

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT NUMBER 3007

CONTRACT BETWEEN

OFFICE OF HAWAIIAN AFFAIRS

AND

WCIT ARCHITECTURE, INC.

This Agreement, executed and entered into as of this 11th day of December, 2014, is made by and between, the Office of Hawaiian Affairs (“OHA”), a body corporate under the Constitution of State of Hawai‘i, by its Chief Operating Officer, acting by and on behalf of its Ka Pouhana, Chief Executive Officer (“CEO”) pursuant to Revised Operation Authority Delegation Hierarchy dated December 12, 2012, acting by and on behalf of the Board of Trustees, whose principal place of business and mailing address is 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817, and WCIT Architecture, Inc. (“CONTRACTOR”), a corporation, whose principal place of business and mailing address is 725 Kapi‘olani Blvd., 4th Floor, Honolulu, Hawai‘i 96813, Federal Tax ID No. 90-00086986.

WITNESSETH:

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

WHEREAS, the Legislature of the State of Hawai‘i enacted Act 15, Session Laws of Hawai‘i 2012(Senate Bill No. 2783, 2012) effective July 1, 2012; and Act 15 conveyed to OHA certain parcels of land located in the area of Honolulu known as “Kaka‘ako Makai” as follows:

- 1) Lots 1, 2, 3, 4, 5, 6 (portion), and 9 of File Plan 2471 filed at the Bureau of Conveyances, State of Hawai‘i, on February 23, 2010,
- 2) TMK (1) 2-1-15-61, and
- 3) TMK (1) 2-1-15-51; and

WHEREAS, OHA is in need of a team of professionals to provide conceptual master planning services for Kaka‘ako Makai including ancillary services such as: conducting financial analysis and market studies, drafting design guidelines, preparing environmental review documents, and obtaining planning entitlements; and

WHEREAS, the CONTRACTOR has been evaluated as a responsible and responsive offeror whose proposal is advantageous to OHA, based on CONTRACTOR's capacity, qualifications, and resources available to perform the terms and condition agreed to under this Agreement; and,

WHEREAS, the EDITH KANAKA'OLE FOUNDATION, DTL, and PBR HAWAII shall also provide services under the CONTRACTOR as part of the Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by OHA, provide all the goods and services set forth in Attachment S 1, which is hereby made a part of this Agreement;
2. Time of Performance. The performance required of the CONTRACTOR under this Agreement shall be completed in accordance with the Time Schedule set forth in Attachment S 2, which is hereby made a part of this Agreement;
3. Compensation. The CONTRACTOR shall be compensated according to the Compensation provision set forth in Attachment S 3, which is hereby made a part of this Agreement;
4. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Agreement;
5. CONTRACTOR's Acknowledgment Statement. The CONTRACTOR's Acknowledgment Statement is attached and is made a part of this Agreement;
6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall

control; and,


7. Notices. Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to the CEO's business and mailing address as set forth in the first paragraph of this Agreement. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's business and mailing address as set forth in the first paragraph of this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying OHA in writing of any change of address.

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IN VIEW OF THE ABOVE, the parties execute this Agreement by their
signatures,

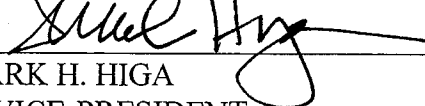
on the dates below, to be effective as of the date first above written.

OFFICE OF HAWAIIAN AFFAIRS

Date: DEC 11 2014, 2014 By 
KAWIKA K. BURGES
Its KA POU NUI, CHIEF OPERATING OFFICER

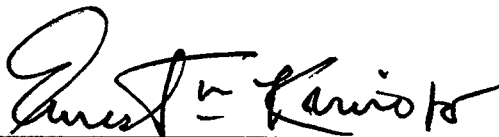
“OHA”

WCIT ARCHITECTURE, INC.

