ENGINEERS, AND THE COUNTY OF MAUI  
REGARDING THE DEMOLITION OF THE HISTORIC SPRING HOUSE AND THE  
LAHAINA PUBLIC LIBRARY IN RESPONSE TO THE 2023 LAHAINA WILDFIRES**

**WHEREAS**, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121-5206) and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR Part 206), at the request of the State of Hawaii proposes to provide assistance for the demolition of structures deemed to be a threat to public health and safety as part of the debris removal operations in Maui County under the FEMA Consolidated Debris Removal Program (Program) for Maui County in Hawaii through the Hawai'i Department of Defense, Hawai'i Emergency Management Agency (HI-EMA) in response to damages resulting from the 2023 Lahaina Wildfires (DR-4724-HI) (Disaster) to demolish the historic Spring House (constructed in 1823), which is a contributing resource to the Lahaina National Historic Landmark historic district (NHL HD), located at 666 Front Street in Lahaina and the Lahaina Public Library (constructed between 1955-1956) located at 680 Papelekanē (Wharf) Street/687 Front Street (Undertaking); and

**WHEREAS**, FEMA is providing direct Federal Assistance via Mission Assignment to the U.S. Army Corps of Engineers (USACE) to demolish the Spring House and Lahaina Public Library due to damages incurred as a result of the Disaster; and

**WHEREAS**, FEMA, HI-EMA, Office of Hawaiian Affairs (OHA), and the Hawaii State Historic Preservation Officer (SHPO), executed a programmatic Agreement (Statewide PA) on July 12, 2016, and as amended in 2023, to extend its terms to July 2030, to satisfy FEMA's responsibilities pursuant to 36 CFR Part 800, the regulations implementing Section 106 and 110(f) of NHPA (54 U.S.C. § 306108) (NHPA), for all Undertakings funded as a result of such Disasters and other FEMA Programs; and

**WHEREAS**, FEMA has defined the Undertaking's area of potential effects (APE) as the Lahaina NHL HD boundaries as of August 26, 2024 (Appendix 1); and

**WHEREAS**, in a letter to the Hawaii SHPO and OHA dated August 26, 2024, FEMA found that the Undertaking will have an adverse effect on the Spring House and Lahaina Public Library, which are listed in and eligible for listing in the National Register of Historic Places, respectively, and the removal of the Spring House, which is at the center of the NHL HD, and a physical link to and reminder of Lahaina's period of significance, will further adversely affect the integrity of the NHL HD, and FEMA received concurrence from the SHPO on September 12, 2024; and

**WHEREAS**, FEMA has tasked USACE to implement the undertaking through a Mission Assignment, therefore FEMA has invited USACE as a Signatory; and

**WHEREAS**, FEMA has determined in consultation with the other Signatories that a Memorandum of Agreement (MOA) would be most appropriate to resolve the adverse effects of the Undertaking; and

**WHEREAS**, FEMA has consulted with the County of Maui regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as an invited signatory; and

**WHEREAS**, FEMA has invited the NPS as a concurring party to the MOA due to the location of the Undertaking within the Lahaina NHL HD, and NPS has agreed to sign the MOA as a concurring

party; and

**WHEREAS**, FEMA sent out requests for public comment soliciting potential treatment measures on June 27, 2024, for the Spring House and on July 30, 2024, for the Lahaina Public Library, and FEMA held two virtual meetings on July 18, 2024, and July 19, 2024 with interested parties to discuss treatment measures for the Spring House due to public interest (Appendix 2); and

**WHEREAS**, FEMA, in a letter dated August 25, 2024, consulted Native Hawaiian organizations (Appendix 3), for which the Spring House and Lahaina Public Library properties have religious and cultural significance, and Historic Hawaii Foundation provided suggested treatment measures, including the establishment of protection measures for known archaeological sites on the Lahaina Public Library Property, which FEMA has included in this MOA ; and

**WHEREAS**, FEMA consulted with the OHA per the Statewide PA, and OHA chose not to participate in the consultation; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), FEMA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP chose not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, FEMA consulted with the County of Maui who has agreed to take salvaged materials and manage the burial vault on the Lahaina Public Library property; and

**WHEREAS**, The Maui County Department of ‘Ōiwi Resources has artifact storage facilities but needs additional staff to receive, document, and curate the number of artifacts that have been found and are anticipated to be found on FEMA funded projects in Lahaina; and

**NOW, THEREFORE, FEMA and the SHPO agree** that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

FEMA and USACE, in coordination with the SHPO (Signatories), shall ensure that the following measures are carried out:

### **I. APPLICABILITY**

- A. This MOA only applies to FEMA’s Section 106 compliance for the demolition of the Spring House and Lahaina Public Library.
- B. If any Signatory does not respond to a request per timelines defined within the MOA, FEMA may assume the Signatory’s concurrence.

