

**OFFICE OF HAWAIIAN AFFAIRS**

**CONTRACT NUMBER 2845**

**CONTRACT BETWEEN**

**OFFICE OF HAWAIIAN AFFAIRS.**

**AND**

**RIDER LEVETT BUCKNALL, LTD.**

 **COPY**

## AGREEMENT

THIS AGREEMENT, made and entered into as of this 11<sup>TH</sup> day of APRIL, 2013 by and between the OFFICE OF HAWAIIAN AFFAIRS, a body corporate existing under the Constitution and laws of the State of Hawai'i, by its Ka Pouhana, Chief Executive Officer, Kamana`opono M. Crabbe, Ph.D., and its Chief Operating Officer, Aedward Los Banos, respectively, acting by and on behalf of the Board of Trustees, whose principal place of business and mailing address is 711 Kapi`olani Boulevard, Suite 500, Honolulu, Hawai'i 96813, hereinafter referred to as "OHA", and RIDER LEVETT BUCKNALL, LTD., a Hawai`i corporation (Federal I.D. No. 99-0292243) by its Executive Vice President, Paul Brussow, whose principal place of business and mailing address is American Savings Bank Tower, 1001 Bishop Street, Suite 1340, Honolulu, Hawai'i 96813, hereinafter referred to as "CONTRACTOR".

In this Agreement, the party who is contracting to receive services is "OHA" and the party who will be providing the services is the "CONTRACTOR."

### WITNESSETH :

WHEREAS, one of the purposes for which OHA has been established is to better the conditions of Hawaiians as defined in Section 10-2, Hawai'i Revised Statutes (HRS); and

WHEREAS, OHA was established to better the conditions of native Hawaiians and Hawaiians as defined in HRS sections 10-2, 10-4(4), 10-4(6) and 10-4(8), and other applicable law(s), as amended; and

WHEREAS, the expenditure of funds as proposed in this Agreement are intended for the betterment of conditions of native Hawaiians and Hawaiians as set forth in section 10-3(1) and (2), HRS, and is consistent with the purpose for which these funds were appropriated; and

WHEREAS, the Hawai`i State Legislature enacted Senate Bill No. 2783 (Attachment A),

effective July 1, 2012, which conveyed certain parcels of land located in the area of Honolulu known as “Kaka`ako Makai” (Attachment B) from the State to OHA; and

WHEREAS, OHA recognizes the need for a management and development framework for these lands and desires the services of a consultant to assist in the preparation of such a plan; and

WHEREAS, the CONTRACTOR represents that it has the required qualifications, capacity, and resources to provide the desired services and to perform the terms and conditions agreed to under this Agreement; and

WHEREAS, GROUP 70 INTERNATIONAL INC. (Group 70) and SANFORD MURATA, INC. (Murata) shall provide services under CONTRACTOR as part of this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

### **SECTION ONE- SCOPE OF SERVICES**

The CONTRACTOR agrees to satisfactorily provide the services hereinafter set forth which includes but may not be necessarily limited to:

#### **1. Project Kick-Off, Coordination, & Initial OHA Community Outreach Group**

- a. CONTRACTOR shall, within three weeks after execution of this Agreement, plan and conduct a kick-off meeting with the appropriate members of OHA leadership, project management and staff, and key associate departments to include, but not be limited to, the community outreach group.
- b. Discussion at this meeting shall include the following:
  - 1) Details of OHA’s critical objectives and preferred methodology to derive solutions towards decision-making;
  - 2) Developing the network and protocol of client-consultant communications;
  - 3) Finalizing the scope of work, deliverables, and time schedule; and

- 4) Coordinating the submittal of documents and information that will be available to CONTRACTOR's team from the onset.
  - c. Deliverable #1: CONTRACTOR shall develop a detailed project task schedule for the anticipated 6-month duration and a summary matrix of key objectives, issues, and opportunities as identified through the internal organization will be provided.
2. Charrettes relating OHA's Kaka'ako vision to its overall vision and strategic priorities.
- a. CONTRACTOR shall plan and conduct two (2) focused charrettes of key individuals and entities facilitated by CONTRACTOR's team.
  - b. Invitees shall include representatives from the Kaka'ako Neighborhood Board, HCDA, OHA and other Native Hawaiian institutions and key stakeholder organizations who will help develop a vision element that achieves OHA's objectives as guided by the existing policy document relative to managing and/or developing the Kaka'ako Makai parcels, and nurtures and fosters key relationships within the various elements of the Maoli and general community which will be critical in advancing key strategic alternatives in the next phase of project planning.
  - c. The charrettes' purpose in their intent and scope shall be to bring a collective of ideas and perspectives that focus on a refined objective and serve as a good stakeholder sounding board and response tool in developing these relationships for the long-term.
  - d. To further define OHA's Kaka'ako vision, CONTRACTOR shall summarize and document the key goals and objectives which will clarify OHA's vision for its Kaka'ako parcels based on priorities related to its commercial and cultural kuleana. This will form the basic foundation for the strategic framework that will

guide OHA's decision-making regarding development and management opportunities.