Date: 12-11, 2014 By 
MARK H. HIGA
Its VICE-PRESIDENT

“CONTRACTOR”

APPROVED AS TO FORM:


ERNEST M. KIMOTO
Ka Paepae Pōhaku/Corporate Counsel

Date: 12-11, 2014

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF HAWAI'I)
) SS.
CITY AND COUNTY OF HONOLULU)
)
)
)

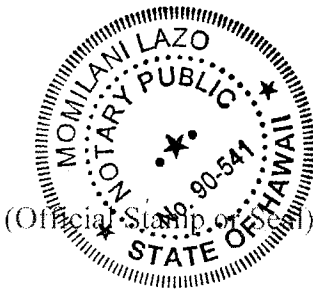
On this 11th day of December, 2014, before me personally appeared MARK H. HIGA, to me personally known, who, being by me duly sworn, did say that such person is a VICE-PRESIDENT, WCIT ARCHITECTURE, INC., the CONTRACTOR, named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

Momilani Lazo

(Notary signature)

Momilani Lazo

(print name) Notary Public, State of Hawai'i



My commission expires: 9-3-2018

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

OHA Contract w/WCIT Architecture, Inc. for Conceptual Master Plan for Kakaako Māhāi

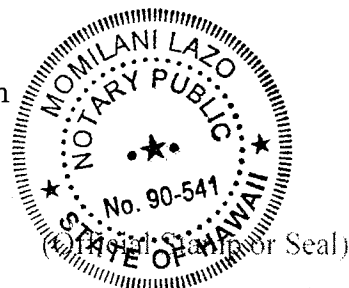
Doc. Date: _____ OR Undated at time of notarization

No. of Pages: 29 Jurisdiction: First Circuit
(in which notary act is performed)

Momilani Lazo
Signature of Notary

12-11-14
Date of notarization

Momilani Lazo
Printed Name of Notary



STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State or OHA, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of WCIT Architecture, Inc. CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or OHA employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or OHA within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or OHA employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or OHA employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or OHA if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or OHA.

CONTRACTOR

By: _____

Title: _____

Date: _____

[Handwritten Signature]
MARIC LEGAT.
VICE-PRESIDENT
12/11/14

SCOPE OF SERVICES

Project: Conceptual Master Plan for Kaka'ako Makai
Locations: Lots 1, 2, 3, 4, 5, 6 (portion), and 9 of File Plan 2471 filed at the Bureau of Conveyances, State of Hawai'i, on February 23, 2010; TMK (1) 2-1-15-61; and, TMK (1) 2-1-15-51.
RFP: KM-2015-01
Contractor: WCIT Architecture, Inc.

1. The following documents, and any amendments or addenda thereto, comprise the Agreement between the parties and are fully a part of this Contract governing the work to be performed by the CONTRACTOR for the Conceptual Master Plan for Real Estate Development in Kaka'ako Makai (Conceptual Master Plan): (1) CONTRACTOR's accepted proposal dated September 14, 2014; (2) Best and Final Offer dated September 26, 2014; (3) Request for Proposal no. KM-2015-01; and this Contract. These documents are collectively referred as the "Contract Documents".

2. The purpose of this Conceptual Master Plan Contract is to take OHA from the Framework Plan to the point of being ready to issue an RFP to select a site(s) developer. This Conceptual Master Plan shall inform the RFP for a site(s) developer of the following:
 - Which site or sites shall be developed first;
 - Potential feasible land uses for the each of OHA's Kaka'ako Makai parcel;
 - Potential financing mechanisms to fund site development; and
 - Design Guidelines to which development shall adhere.

3. As a part of the Conceptual Master Plan, the CONTRACTOR shall include the following items:
 - A. Conceptual Land Use Scenarios – The heart of the conceptual master plan shall consist of conceptual land use scenarios that consider three alternatives based on the findings of all the studies below, as well as input obtained from OHA, its beneficiaries, and other community stakeholders. The CONTRACTOR shall identify real estate development opportunities that would be attractive to OHA as well as recommend specific uses and densities. The three alternative scenarios shall consist of:
 - 1) Feasible land uses including residential;
 - 2) Feasible land uses including residential in latter phases; and
 - 3) Feasible land uses excluding residential.