### **II. TREATMENT MEASURES**

- A. Protection of archaeological sites on the Lahaina Public Library and Spring House Properties.
  - 1. FEMA, through its mission assignment with USACE, will utilize the DR-4724-HI Archaeological Treatment Plan (ATP) (Appendix 4) during debris removal on the Spring House and Lahaina Public Library properties.

2. Known archaeological sites within the vicinity of the Lahaina Public Library property (TMKs (2) 4-6-001:010 and (2) 4-6-001:007), including the Brick Palace, will be temporarily fenced, and excluded from access during site cleanup actions. The fencing installation will be done by an archaeologist or cultural monitor in a manner that establishes a visual buffer and avoids and minimize impacts to historic properties. Ingress and egress to the Lahaina Public Library property will be limited to Papelekane (Wharf) Street along the southeast side of the library building (Appendix 5).
3. Ingress and egress to the Spring House property will be limited to Front Street (Appendix 6).
4. USACE will provide FEMA with photographic documentation of the visual buffers. FEMA will upload the photographs and maps of the visual buffers to HICRIS Project #2024PR01182.

**B. Recordation of the Spring House through HABS Documentation.**

1. Upon execution of this MOA, FEMA shall contact the regional Historic American Building Survey/Historic American Engineering Record/Historic American Landscape Survey (HABS/HAER/HALS) coordinator at the NPS Interior Regions 8, 9, 10, and 12 Regional Office to request that NPS stipulate the level and procedures for completing the documentation.
2. FEMA will ensure that all recordation documentation activities are performed or directly supervised by architectural historians, architects, archaeologists, historians, photographers, and/or other professionals meeting the qualification standards in the Secretary of Interior's Professional Qualification Standards (36 CFR Part 61, Appendix 7) (Qualification Standards).
3. Upon completion of the documentation, FEMA shall provide the draft HABS Documentation report for the Spring House to the NPS for review and comment.
4. Within six (6) months of the execution of this MOA, FEMA shall provide the final HABS documentation to the NPS per their 2024 *Preparing HABS/HAER/HALS Documentation for Transmittal Guidelines* (included in Appendix 8).
5. FEMA shall notify the SHPO that the documentation is complete for the Spring House and upload the documentation into HICRIS Project #2024PR01182. All field surveys and comments from the NPS shall be completed prior to the start of demolition.

**C. Recordation of the Lahaina Public Library per the CDRP Archaeological Treatment Plan.**

1. FEMA will ensure that the Lahaina Public Library is documented in the Cultural Resources Report in accordance with the ATP for the Program. Additionally, FEMA will provide the SHPO copies of the USACE Technical Center of Expertise structural report completed in February 2024 and the AIA Site Assessment completed in December 2023. FEMA shall upload the documentation into HICRIS Project #2024PR01182.
2. FEMA ensured that all recordation documentation activities were performed or directly supervised by architectural historians, architects, archaeologists, historians,

photographers, and/or other professionals meeting the Qualification Standards.

3. Upon completion of the Cultural Resources Report, FEMA shall follow the review and comment process outlined on page 18 of the ATP.
  4. FEMA shall notify the SHPO that the documentation is complete and upload a copy to HICRIS Project #2024PR01182.
- D. Salvage of the remaining stone wall materials of the Spring House, and salvage of the lava rock cladding and columns on the Lahaina Public Library, and storage of the material for future reuse.
1. FEMA will determine which materials are salvageable from the Spring House and Lahaina Public Library. USACE contractors will transport the salvaged stone materials from the Spring House and Lahaina TMKs to the paved parking area located in the north corner of Malu Ulu O Lele Park (TMK (2) 4-6-007:002) (Appendix 9), where they will be stored for the Maui County Department of 'Ōiwi Resources. FEMA will provide a memorandum to the Maui County Department of 'Ōiwi Resources and SHPO when this action has been completed, and the memo will be uploaded into HICRIS Project #2024PR01182.
  2. FEMA and USACE will ensure that a reasonable and good-faith effort is made when removing materials identified as salvage and temporarily securing them from the elements. FEMA will provide such materials for salvage on an as-is, where-is basis, and will make no warranty as to condition, and suitability for any intended subsequent use. If USACE finds that salvaged stone materials possess or are likely to be contaminated by hazardous material or waste, FEMA may withdraw the salvaged stone material without making it available for use and dispose of the same in accordance with applicable statutes and regulations. However, FEMA will not be required to affirmatively certify the condition of salvaged stone material as safe or appropriate for any particular use.
  3. FEMA and USACE may dispose of unclaimed salvaged stone material following the thirty (30) calendar day holding period at their discretion in accordance with applicable state and county disposal requirements.
- E. Installation of a burial vault at a future agreed upon location on West Maui, in coordination with the SHPO
1. FEMA, through a Mission Assignment, will construct a burial vault on the southeastern side of the Maui County owned portion of the Lahaina Public Library property (TMK (2) 4-6-001:010) for the temporary curation of any iwi revealed during the demolition of the Library and Spring House (Appendix 10).
  2. FEMA and USACE contractors will follow Stipulation III.B.1.c. of the Statewide PA if suspected human remains are discovered. In this case, FEMA will notify the SHPO, local law enforcement office, and coroner/medical examiner in accordance with the Hawaii Administrative Rules (HAR) §13-300-40 (inadvertent discovery of human remains), and protect the remains from any harm by covering the human remains with a tarp or similar material until consultation occurs with known lineal descendants and the appropriate Island Burial Council. Photographing human remains is not permitted.