- d. Deliverable #2: CONTRACTOR shall provide a summary report of key vision elements, shared commonalities of concerns and opportunities, and priorities to be addressed in subsequent phases of project design.

3. Market Assessment and Residual Land Valuation

- a. To determine the strength of the market for a range of candidate land uses (engagements) that make economic sense for current and near-term (3-5 year) demand trends, CONTRACTOR shall conduct a parcel-by-parcel assessment of market demand trends by categories of uses, including but not limited to:
  - 1) for-sale residential;
  - 2) rental housing;
  - 3) office;
  - 4) retail (highway oriented community retail, local service retail, and ground floor retail);
  - 5) educational, community, and cultural space;
  - 6) open/green space and gathering spaces;
  - 7) others to be determined as potentially feasible and a range of mix-uses.
- b. This assessment shall be conducted based upon existing documents including market studies, due diligence, and appraisal reports for the subject parcels.
- c. CONTRACTOR shall assess and inventory competitive projects within the immediate vicinity.
- d. Deliverable #3: CONTRACTOR shall provide a parcel-by-parcel assessment of market demand trends by categories of uses set forth in Item 3.a. above.

#### 4. Master Infrastructure Review

- a. CONTRACTOR shall, based upon existing and available documentation, assess at a conceptual level, the primary potable water, wastewater, drainage, roadway and circulation, and other infrastructure issues related to any potential area development
- b. Deliverable #4: CONTRACTOR shall provide an infrastructure overview of existing infrastructure conditions.

#### 5. Cultural Landscape and Ancestral Connectivity Analysis

- a. CONTRACTOR shall determine and document a sense of ancestral connection to place through identification and documentation of cultural practices, beliefs, and values associated with these lands and the surrounding landscape.
- b. Activities to be analyzed shall include:
  - 1) Marine/coastal recreational (e.g., surfing);
  - 2) Marine/coastal subsistence (e.g., fishing, diving, limu gathering);
  - 3) Ceremonial (e.g., ho'olauna, ho'okipa, kai 'au'au/pikai purification, Makahiki);
  - 4) Existing and potential future mālama wahi kanu/iwi kūpuna stewardship opportunities; and
  - 5) A purposeful celebration and expression of Ho'oulu Lāhui Aloha.
- c. Deliverable #5: CONTRACTOR shall provide a cultural analysis overview.

#### 6. Baseline Development Strategy

- a. CONTRACTOR shall identify a phased development strategy, based upon a synthesis and assessment of the market demand and opportunity for individual land uses, densities, ownership types, and variation of combinations, that is guided

by the comprehensive vision, infrastructural evaluation, and cultural analysis that are the essential underpinnings that define the potential of these lands. The strategic alternatives are not intended to be detailed Master Plans but rather a measure of economic implications of specific land use proposals that are flexible to respond to shifts in market demand, emerging competition, and changes in OHA's leadership preferences and priorities over time.

- b. Deliverable #6: CONTRACTOR shall generate a minimum of three (3) alternative strategic scenarios. Each scenario will include a proposed land use map and a summary matrix of existing land data, proposed use assumptions, calculations of surplus/deficits and land value, and major issues and implications to implement the scenario.

7. Recommended Strategic Action Plan

- a. CONTRACTOR shall synthesize its findings, analyses, and conclusions into a recommended strategic action plan.
- b. CONTRACTOR shall present these findings to OHA project managers and decision-makers upon request.
- c. Deliverable #7: CONTRACTOR shall deliver to OHA a strategic action plan as a final document with appendices that are products of the previous tasks.
- d. Deliverable #7a: Upon mutual agreement between CONTRACTOR and OHA, CONTRACTOR shall deliver additional strategic action plan documents specific to each individual parcel at Kaka'ako Makai owned by OHA.

