

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF THE ARMY
AND
THE STATE OF POHNPEI

SUBJECT: Construction of the Nanpil River Hydropower Project,
Pohnpei

THIS AGREEMENT is entered into this 26th day of January,
1985, by and between the United States Department of the Army,
Corps of Engineers, (hereinafter referred to as "Corps") acting
through the Division Engineer, and the State of Pohnpei,
(hereinafter referred to as "Pohnpei") acting through the Governor
of Pohnpei.

WHEREAS, Pohnpei proposes to construct a hydropower facility
on the Nanpil River (hereinafter referred to as "Project"); and

WHEREAS, Pohnpei has requested the Corps, to perform
supervision and administration services in connection with the
construction of the hydropower facility; and

WHEREAS, Section 101 of Public Law 96-205, 94 Stat 84, dated
March 20, 1980, authorizes such sums as necessary for a feasibility
study and construction of a hydroelectric project on Pohnpei and
Section 2 of Public Law 98-213, 97 Stat 1459, dated December 8,
1983, specifically provides that these authorized funds may be
appropriated directly to the Secretary of the Army for expenditure
by the Chief of Engineers on the construction of this hydroelectric
plant.

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE 1. SCOPE OF SERVICES:

a. The Corps shall solicit and award on behalf of Pohnpei contract(s) necessary for the construction of the Pohnpei hydropower facility; operation and maintenance of the intake structure, penstock, powerhouse, and switchyard for a period of three hundred sixty-five (365) calendar days from the date of completion and acceptance of the construction work; and training of Pohnpei personnel in the operation and maintenance of the hydroelectric facility; and shall perform engineering, supervision, administration, and related services in connection with the contract(s) awarded.

b. The contract(s) shall incorporate the plans and specifications previously prepared by the Corps and accepted by Pohnpei. The Corps shall make changes in the plans and specifications during construction as required, and within the limit of available funds, provided any major change shall be made after consultation with Pohnpei.

c. The Corps shall provide an operations and maintenance manual, as-built drawings for the hydropower facility, and training of Pohnpei hydroelectric personnel.

d. Upon completion of the Project, the Corps and Pohnpei shall conduct a joint inspection. The Corps shall have corrected, under the contract, all noted construction deficiencies. Minor deficiencies in construction will not cause delay of transfer of the Project to Pohnpei.

e. The Corps shall conduct monthly meetings for the Governor of Pohnpei or his authorized representative for the purpose of briefing the Governor on construction progress.

ARTICLE 2. RELEASE OF CLAIMS:

The Corps and its officers, agents, and employees shall not be liable in any manner to Pohnpei for or on account of damage, related to, caused by, or resulting from the construction, operation, and/or maintenance of the hydropower facility. Pohnpei hereby releases the Corps and agrees to indemnify and hold harmless the Corps from all damages, claims, suits or demands that may result from construction, operation, and maintenance of the hydropower facility, whether by act or omission of the Corps, its officers, or employees. No contractor shall be an agent of the Corps for the purpose of this Memorandum of Agreement.

ARTICLE 3. RESPONSIBILITIES OF POHNPEI:

a. Pohnpei shall provide all legal interests in lands, easements, rights-of-way necessary for construction, operation, and maintenance of the intake, road, penstock, powerhouse, and transmission line.

b. Pohnpei shall designate the responsible department and officials for coordination of the work and shall also designate an on-site representative who shall coordinate matters pertaining to Pohnpei and who may participate in construction meetings. Only the Corps' representative shall issue contract instructions or directives to the contractor. Project funds are not available for costs associated with stationing the designated representatives at the project site except that the Pohnpei representative may share the Corps' Project office.

c. Pohnpei shall provide all required clearances, licenses, or permits that may be required for the Project under the laws of Pohnpei, the Trust Territory of the Pacific Islands and/or the United States of America.

d. Upon completion and acceptance of the Project from the contractor, and upon completion of the 365-calendar day operation, maintenance and training period, Pohnpei agrees to operate and maintain the Project in accordance with guidelines provided in the operations and maintenance manual to be provided by the Corps.

ARTICLE 4. BASIS FOR FUNDING AND EXPENDITURES:

a. The project was authorized by Public Law 96-205. Public Law 98-213 directed that the funds be available to the Secretary of the Army as design and construction agent of Pohnpei, and funds were appropriated by Public Law 98-396.

b. The performance of any obligation or the expenditure of any funds by the Corps under this Agreement is contingent upon funds being made available to Corps for the Project. The Corps' costs incurred in the performance of this Agreement shall be funded from appropriations provided for the Project. Such costs shall be charged in accordance with applicable Engineer Regulations (ER), including ER 37-2-10.

c. Upon completion and acceptance of the Project from the contractor, and following the 365-calendar day operation, maintenance and training period, the Corps' services shall be terminated and Pohnpei shall assume responsibility for the Project, except for the roads and transmission lines which become the responsibility of Pohnpei upon their respective completion.

ARTICLE 5. OFFICIALS NOT TO BENEFIT:

No member of or delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE 6. COVENANT AGAINST CONTINGENT FEES:

Pohnpei warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Pohnpei for the purpose of securing business. For breach or violation of this warranty, the Corps shall have the right to annul this Agreement without liability or in its discretion to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 7. CHOICE OF LAW:

This Agreement and all rights and duties hereunder shall be interpreted in accordance with the applicable statutes, regulations, executive orders, and decisions of the United States of America, its branches, departments and agencies, and instrumentalities.


ARTICLE 8. EFFECTIVE DATE:

This Agreement shall become effective immediately upon signature of all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


FOR THE DEPARTMENT OF THE ARMY

Date: 1/26/85

By: 
R. M. BUNKER
Brigadier General, U. S. Army
Division Engineer/Contracting
Officer
U. S. Army Engineer Division,
Pacific Ocean

THE STATE OF Pohnpei

Date: 12-24-84

By: 
RESIO S. MOSES
Governor

CERTIFICATE OF AUTHORITY

I, Patricia E. Billington, do hereby certify that I am an Attorney in the Pohnpei State Department of Legal Affairs; that Resio S. Moses, who signed this Agreement on behalf of the State of Pohnpei was then Governor; that in signing the Agreement on behalf of the State of Pohnpei, he acted within his statutory authority.

In Witness Whereof, I have and executed this Certificate this 26 day of December 1984.

Patricia E. Billington
Attorney
Department of Legal Affairs
Pohnpei State