- B. Phasing Strategy and Development Schedule – The CONTRACTOR shall assemble in writing a strategy and schedule that implements each of the above three (3) alternatives. This strategy and schedule must also include 1) a phased development schedule of sites based on the Market & Financial analyses described below; and 2) development activities that are immediately implementable during the interim period prior to long-term development.
- C. Public-Private Financing Tools – The CONTRACTOR shall prepare a technical memorandum that contains the assessment of financing methods appropriate for OHA landholdings for inclusion in the Conceptual Master Plan. For the development alternatives identified and analyzed, the CONTRACTOR shall develop effective and efficient (lowest cost/highest return to OHA) financing mechanisms and alternatives, including but not limited to:
- 1) OHA self-development utilizing commercial debt, capital markets and/or private equity financing;
 - 2) OHA joint venture with one or more development partners;
 - 3) Other means of OHA equity of quasi-equity participation with one or more development partners;
 - 4) International partnerships;
 - 5) Land leasing/leasehold development agreements; and
 - 6) Public financing using Special Purposed Revenue Bonds, Tax Increment Financing (TIFs), Business Improvement District (BID) financing and/or others.
- D. Development Roadmap – The CONTRACTOR shall provide, in writing, a clear roadmap to development that outlines land use and other entitlements, developer selection process, etc. which will guide OHA’s economic and real estate development in Kaka’ako Makai.
- E. Background Analysis – The CONTRACTOR shall review all relevant information, studies and previously completed plans for Kaka’ako Makai, and other documentation to gain familiarization with the issues pertaining to the OHA properties in Kaka’ako Makai. The CONTRACTOR shall prepare a technical memorandum that contains recommendations of elements from previous plans and studies that should be included in the Conceptual Master Plan. This technical memorandum shall be incorporated into the final Conceptual Master Plan Document.
- F. The CONTRACTOR shall also include in the technical memorandum of the Background Analysis, a review of the following documents including, but not limited to:
- 1) Kaka’ako Makai Policy (OHA, 2012);

- 2) Real Estate Vision, Mission, and Strategy Policy (OHA, 2007);
- 3) Kaka‘ako Makai Strategic Action Plan (“Framework Plan” [OHA, November 2013]);
- 4) Strategic Management Framework Kaka‘ako Makai Cultural Landscape and Ancestral Connectivity Analysis (“CLACA” [OHA, November 2013]);
- 5) HAR Title 15, Chapter 23, the Kaka‘ako Community Development District Rules for the Makai Area;
- 6) Kaka‘ako Community Development District Makai Area Plan (HCDA, October 2005); and
- 7) Kaka‘ako Makai Conceptual Master Plan (HCDA, April 2011).

G. Refinement of Land Use Themes from Framework Plan – Based on findings from other tasks within this Contract as well as from OHA, Beneficiary and other community stakeholders input, the CONTRACTOR, in a written report that shall be included in the Conceptual Master Plan, shall narrow the cultural themes from the Framework Plan so that they may be are tangible and implementable as a part of the Conceptual Master Plan.

H. Market Analysis – The CONTRACTOR shall prepare a market analysis report that will be included in the Conceptual Master Plan that focuses on the evaluation of market conditions of alternative feasible land uses. Each alternative land use should be assessed for market demand, land value, and potential absorption in Kaka‘ako Makai. Additionally, the CONTRACTOR shall provide an assessment of economic, demographic, employment, and real estate market conditions, including historical trends and future projections. The CONTRACTOR shall also determine long-run trends. The analysis shall focus on Kaka‘ako (Makai and Mauka) and metropolitan Honolulu and other comparable metropolitan areas in the United States and globally, and shall address the following:

- 1) Population and household characteristics and growth trends;
- 2) Age and income distributions;
- 3) Housing tenure and preference;
- 4) Employment trends by industry sector;
- 5) Underlying demographic and economic reasons for growth trends to continue accelerate or decelerate;
- 6) Real estate market fundamentals, including leasing activity, sales, and vacancy;
- 7) Real estate development trends;
- 8) Requirements for supporting community uses such as community centers; and
- 9) Supply of entertainment, cultural and other supporting facilities and services in the Kaka‘ako and metropolitan Honolulu market area.