8. Overall Coordination, Team Meetings, & Project Management

- a. CONTRACTOR shall hold a minimum of three (3) general meetings with Group 70 and Murata during the term of this Agreement for project coordination and

communication purposes.

- b. CONTRACTOR shall hold a minimum of eight (8) one-hour meetings for small working groups comprised of OHA project managers, staff, and *hui* representatives.
- c. Deliverable #8: CONTRACTOR shall complete a bulleted summary of key points, tasks, next-steps and assignments to complete with timeframes identified after each status meeting and monthly team meeting.

### **SECTION TWO - TIME AND MANNER OF PERFORMANCE**

The CONTRACTOR shall render the services required under this Agreement from April 15, 2013 through and including October 15, 2013, unless this Agreement is sooner terminated as provided hereafter in this Agreement. The manner in which the services are to be performed and the specific hours to be worked by the CONTRACTOR shall be determined by the CONTRACTOR, limited, however, to the maximum amount payable as specified in this Agreement.

### **SECTION THREE - COMPENSATION AND METHOD OF PAYMENT**

OHA agrees to compensate CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed, ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) inclusive of all actual reasonable ordinary necessary costs and expenses, including general excise tax currently at the rate of 4.712%, for services satisfactorily rendered under this Agreement. All costs and expenses shall be actual reasonable ordinary necessary costs and/or expenses incurred in conjunction with the services provided under SECTION ONE - SCOPE OF SERVICES herein and shall be approved by the Coordinator. The Coordinator's written approval shall also be required prior to CONTRACTOR's incurring any exceptional costs and/or expenses.

OHA agrees to pay CONTRACTOR in the following manner:

1. THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) shall be payable upon execution of this Agreement;
2. THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) shall be payable upon CONTRACTOR's completion and OHA's approval of Deliverables #1 and #2 set forth in Items 1 and 2 of Section One of this Agreement;
3. THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) shall be payable upon CONTRACTOR's completion and OHA's approval of Deliverables #3 and #4 set forth in Items 3 and 4 of Section One of this Agreement;
4. THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) shall be payable upon CONTRACTOR's completion and OHA's approval of Deliverable #5 and #6 set forth in Items 5 and 6 of Section One of this Agreement;
5. THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) shall be payable upon CONTRACTOR's completion and OHA's approval of all of the services set forth in Section One of this Agreement.

Fees shall be payable upon presentment of invoices specifying to the satisfaction of OHA's Coordinator, who is identified in Section Four of this Agreement, that the services rendered have been satisfactorily performed in conformance with this Agreement. The invoices shall include a detailed breakdown of CONTRACTOR's time charges attributable to the particular billing period and shall be accompanied by a verbal and/or written activity report as required by OHA identifying the type of work activities, tasks, and/or work product completed. Receipts evidencing actual costs and expenditures shall accompany monthly invoices whenever possible. Expenditure details and related receipts for any travel shall be for actual travel expenses incurred and shall also accompany monthly invoices presented for payment.

All payments shall be made in accordance with and subject to Chapter 40, HRS, which specifies the accounting procedures and controls applicable to payments out of the Treasury of the State of Hawai'i. Final payment in final settlement of this Agreement shall be subject to §103-53, HRS, which requires a tax clearance from the Director of Taxation, State of Hawai'i, stating that all delinquent taxes, if any levied or accrued under state statutes against the CONTRACTOR has been paid.

Upon termination of this Agreement, payments under this section shall cease, provided however, that CONTRACTOR shall be entitled to payments for work performed prior to the date of termination, provided hereinafter, and for which CONTRACTOR has not yet been paid.

#### **SECTION FOUR - COORDINATION AND REPORTS**

The work performed under this Agreement shall be coordinated with the Chief Operating Officer or Designee, hereinafter referred to as "Coordinator", who will act as the contract monitor and principal liaison between the CONTRACTOR and OHA and who will assist in resolving policy questions, expediting decisions and the review of the work performed.

It shall be the responsibility of the CONTRACTOR to maintain close and frequent communication with the Coordinator at all stages of the work required under this Agreement. The CONTRACTOR shall inform the Coordinator of all scheduled contacts made by CONTRACTOR with public agencies or individuals on matters relating to work performed under this Agreement.

The CONTRACTOR shall submit to the Coordinator upon request written progress reports on the performance of services, expenditure reports, and/or any other information required by Coordinator. The CONTRACTOR shall submit these reports in the appropriate formats and within the deadlines specified by the Coordinator.

The CONTRACTOR may be requested to discuss any work or reports with OHA's Board

of Trustees or Chief Executive Officer.