3. The Maui County Department of 'Ōiwi Resources will be responsible for the use and maintenance of the burial vault.
  4. At the point when the burial vault is no longer needed to facilitate the demolition of the Lahaina Public Library and Spring House, the use and management of the vault will be at the discretion of the Maui County Department of 'Ōiwi Resources.
- F. Acquisition of a temporary Artifact Storage Unit at a future agreed upon location on West Maui or in Central Maui in coordination with the SHPO
1. FEMA will provide funding to the Maui County Department of 'Ōiwi Resources for staff or interns to catalogue and curate unclaimed artifacts found during FEMA funded projects in Lahaina.
  2. FEMA will identify the type of funds to be used for the treatment measures within six (6) months of the execution of this MOA. FEMA will notify the Maui County Department of 'Ōiwi Resources and SHPD, via HICRIS Project #2024PR01182, about the type of funds to be used and the associated requirements.
  3. FEMA and the Maui County Department of 'Ōiwi Resources will agree upon an amount and/or time period for the use of the funds within one (1) year of the execution of this MOA. FEMA will share the details of the funding with the other Signatories of this agreement via email and will upload a copy to HICRIS Project #2024PR01182.
  4. FEMA will notify the Maui County Department of 'Ōiwi Resources Archaeologist and SHPO when unclaimed artifacts are found on FEMA projects in Lahaina for four (4) years after the signing of this agreement. FEMA will upload a copy of the notification to HICRIS Project #2024PR01182.
  5. The Maui County 'Ōiwi Department will be responsible for transporting artifacts found on FEMA projects in Lahaina and storing them in a facility that conforms to the standards for museum facilities specified in 36 CFR § 79.9(b)(2-3).
  6. The Maui County Department of 'Ōiwi will be responsible for reporting staff hours spent gathering, documenting, curating and deaccessioning artifacts found on FEMA projects to FEMA monthly. FEMA and the Maui County Department of 'Ōiwi will identify how the reports will be filed and shared within one (1) year of the signing of this MOA.
  4. If the Maui County Department of 'Ōiwi will not accept an artifact or does not respond to a notification within a thirty (30) calendar day holding period, FEMA may dispose of the artifact at its discretion in accordance with applicable statutes and regulations.

### **III. POST-REVIEW DISCOVERIES**

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, the FEMA shall implement the discovery plan outlined in the ATP (Appendix 4).

### **IV. MONITORING AND REPORTING**

Each year following the execution of this MOA until it expires or is terminated, FEMA shall provide all Consulting Parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in FEMA's efforts to carry out the terms of this MOA.



**V. AMENDMENTS**

- A. If any Signatory determines that an amendment to the terms of this MOA must be made, the Signatories shall consult for no more than sixty (60) calendar days to seek amendment of the MOA.
- B. An amendment to this MOA shall be effective only when it has been signed by the Signatories and a copy filed with the ACHP.

**VI. DURATION AND EXTENSION**

- A. This MOA will expire if its terms are not carried out within four (4) years from the date of its execution. Prior to such time, FEMA may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.
- B. The Signatories may collectively agree to extend this MOA to cover additional calendar years, or portions thereof, through an amendment per Stipulation VIII, provided that the original MOA has not expired.