- I. Community Engagement Plan – Throughout the master planning process, OHA and its CONTRACTOR shall reach out to the Trustees, beneficiaries, and stakeholders to share the progress of the master planning process, as well as to seek out input from the participants. The CONTRACTOR shall organize, conduct, and facilitate eleven (11) statewide meetings: four (4) on O‘ahu, one (1) on Moloka‘i, two (2) on Maui, one (1) on Lāna‘i, one (1) on Kaua‘i, and two (2) on Hawai‘i for OHA beneficiaries, as well as reach out to Kaka‘ako Makai stakeholders and community members, Trustees and OHA staff.

Throughout this Conceptual Master Plan Contract, all of the CONTRACTOR’s outreach efforts shall be coordinated and supervised by OHA. OHA expects that the CONTRACTOR’s responsibilities, as directed by OHA, shall include, but not be limited to: the preparation of materials for distribution; coordination of logistics for community meetings; community meeting facilitation and presentations; and, meeting with stakeholders and consulting agencies/organizations. OHA shall approve the distribution methods of any materials, distribution timing, and message content. Any lobbying activities shall be OHA’s responsibility.

- J. Financial Assessment of Candidate Land Uses – The CONTRACTOR shall prepare a financial assessment that will form the analytical basis of and facilitate the decision by the Trustees and other stakeholders on the selection of alternate candidate land uses to be included in the Conceptual Master Plan. The financial assessment shall also form the basis of the subsequent solicitation of and negotiation with development partners to develop the projects to achieve the selected land uses. The financial assessment shall be incorporated in the Conceptual Master Plan and include:

- 1) A rigorous valuation of the Kaka‘ako Maki properties under their existing allowable land uses;
- 2) The development costs and potential revenue of OHA properties (both individually and collectively) under each alternative scenario;
- 3) Evaluation of on-site or off-site improvements or investments that will enhance the value of the Kaka‘ako Makai properties; and
- 4) A rigorous financial model with projections and sensitivity analysis to test and validate the overall economic viability of alternate land uses in Kaka‘ako Makai. The assessment shall determine the financial feasibility of the alternative land uses under market-driven economic and real estate conditions. The CONTRACTOR shall also determine the financial feasibility of the land use theme/scenarios under realistic economic and real estate conditions.

K. Development Guidelines – The CONTRACTOR shall prepare, based on community and OHA input, development design guidelines that will be appended to each RFP to select a site(s) developer. Such design elements should make OHA’s properties:

- 1) Environmentally functional;
- 2) Unified both visually and in feel;
- 3) Unique in both Hawai‘i and the world; and
- 4) Distinctly Hawaiian.

4. Tasks After Conceptual Master Plan is Prepared – After the Conceptual Master Plan has been prepared, the CONTRACTOR shall:

A. Present the Conceptual Master Plan Alternatives to beneficiaries and OHA staff - The CONTRACTOR shall organize, conduct, and facilitate eleven (11) statewide meetings: four (4) on O‘ahu, one (1) on Moloka‘i, two (2) on Maui, one (1) on Lāna‘i, one (1) on Kaua‘i, and two (2) on Hawai‘i for OHA beneficiaries, as well as reach out to OHA staff, to garner feedback as to which master plan alternative OHA should follow.

B. Present the Conceptual Master Plan Alternatives to Trustees – The CONTRACTOR shall present the Conceptual Master Plan alternatives in their entirety, along with input from beneficiaries and OHA Staff to the Trustees in a workshop. The CONTRACTOR shall plan, organize and facilitate the workshop to enable the Trustees to make a decision as to which alternative OHA should pursue.

C. Begin execution of the Conceptual Master Plan – The CONTRACTOR shall obtain any and all Planning Entitlements including, but not limited to:

- 1) A programmatic environmental assessment or an environmental impact statement (EA/EIS) – the CONTRACTOR shall provide professional services for the analysis, review, production, and acceptance of a programmatic EA/EIS pursuant to Chapter 343, HRS, based on the land use determined, and potentially beneficial and adverse impacts in the event the lands developed as determined in the Conceptual Master Plan. Due to the perceived lack of site-specific details on each parcel, a programmatic environmental review is suggested. Administration of the EA/EIS shall involve regular coordination and verbal and written communication between the CONTRACTOR and OHA.