**SECTION FIVE - RECORDS MAINTENANCE, RETENTION, AND ACCESS**

The CONTRACTOR shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the CONTRACTOR's performance of services under this Agreement. OHA, the comptroller of the State of Hawai'i, and any of its authorized representatives, the committees (and their staff) of the Legislature of the State of Hawai'i, and the Legislative Auditor of the State of Hawai'i shall have the right of access to any book, document, paper, file or other record of the CONTRACTOR (and of any of its subcontractors) that is related to the performance of services under this Agreement in order to conduct an audit or other examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the CONTRACTOR's performance of services and the CONTRACTOR's program, management and fiscal practices to assure the proper and effective expenditure of funds under this Agreement.

The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The CONTRACTOR shall retain all records related to the CONTRACTOR's performance of services under this Agreement at least THREE (3) years after the date of submission of the CONTRACTOR's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the THREE (3) year period, the CONTRACTOR shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

**SECTION SIX - RESPONSIBILITY FOR ACCURACY, COMPLETENESS AND ADEQUACY**

The CONTRACTOR shall be responsible and accountable for accuracy, completeness,

clarity, and adequacy of the work performed, including work performed by agents and employees. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the Project's interest above other considerations and to accept the professional responsibility for the services to be rendered.

#### **SECTION SEVEN - INDEPENDENT CONTRACTOR**

In the performance of the services required under this Agreement, CONTRACTOR shall be an "independent contractor" with the authority to control and direct the performance and details of the work and services required under this Agreement; however, OHA shall have a general right to inspect the work in progress to determine whether, in OHA's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Agreement. The CONTRACTOR shall insure that all person(s) hired or used by the CONTRACTOR as agents and employees are qualified to engage in the activity and services in which they participate. The CONTRACTOR's agents and employees shall also be bound by the provisions of this AGREEMENT. At the request of the OHA, CONTRACTOR shall provide adequate evidence that such persons are CONTRACTOR's agents or employees.

The CONTRACTOR shall insure that all applicable licensing and operating requirements of the State, Federal and County governments and all applicable accreditation and other standards of quality generally accepted in the field of the CONTRACTOR's business are completed and satisfactorily met. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for any of its agents and employees, and to third parties for all loss, cost, damage, or injury caused, either directly or indirectly, by CONTRACTOR or CONTRACTOR's agents and employees in the course of their employment. Any work under this Agreement shall not be construed as employment with OHA and shall not entitle CONTRACTOR or CONTRACTOR's agents and employees to vacation, sick leave,

retirement, or other benefits afforded OHA employees. The CONTRACTOR shall be responsible for obtaining and maintaining a general excise tax license and other required licenses related to the operations of CONTRACTOR's business and shall be responsible for the payment of applicable income, social security, any other federal, state or county taxes and fees, as appropriate.

#### **SECTION EIGHT - SUBCONTRACTS AND ASSIGNMENTS**

The CONTRACTOR may not subcontract, assign, or transfer any right, title, or interest in whole or in part any services to be performed under this Agreement without prior written consent and approval of OHA. OHA may condition any consent and approval upon such terms and provisions that OHA may deem necessary. Furthermore, no assignment of claims for money due or to become due to the CONTRACTOR under this Agreement shall be effective unless such assignment is first approved by OHA.

#### **SECTION NINE – INDEMNIFICATION & INJURIES**

The CONTRACTOR shall defend, indemnify and hold OHA, its Trustees, employees, and agents harmless, from and against any and all actions, claims, suits, damages and expenses, including attorney fees, costs and judgments arising, either directly or indirectly, out of or resulting from the errors, omissions or acts of CONTRACTOR or CONTRACTOR's officers, employees, agents or subcontractors occurring during or in connection with the performance of CONTRACTOR's services under this Agreement.

The CONTRACTOR waives any rights to recovery from OHA for any injuries that CONTRACTOR or CONTRACTOR's employees or agents may sustain while performing services under this Agreement and that are a result of the negligence of CONTRACTOR or CONTRACTOR's employees or agents.

## SECTION TEN - INSURANCE

A. **INSURANCE REQUIREMENT:** At all times during the Term of this Agreement, CONTRACTOR shall obtain and maintain in full force and effect during the Term, any and all insurance to cover CONTRACTOR's operations under this Agreement that may be required under all applicable federal, state, and city laws and ordinances including, but not limited to, worker's compensation coverage, commercial general liability insurance, and automobile liability insurance coverage. Prior to commencing work pursuant to this Agreement, CONTRACTOR shall provide evidence that CONTRACTOR has in full force and effect the following policies:

1. **Commercial Liability Insurance:** CONTRACTOR shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. OHA shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. Policy shall be an "Occurrence" form of policy, unless otherwise specifically approved by OHA.