**VII. DISPUTE RESOLUTION**

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FEMA shall consult with such party for not more than thirty (30) calendar day to resolve the objection. If the objection is resolved within thirty (30) calendar days, FEMA shall proceed in accordance with the resolution. If FEMA determines that such objection cannot be resolved within thirty (30) calendar days of receipt, FEMA will:

- A. Forward all documentation relevant to the dispute, including the FEMA's proposed resolution, to the ACHP. The ACHP shall provide FEMA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FEMA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and concurring parties, and provide them with a copy of this written response. FEMA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, FEMA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FEMA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. FEMA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

**VIII. TERMINATION**

**V. AMENDMENTS**

- A. If any Signatory determines that an amendment to the terms of this MOA must be made, the Signatories shall consult for no more than sixty (60) calendar days to seek amendment of the MOA.
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Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FEMA shall consult with such party for not more than thirty (30) calendar day to resolve the objection. If the objection is resolved within thirty (30) calendar days, FEMA shall proceed in accordance with the resolution. If FEMA determines that such objection cannot be resolved within thirty (30) calendar days of receipt, FEMA will:

- A. Forward all documentation relevant to the dispute, including the FEMA's proposed resolution, to the ACHP. The ACHP shall provide FEMA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FEMA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and concurring parties, and provide them with a copy of this written response. FEMA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, FEMA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FEMA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. FEMA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

**VIII. TERMINATION**

- A. If any Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) calendar days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.
- B. Once the MOA is terminated, and prior to work continuing on the undertaking, FEMA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FEMA shall notify the other Signatories as to the course of action it will pursue.

**IX. MOA EXECUTION AND IMPLEMENTATION**

- A. This MOA will be executed in counterpart, with a separate signatory page to be signed by each Signatory party.
- B. FEMA will provide each Signatory with a signed original of this MOA. This MOA will become effective upon signature of all Signatory parties and a copy filed with ACHP.
- C. Execution and implementation of this MOA evidences that FEMA has taken into account the effects of the Undertaking on historic properties, has afforded ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that FEMA has satisfied its responsibilities in accordance with Section 106 of NHPA.

**X. MAUI COUNTY COUNCIL APPROVAL**

- A. The County's responsibilities under this MOA with respect to Spring House are subject to approval by the Maui County Council.

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
HAWAII STATE HISTORIC PRESERVATION OFFICER,  
THE UNITED STATE ARMY CORPS OF ENGINEERS, AND MAUI COUNTY  
REGARDING THE RESOLUTION OF ADVERSE EFFECTS TO THE DEMOLITION OF  
THE HISTORIC SPRING HOUSE (666 FRONT STREET, LAHAINA) AND THE  
LAHAINA PUBLIC LIBRARY IN RESPONSE TO THE 2023 LAHAINA WILDFIRES**

**SIGNATORIES:**

**Federal Emergency Management Agency**

ROBERT J FENTON JR Digitally signed by ROBERT J FENTON JR  
Date: 2024.12.19 11:16:41 -0800 \_\_\_\_\_ Date

**Robert Fenton, Regional Administrator, Region IX**

**State Historic Preservation Officer**

 \_\_\_\_\_ Date **Dec 19, 2024**

**Dawn Chang, State Historic Preservation Officer, State of Hawaii**

**INVITED SIGNATORIES:**

**United State Army Corps of Engineers**

JONES.COLLIN.R.10775062 Digitally signed by  
JONES.COLLIN.R.1077506248  
48 (Date: 2024.12.19 11:14:04 -10:00) \_\_\_\_\_ Date

**Collin R. Jones, Lieutenant Colonel**

**County of Maui**

\_\_\_\_\_ Date  
**Richard T. Bissen, Jr. Mayor**

**CONCURRING PARTY:**

**National Park Service**

\_\_\_\_\_ Date  
**[insert name and title]**

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
HAWAII STATE HISTORIC PRESERVATION OFFICER,  
THE UNITED STATE ARMY CORPS OF ENGINEERS, AND MAUI COUNTY  
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**SIGNATORIES:**

**Federal Emergency Management Agency**

\_\_\_\_\_ Date  
**Robert Fenton, Regional Administrator, Region IX**

**State Historic Preservation Officer**

\_\_\_\_\_ Date  
**Dawn Chang, State Historic Preservation Officer, State of Hawaii**

**INVITED SIGNATORIES:**

**United State Army Corps of Engineers**

\_\_\_\_\_ Date  
**Collin R. Jones, Lieutenant Colonel**

**County of Maui**

 \_\_\_\_\_ Date **12-17-24**  
**Richard T. Bissen, Jr. Mayor**

**Approved as to Form and Legality**

**/s/ Michael J. Hopper 12/17/24**

\_\_\_\_\_  
**Michael J. Hopper, Deputy  
Corporation Counsel, County of  
Maui**

**CONCURRING PARTY:**

**National Park Service**

\_\_\_\_\_ Date  
**[insert name and title]**