- 2) Public Involvement - The CONTRACTOR shall work with OHA to prepare a public involvement strategy, including reaching out across all islands, that outlines the various elements and steps needed to implement a successful public involvement program over the course of the project.
- 3) Public scoping - to solicit early and meaningful input from the affected public, agencies, and other interested parties on the issues and alternatives to be evaluated in the EA/EIS. One (1) public scoping meeting that includes reaching out to the entire island chain equal to a minimal of eleven (11) locations.
- 4) Agency and stakeholder consultation - Work performed under this task shall be conducted by OHA as part of its ongoing community and stakeholder outreach efforts. The CONTRACTOR shall also consult with a variety of agencies and interested stakeholders as part of the data gathering and agency contact activities. Where applicable, the information shall be incorporated into the EA/EIS.
- 5) Cultural Impact Assessment preparation – The CONTRACTOR shall prepare cultural impact assessment and archaeological survey as required by HRS 343, as amended.
- 6) HCDA Master Plan permit application – The CONTRACTOR shall prepare and submit HCDA master plan permit application and associated materials for discretionary review by HCDA staff.
- 7) Special Management Permit Application – The CONTRACTOR shall prepare and submit SMA permit application and associated materials for discretionary review by the Office of Planning staff.
- 8) Other – The CONTRACTOR shall prepare and submit any other federal, State or county permit application and associated materials for review.

OHA Contract Coordinator:

Allen Kam, Commercial Property Manager
 Pou Kāko‘o Kuleana Ho‘owaiwai
 Office of Hawaiian Affairs
 560 North Nimitz Hwy, Ste. 200
 Honolulu, HI 96817

WCIT Architecture, Inc.:

Mr. Robert Iopa
 President
 WCIT Architecture, Inc.
 725 Kapi‘olani Blvd. 4th Floor.
 Honolulu, Hawai‘i 96813

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TIME OF PERFORMANCE

Project: Conceptual Master Plan for Kaka‘ako Makai
Locations: Lots 1, 2, 3, 4, 5, 6 (portion), and 9 of File Plan 2471 filed at the Bureau of Conveyances, State of Hawai‘i, on February 23, 2010; TMK (1) 2-1-15-61; and, TMK (1) 2-1-15-51.
RFP: KM-2015-01
Contractor: WCIT Architecture, Inc.

1. The CONTRACTOR shall render the services required under this Contract from December 11, 2014 through and including December 10, 2016 unless this Contract is sooner terminated as provided hereafter in this Contract.
2. Option to Extend: The Time of Performance of this Contract may be extended at negotiated fees, upon mutual agreement in writing prior to the end of the current Contract. It is understood that a Supplemental Contract (Amendment) will be executed by both the CONTRACTOR and OHA to exercise any and all extensions.

Initial term of Contract: Twenty-four (24) months.
Length of each extension: Up to 12 months, may be less than twelve months when it is in the best interest of the OHA.
Number of possible extensions: Three (3) extensions.
Maximum length of Contract: Not to exceed sixty (60) months from December 11, 2014.

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COMPENSATION

Project: Conceptual Master Plan for Kaka'ako Makai
Locations: Lots 1, 2, 3, 4, 5, 6 (portion), and 9 of File Plan 2471 filed at the Bureau of Conveyances, State of Hawai'i, on February 23, 2010; TMK (1) 2-1-15-61; and, TMK (1) 2-1-15-51.
RFP: KM-2015-01
Contractor: WCIT Architecture, Inc.

1. OHA agrees to pay the CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed, TWO MILLION NINE HUNDRED TWENTY-FIVE THOUSAND SEVEN HUNDRED FIFTY-TWO AND NO/100 DOLLARS (\$2,925,752.00), inclusive of all actual reasonable ordinary necessary costs and expenses, including tax currently at the rate of 4.712%, for services satisfactorily rendered under this Contract.
2. Payment shall be made to the CONTRACTOR on a quarterly reimbursement basis that shall not exceed the allotted funding upon the CONTRACTOR's timely submission of the required deliverables for OHA's approval and request for payment.
3. OHA shall retain FIVE PERCENT (5%) equal to ONE HUNDRED FORTY-SIX THOUSAND TWO HUNDRED EIGHT-SEVEN AND 60/100 (\$146,287.60) of the total Contract amount as the final payment under this Contract. Payment of the retained amount shall be made upon the completion and approval by OHA of deliverables as stated in the payment schedule below.
4. Compensation shall be paid pursuant to the payment schedule set forth below and upon presentation of invoice and satisfactory performance of the work described in ATTACHMENT S 1-SCOPE OF SERVICES and shall be approved by the OHA Contract Coordinator. The Coordinator's written approval shall be required before incurring any exceptional cost and/or expenses. Compensation shall be paid in the following manner:

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PAYMENT SCHEDULE

QUARTER 1

December 2014 to February 2015

PAYMENT AMOUNT: \$202,991.25

Deliverables: Background Analysis Tech Memo (Task 3.E.)	\$104,452.50
Additional Studies Technical Memo (Task 3.F.)	\$47,737.50
Community Engagement Plan (Task 3.I.)	\$50,801.25

QUARTER 2

March 2015 to May 2015

PAYMENT AMOUNT: \$600,172.00

Deliverables: Draft Conceptual Land Use Scenarios (Task 3.A.)	\$326,990.00
Market Analysis Report (Task 3.H.)	\$104,500.00
Pae 'Äina Community Meetings (Task 3.I.)	\$81,282.00
Draft Financial Assessment (Task 3.J.)	\$87,400.00

QUARTER 3

June 2015 to August 2015

PAYMENT AMOUNT: \$511,652.90

Deliverables: Final Conceptual Land Use Scenarios (Task 3.A.)	\$81,747.50
Phasing Strategy Report & Schedule (Task 3.B.)	\$95,486.40
Public-Private Financing Tools Tech Memo (Task 3.C.)	\$19,000.00
Development Roadmap (Task 3.D.)	\$92,088.25
Land Use Theme Refinement Report (Task 3.G.)	\$152,000.00
Agency and Community Group Consultation Memo (Task 3.I.)	\$30,480.75
Final Financial Assessment (Task 3.J.)	\$21,850.00
Present Conceptual Master Plan to BOT (Task 4.B.)	\$19,000.00

QUARTER 4

September 2015 to November 2015

PAYMENT AMOUNT: \$415,383.24

Deliverables: Development Design Guidelines (Task 3.K.)	\$164,730.00
Present Conceptual Master Plan to Pae 'Äina (Task 4.A.)	\$181,687.50
EIS Scoping Meetings (Task 4.C.)	\$68,965.74

QUARTER 5

December 2015 to February 2016

PAYMENT AMOUNT: \$620,691.70

Deliverables: Draft EIS (Task 4.C.) \$620,691.70

QUARTER 6

March 2016 to May 2016

PAYMENT AMOUNT: \$54,803.37

Deliverables: Assist with Public Meeting (Task 3.I.) \$20,320.50
Public Meeting for EIS (Task 4.C.) \$34,482.87

QUARTER 7

June 2016 to August 2016

PAYMENT AMOUNT: \$137,931.49

Deliverables: Final EIS (Task 4.C.) \$137,931.49

QUARTER 8

September 2016 to November 2016

PAYMENT AMOUNT: \$235,838.45

Deliverables: Assist with Public Hearings (Task 3.I.) \$20,320.50
HCDA Approval & SMA Permit (Task 4.C.) \$215,517.95

December 2016

FINAL PAYMENT: \$146,287.60

TOTAL PAYMENTS \$2,925,752.00

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Office of Hawaiian Affairs
GENERAL CONDITIONS
(NON-GRANT GOODS AND SERVICES)
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1. COORDINATION AND REPORTS

The work performed under this Agreement shall be coordinated with OHA's "head of purchasing agency" or Designee as listed in the Scope of Services (Attachment S 1) 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 the 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.

2. 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.

3. ADDITIONAL COMPENSATION AND PAYMENT TERMS

All costs and expenses shall be actual reasonable ordinary necessary costs and/or expenses incurred in conjunction with the services provided under SCOPE OF SERVICES herein and shall be approved by the Coordinator. The Coordinator's approval shall also be required prior to the CONTRACTOR incurring any exceptional costs and/or expenses.