2. **Automobile Liability Insurance:** Auto Liability Policy shall have a combined Single Limit of \$1,000,000.00 for each accident or equivalent and shall cover owned, hired and non-owned vehicles.

3. **Workmen's Compensation Coverage:** Policy shall include coverage required by State of Hawai'i and include Part B coverage as follows: Employers Liability with limits of \$100,000.00 for each accident, \$500,000.00 disease policy limit, and \$100,000.00 disease policy limit per employee.

4. **Professional Liability Insurance:** CONTRACTOR shall maintain professional liability insurance (PLI) with a limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00

general aggregate which shall provide coverage for losses as a result of the CONTRACTOR's negligent acts, errors or omissions.

B. OTHER TERMS. All policies of insurance described above shall:

1. Name the State of Hawai'i, OHA and its Trustees, OHA's employees, representatives and agents as Additional Insureds, by endorsement.
2. Provide that the insurance is Primary with respect to all insureds for claims arising out of CONTRACTOR's negligent acts and/or omissions or misconduct, and that any insurance (or self-insurance) carried by OHA or the State of Hawai'i shall be excess and non-contributing.
3. Be provided by insurers authorized to do business in the State of Hawai'i, and with a current Best's rating of not less than A-VII, or otherwise as approved by OHA.

C. EVIDENCE OF INSURANCE: CONTRACTOR shall provide to OHA and maintain current certificates of insurance, prepared by a duly authorized agent, and copies of the policies, evidencing the insurance in effect at all times during the Term of this Agreement. OHA shall be listed as the Certificate Holder on all such certificates.

D. NOTICE OF CANCELLATION: CONTRACTOR will immediately provide written notice to OHA should any of its insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

#### **SECTION ELEVEN – OTHER CONDITIONS OF USE OF FUNDS**

The CONTRACTOR shall not use any funds involved in this Agreement for purposes of entertainment or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Agreement, including those conditions made applicable by provisions of appropriation acts of the Legislature or by administrative rules adopted pursuant to law.

## **SECTION TWELVE – CONFIDENTIALITY OF MATERIAL**

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Agreement shall be confidential and shall not be made available to any individual or organization by CONTRACTOR without prior written approval of OHA. Nor shall any information data, report, record or material given to or prepared or assembled by CONTRACTOR be used by the CONTRACTOR for personal gain and/or any other purposes, except those purposes explicitly stated in this Agreement. A violation of this Section shall be a material violation of this Agreement.

If it appears that CONTRACTOR has disclosed (or has threatened to disclose) information and or has used such information for purposes in violation of this Agreement, OHA shall be entitled to an injunction to restrain CONTRACTOR from disclosing and/or using, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. OHA shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

The confidentiality provisions of this Agreement shall remain in full force and effect after termination of this Agreement.

## **SECTION THIRTEEN – CONFLICT OF INTEREST & DISCLOSURE**

The CONTRACTOR represents that CONTRACTOR presently has no interest and/or has no interest in another company, partnership, organization, entity, etc., that would conflict in any manner or degree with the performance of the services under this Agreement. CONTRACTOR promises that he/she shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services under this Agreement.

The CONTRACTOR is required to disclose any outside activities or interests, including ownership or participation in any activity that conflict or may conflict with the best interest of

OHA. Prompt disclosure is required under this Section if the activity or interest is related, directly or indirectly, to any activity that CONTRACTOR may be involved with on behalf of OHA.

The conflict of interest/disclosure provisions of this Agreement shall remain in full force and effect for the entire duration of this Agreement and/or extensions under this Agreement.

**SECTION FOURTEEN – RETURN OF RECORDS/PROPERTY OF OHA**

Upon expiration or termination of this Agreement, as provided hereinafter, the CONTRACTOR shall deliver and/or surrender all finished or unfinished documents, reports, summaries, lists, charts, graphs, maps, records, notes, data, memoranda, photographs, photographic negatives, videos, or other materials prepared by the CONTRACTOR and any discoveries, inventions or developments produced in whole or in part under this Agreement (which shall become OHA's property) together with all information, data, reports, records, maps, and other materials provided to the CONTRACTOR by OHA, to OHA on or before the expiration date or date of sooner termination. The CONTRACTOR shall not be required, however, to deliver or surrender any licenses to proprietary software used in CONTRACTOR's normal course of business.

**SECTION FIFTEEN – NOTICES**

All notices required or permitted under this Agreement shall be in writing and will be deemed delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

OHA:

OFFICE OF HAWAIIAN AFFAIRS  
711 Kapi'olani Boulevard, Suite 500  
Honolulu, Hawai'i 96813  
Attn: Kamana`opono M. Crabbe, Ph.D.  
Ka Pouhana, Chief Executive Officer

CONTRACTOR:

RIDER LEVETT BUCKNALL, LTD.  
American Savings Bank Tower  
1001 Bishop Street, Suite 1340  
Honolulu, Hawai'i 96813  
Attn: Paul Brussow, Executive Vice  
President

Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

### **SECTION SIXTEEN - DISPUTES**

**NEGOTIATION.** In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach, termination, or validity thereof, OHA and CONTRACTOR agree to use their best efforts to settle such dispute, claim, question, or disagreement. To this effect, upon notice of the dispute, claim, question or disagreement, OHA and CONTRACTOR agree to consult and negotiate with each other in good faith to reach a just and mutually satisfactory solution.

**MEDIATION.** If OHA and CONTRACTOR do not reach such a negotiated solution within TWENTY-ONE (21) days of notice of the dispute, claim, question or disagreement, OHA and CONTRACTOR agree next to try in good faith to settle the dispute by mediation before resorting to arbitration. The mediation shall be administered by mediator mutually agreed upon by OHA and CONTRACTOR in accordance with the Dispute Prevention and Resolution, Inc., Mediation Rules and Guidelines.

**ARBITRATION.** Thereafter, any unresolved dispute, claim, question or disagreement arising out of or relating to this Agreement (including whether such dispute, claim, question or disagreement is arbitral), or breach, termination or validity thereof, shall be settled by binding arbitration before one arbitrator, and judgment upon the Award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be administered and conducted in accordance with accordance with the Dispute Prevention and Resolution, Inc., Mediation Rules and Guidelines in effect at the time a request for arbitration of the dispute is made. A decision and award of the arbitration made under the said rules shall be exclusive, final, and binding upon all parties, their agents, employees, successors, and assigns. The costs and

expenses of the arbitration shall be borne equally by the parties. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of services under this Agreement. The selection of the arbitrator shall be mutually agreed to by OHA and the CONTRACTOR. OHA and CONTRACTOR understand that by choosing arbitration for their dispute, OHA and CONTRACTOR are waiving their right to trial by jury.

The negotiation, mediation, or arbitration shall be conducted in Honolulu, Hawai'i.

#### **SECTION SEVENTEEN – TERMINATION OF AGREEMENT**

If, for cause, the CONTRACTOR fails to satisfactorily fulfill in a timely and proper manner the CONTRACTOR's obligation under this Agreement or breaches any promises, terms or conditions of this Agreement and having been given reasonable notice of an opportunity to cure any such default and not having taken satisfactory corrective action within the time specified by OHA, OHA shall have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination at least SEVEN (7) calendar days before the effective date of such termination. The particular acts which shall constitute cause and justify termination include poor performance, disloyalty or self-dealing, disclosure of confidential information, or other acts of like nature.

Furthermore, either party may terminate this Agreement without statement of cause at any time by giving written notice to the other party of such termination at least THIRTY (30) calendar days before the effective date of such termination.

In the final settlement of this Agreement, OHA shall determine the amount of unexpended and unobligated funds to be refunded to OHA by the CONTRACTOR. If the termination is for cause, any other provision to the contrary notwithstanding, the CONTRACTOR shall not be relieved of liability to OHA for damages sustained because of any breach of this Agreement by the CONTRACTOR.

### **SECTION EIGHTEEN - WAIVER OF VIOLATIONS**

It is expressly understood and agreed that no waiver granted by OHA on account of any violation of any promise, term, or condition of this Agreement shall constitute or be construed in any manner as a waiver of the promise, term, or condition or of the right to enforce the same as to any other or further violation.

### **SECTION NINETEEN – SEVERABILITY**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

### **SECTION TWENTY – WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce, or the granting of a waiver of, any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

### **SECTION TWENTY-ONE – AMENDMENT**

This Agreement may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This contract may be extended on condition of satisfactory performance by the CONTRACTOR as determined by the COORDINATOR and shall be contingent upon the availability of funds for compensation payable for services rendered and cost and expenses incurred beyond the initial term of this Agreement.