Should inter-island or out-of-state travel be required, the CONTRACTOR shall obtain advance written approval from the Coordinator for such travel. Travel shall be by the most economical means consistent with time available and the urgency of the trip. Travel accommodations (airfare, subsistence and lodging) shall be reasonable considering all relevant circumstances. The CONTRACTOR shall be entitled to reimbursement for air fare and stipend for meals and lodging at a rate not to exceed the current per diem rates afforded State employees for similar type travel and shall be uniform and equitable for all travelers in all cases. Subject to the approval of the Coordinator, other necessary reasonable expenses which meet certain stipulated conditions which OHA shall make known to the CONTRACTOR and are supported by receipts issued in the normal course of business may be allowed in addition to airfare and stipend. The CONTRACTOR shall submit a written reimbursement request, certified by the CONTRACTOR to be the actual travel costs and expenses incurred in conjunction with the Scope of Services herein, to the Coordinator for Coordinator's review and approval. Each reimbursement request shall be accompanied by original receipts/invoices evidencing the actual expenditures incurred for which reimbursement is being claimed. Photocopies or faxed copies of receipts or invoices may be acceptable in exceptional circumstances when properly justified in writing. Credit card receipts are unacceptable for purposes of reimbursement herein.

Fees shall be payable as described in this section with incremental payments and final payment to be made upon presentment of original invoices specifying to the satisfaction of OHA's Coordinator, who is identified in Scope of Services (Attachment S 1) of this Agreement, the amount due and owing and certifying that the services requested under the Agreement have been satisfactorily performed in conformance with this Agreement. Each invoice shall include a detailed breakdown of the CONTRACTOR's time charges attributable to the particular billing period and shall be accompanied by a written activity report as required by OHA identifying the type of work activities, tasks, and/or work product completed. Original receipts evidencing actual costs and expenditures shall accompany each monthly invoice⁸ presented for payment whenever possible. Expenditure details and related original 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 and 103D-328, Hawai'i Revised Statutes (HRS), as amended, respectively 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 the CONTRACTOR shall be entitled to payments for work performed prior to the date of termination, provided hereinafter, and for which the CONTRACTOR has not yet been paid.

4. 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.

5. 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 and any subcontractors the CONTRACTOR may retain with OHA's approval. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the OHA's interest above other considerations and to accept the professional responsibility for the services to be rendered.

6. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

In the performance of the services required under this Agreement, the 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 experienced and fully 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 OHA, the CONTRACTOR shall provide adequate evidence that such persons are the CONTRACTOR's agents or employees.

Any work under this Agreement shall not be construed as employment with OHA and shall not entitle the CONTRACTOR or the CONTRACTOR's agents and employees to vacation, sick leave, retirement, or other benefits afforded OHA employees.

The CONTRACTOR shall insure that all applicable licensing and operating requirements of the State, Federal, City and County governments and all applicable accreditation and other standards of quality generally accepted in the field of the CONTRACTOR's business activities are complied with and satisfactorily met.

The CONTRACTOR shall also be responsible for payment of all applicable federal, state, city and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to, (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

The CONTRACTOR shall also be responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, U. S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to OHA prior to commencing any performance under this Agreement. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 3 of these General Conditions.

The CONTRACTOR shall also obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawai'i and a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawai'i, in accordance with section 103D-310, HRS, and section 3-122-112, Hawai'i Administrative Rules (HAR), respectively, that is current within six months (two months for final payment) of the date of issuance.

In lieu of the above certificates from the Department of Taxation, the Department of Labor and Industrial Relations, and the Department of Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process, Hawaii Compliance Express.

7. SUBCONTRACTS AND ASSIGNMENTS

The CONTRACTOR shall not subcontract, assign, or transfer any right, title, interest, duties or obligations or any services to be performed under this Agreement, in whole or in part, 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.

8. INDEMNIFICATION AND INJURIES

The CONTRACTOR shall indemnify and hold harmless OHA, its Trustees, officers, employees and agents, from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, demands 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. Furthermore, nothing herein contained shall excuse the CONTRACTOR from compliance with any State, Federal or County law, rule, regulation, or ordinance. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

Neither party shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

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.

The CONTRACTOR waives any rights to recovery from OHA for any injuries that the 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.