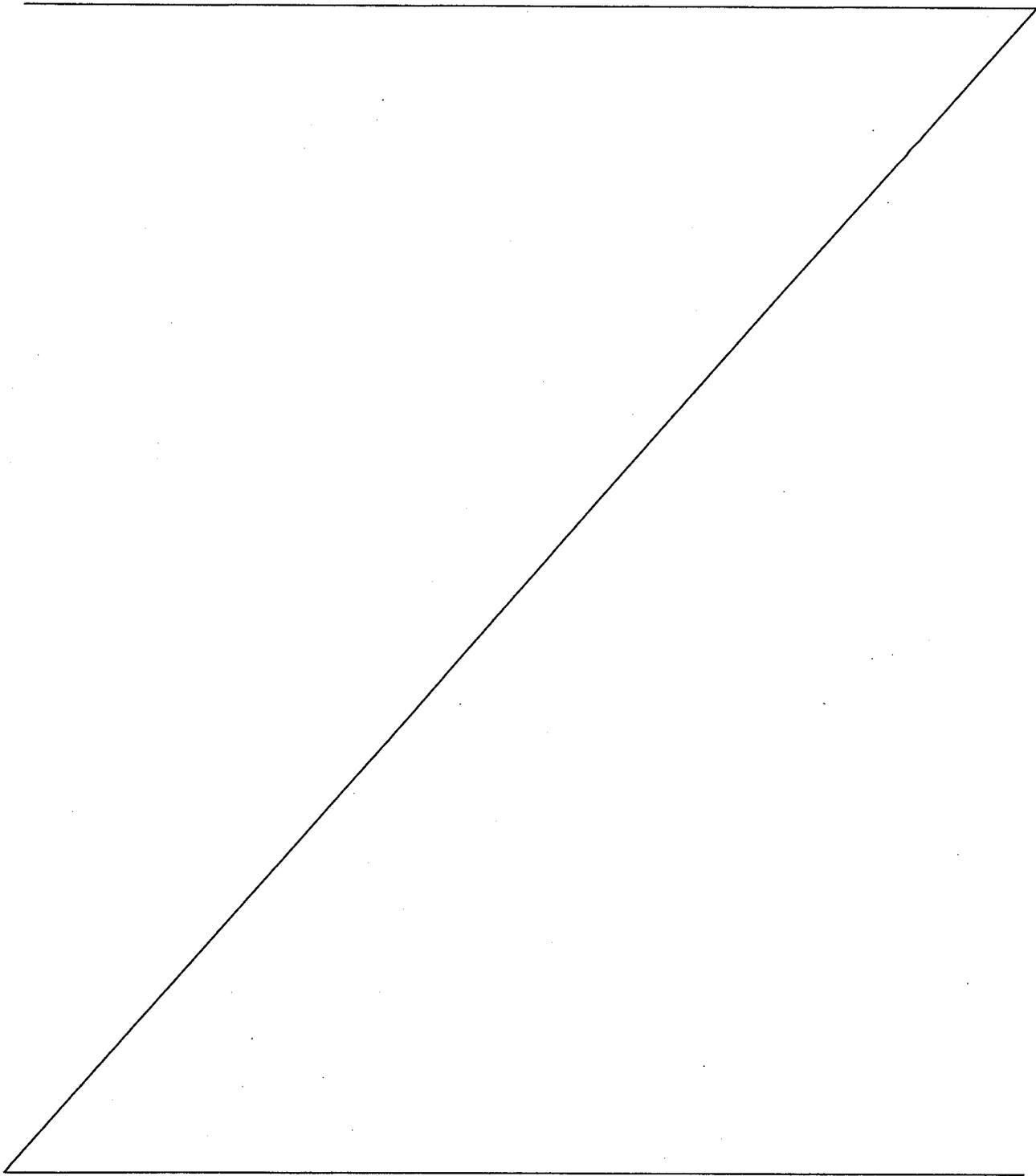
### **SECTION TWENTY-TWO – ENTIRE AGREEMENT**

This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement

supersedes any prior written or oral Agreements between parties.

**SECTION TWENTY-THREE – APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Hawai‘i.



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

OFFICE OF HAWAIIAN AFFAIRS

Date: April 12, 2013

By Kamano M. Crabbe  
KAMANA O'PONO M. CRABBE, Ph.D.  
Ka Pouhana, Chief Executive Officer

Date: April 12, 2013

By Aedward Los Banos  
AEDWARD LOS BANOS  
Its Chief Operating Officer

"OHA"

RIDER LEVETT BUCKNALL, LTD.

Date: 4/11/13

By Paul Brussow  
PAUL BRUSSOW  
Its Executive Vice President

"CONTRACTOR"

APPROVED AS TO CONTENT:

Aedward Los Banos  
AEDWARD LOS BANOS  
Chief Operating Officer

Date: APR 10 2013

APPROVED AS TO FORM:

Ernest M. Kimoto  
ERNEST M. KIMOTO  
Corporate Counsel

Date: 4-10-13

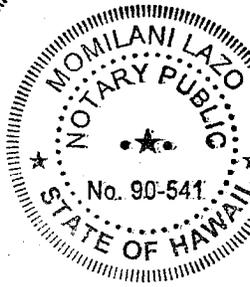
STATE OF HAWAI'I )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

On this 12th day of April, 2013, before me personally appeared KAMANA`OPONO M. CRABBE, Ph.D., to me known, who being by me duly sworn, did say that he is Ka Pouhana, Chief Executive Officer of the OFFICE OF HAWAIIAN AFFAIRS, a body corporate and instrumentality of the State, and that in the absence of a seal that said instrument was signed in behalf of said corporation by authority of its Board of Trustees, and the said Chief Executive Officer acknowledged said instrument to be the free act and deed of said body corporate and instrumentality of the State.



Momilani Lazo  
Notary Public, State of Hawai'i  
Print Name: Momilani Lazo

My commission expires: 9/3/2014



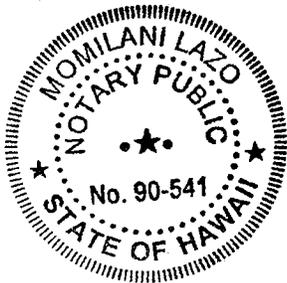
NOTARY PUBLIC CERTIFICATION  
Momilani Lazo First Circuit  
Doc. Description: OHA Contract w/ Rider Levett Bucknall Ltd

No. of Pages: 25 Date of Doc: unkwn

Momilani Lazo 4/12/13  
Notary Signature Date

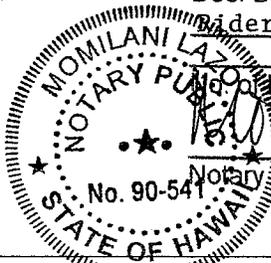
STATE OF HAWAI'I )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

On this 12th day of April, 2013 before me personally appeared AEDWARD LOS BANOS, to me known, who being by me duly sworn, did say that he is the Chief Operating Officer of the OFFICE OF HAWAIIAN AFFAIRS, a body corporate and said instrumentality of the State, that in the absence of a seal said instrument was signed in behalf of said corporation by authority of its Board of Trustees, and the said Chief Operating Officer acknowledged said instrument to be the free act and deed of said body corporate and instrumentality of the State.



Momilani Lazo  
Notary Public, State of Hawai'i  
Print Name: Momilani Lazo

My commission expires: 9/3/2014



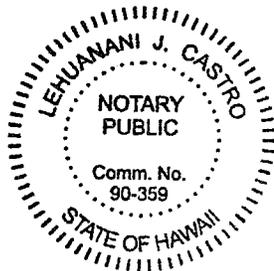
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Momilani Lazo 4/12/13  
Notary Signature Date

STATE OF HAWAII )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

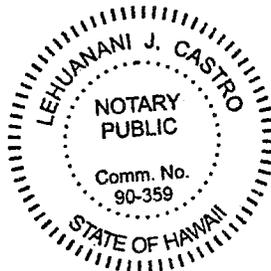
On this 11<sup>th</sup> day of April, 2013 before me personally appeared PAUL BRUSSOW, to me known, who, being by me duly sworn, did say that he is the Executive Vice President of RIDER LEVETT BUCKNALL, LTD., a Hawai'i corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.



Lehuanaani J. Castro

Notary Public, State of Hawaii  
Print Name: Lehuanaani J. Castro

My commission expires June 25, 2014



Doc. Description: Office of Hawaiian Affairs  
Contract between Office of Hawaiian Affairs  
& Rider Levett Bucknall, Ltd  
Doc. Date: April 2013 No. Pages: 25  
Lehuanaani J. Castro 1st  
Notary Printed Name Jud. Circuit