Should OHA, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR, the CONTRACTOR shall, in connection with this Agreement, pay all costs and expenses incurred by or imposed on OHA, including attorneys' fees.

Although Contractor shall not be required to defend Client, indemnification shall include recovery for such portion of attorney's fees and expenses to the extent incurred by Client and caused by Contractor's errors, Omission and or negligence.

9. INSURANCE

A. **INSURANCE REQUIREMENT:** At all times during the term of this Agreement, CONTRACTOR shall obtain and maintain in full force and effect, 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, the CONTRACTOR shall provide evidence that the CONTRACTOR has in full force and effect the following policies:

1. **Commercial Liability Insurance:** The 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:** Automobile 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 (PU) 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.

5. Other insurance as required by OHA.

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 the 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: The 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: The CONTRACTOR, through its insurance broker, will provide OHA with THIRTY (30) days written notice prior to cancellation, termination, lapse, non-renewal or material change to the insurance policy.

E. Should any of the insurance required above be cancelled before the CONTRACTOR's work under this Agreement is complete as determined by OHA, the CONTRACTOR shall immediately procure replacement insurance that complies in all respects to the requirements of this section.

F. Nothing in the insurance requirements of this Agreement shall be construed as limiting the extent of CONTRACTOR's responsibility for payment of damages resulting from its operations under this Agreement including the CONTRACTOR's separate and independent duty to defend, indemnify, and hold OHA, its Trustees, officers, employees and agents harmless pursuant to other provisions of this Agreement.

10. 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. This shall also include requests tendered to CONTRACTOR by individuals and organizations pursuant to Chapter 92F, Uniform Information Practices Act, Hawai'i Revised Statutes, as amended; provided however, that such documents that are otherwise by law made public, shall not be subject to this provision. In addition, no information data, report, record or material given to or prepared or assembled by CONTRACTOR shall be used by the CONTRACTOR for his or her personal gain and/or for 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.

11. CONFLICT OF INTEREST AND DISCLOSURE

The CONTRACTOR represents that the CONTRACTOR or any employee or agent of the CONTRACTOR presently has no interest and/or has no interest in another company, corporation, partnership, joint venture, organization, or entity of similar type and nature, direct or indirect, that would conflict in any manner or degree with the performance of the services under this Agreement. The 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 the 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.

12. 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, memorandum, photographs, photographic negatives, videos, or other materials prepared by the CONTRACTOR and 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. OHA shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." OHA, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement. The CONTRACTOR shall not be required, however, to deliver or surrender any licenses to proprietary software used in CONTRACTOR's normal course of business.

13. DISPUTES

Disputes shall be resolved in accordance with section I03D-703, HRS, and chapter 3126, HAR, as the same may be amended from time to time. To the extent not inconsistent with the above, the CONTRACTOR and OHA also agree to the following.

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 the 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 the CONTRACTOR agree to consult and negotiate with each other in good faith to reach a just and mutually satisfactory solution.

MEDIATION. If OHA and the CONTRACTOR do not reach a negotiated solution within TWENTY -ONE (21) days of written notice of the dispute, claim, question or disagreement, OHA and the CONTRACTOR agree next to try in good faith to settle the dispute by mediation before resorting to arbitration. The mediation shall be administered by a mediator mutually agreed upon by OHA and the 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 the Dispute Prevention and Resolution, Inc., Arbitration 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, the 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 the CONTRACTOR understand that by choosing arbitration for its dispute, OHA and CONTRACTOR are waiving its right to trial by jury.

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

14. 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 with 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 but are not limited to poor performance, disloyalty or self-dealing, disclosure of confidential information, or other acts of similar kind and nature. Furthermore, OHA may terminate this Agreement in whole or in part, for the convenience of OHA without statement of cause at any time by giving written notice to the CONTRACTOR of such termination and the effective date of the 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.

15. 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.

16. 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.

17. 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.

18. AMENDMENT

This Agreement may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This Agreement 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 performed and for cost and expenses incurred beyond the initial term of this Agreement.

19. 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 relative to this Agreement. This Agreement supersedes any prior written or oral agreements, conditions, understandings, promises, warranties or representations whether express or implied between parties.

20. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.