



State of Hawai'i

REQUEST FOR PROPOSALS

OHA RFP NO. NLK 2017-11

FOR A

**REAL ESTATE BROKERAGE TO MANAGE AND LEASE THE
OFFICE OF HAWAIIAN AFFAIRS' NĀ LAMA KUKUI
PROPERTY**

ISSUED DATE: May 19, 2017

DUE DATE: July 14, 2017 12:00 Noon HST

The Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817

Notice to Interested Parties: Offerors interested in submitting a proposal are encouraged to register your company by completing the Interest Form and submitting it to OHA's Issuing Officer via email, mail and/or hand delivery. If you do not register your company, you will not receive an addendum, if any, and your offer may be rejected and not considered for award.

RFP NO. NLK 2017-11

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Notice to Offerors
(Chapter 103D, Hawai'i Revised Statutes)

REQUEST FOR PROPOSALS RFP NO. NLK 2017-11
FOR
**REAL ESTATE BROKERAGE TO MANAGE AND LEASE THE OFFICE OF HAWAIIAN
AFFAIRS' NĀ LAMA KUKUI PROPERTY**

Notice is hereby given that pursuant to Chapter 103D, Hawai'i Revised Statutes (hereinafter "HRS"), as amended, the Office of Hawaiian Affairs (hereinafter "OHA"), will be accepting sealed proposals for managing and leasing OHA's Nā Lama Kukui property. A proposal shall incorporate plans to manage, coordinate and supervise the conduct of the ordinary and usual business affairs pertaining to commercial leasing.

This Request for Proposal (hereinafter "RFP") is provided to you for informational purposes. If you are interested in responding to this solicitation, you may download the RFP from the OHA website at www.oha.org/solicitation, SPO website <http://spo3.hawaii.gov/notices/notices> and/or pick up a copy at the OHA's Procurement Unit on O'ahu, located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817, between the hours of 7:45 a.m. to 4:30 p.m. beginning **Friday, May 19, 2017**.

The OHA's Procurement Unit will conduct a Pre-Proposal Conference from 9:00 a.m. to 11:00 a.m. Hawai'i Standard Time (hereinafter "HST") on **Friday, June 9, 2017**. The OHA strongly recommends that all interested Offerors attend. For those interested in attending via web conferencing, please contact the RFP Coordinator listed below no later than **12:00 Noon HST, Tuesday, June 6, 2017**.

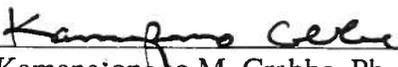
Sealed proposals will be received at the OHA's Reception Desk located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i, 96817, until **12:00 Noon HST, Friday, July 14, 2017**.

Any unsealed, electronic mail, and facsimile transmitted proposals shall not be accepted.

The official time for hand-delivered proposals shall be that which is recorded on the time stamp clock of the OHA. Deliveries by private mail services, such as Federal Express, shall be considered hand deliveries. All mail-in proposals delivered/postmarked by the United States Postal Service (hereinafter "USPS") must be received by the OHA Reception Desk on or before 12:00 Noon HST the day of the deadline.

The OHA reserves the right to reject any and all proposals and accept the proposals, in whole or part, without liability to the OHA, when it is determined to be the best interest of the OHA. Questions relating to this solicitation shall be directed to the RFP Coordinator, Charmaine Matsuura at (808) 594-0273.

OFFICE OF HAWAIIAN AFFAIRS


Kamana'opono M. Crabbe, Ph. D.

RFP NO. NLK 2017-11

INTEREST FORM

For

REQUEST FOR PROPOSAL RFP NO. NLK 2017-11: REAL ESTATE BROKERAGE TO
MANAGE AND LEASE THE OFFICE OF HAWAIIAN AFFAIRS'
NĀ LAMA KUKUI PROPERTY

INSTRUCTIONS: Please complete this form and leave original at the OHA's Procurement Unit where you picked up your RFP packet. A receipt containing important dates, times and information will be given you. If the RFP was downloaded from the OHA's website, please complete and e-mail or mail this form to the RFP Coordinator.

Read this packet carefully. If you have any questions, please call Charmaine Matsuura at (808) 594-0273.

Interest Form	Due by 12:00 Noon HST on Tuesday, June 6, 2017
RSVP for Pre-Proposal Web Conference	Tuesday, June 6, 2017 by 12:00 Noon, HST RFP Coordinator: Charmaine Matsuura at (808) 594-0273, email: charmainem@oha.org
Pre-Proposal Conference & Site Visit	Friday, June 9, 2017, from 9:00 a.m. to 11:00 a.m. HST. Location: OHA, 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817
Sealed Proposal Deadline	Friday, July 14, 2017, by 12:00 Noon HST Submit at: OHA, 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817

Date: _____

Company: _____

Address: _____

Contact Information

Business: _____ Cell: _____ Fax: _____

Email: _____

Name of Person Picking up Packet: _____ Print: _____

Signature: _____

SECTION 1

Introduction, Terms, Acronyms and Key Dates

1.1 Introduction

In 1978, a State of Hawai‘i Constitutional Convention created the OHA to address historical injustices and challenges arising out of those circumstances. The convention delegates envisioned an agency that provides a form of self-determination for Native Hawaiians and advocate for their overall well-being.

The OHA was established through Article XII of the State Constitution. Chapter 10 of the Hawai‘i Revised Statutes outlines the OHA’s duties and purposes, including promoting and protecting the rights of Native Hawaiians.

1.2 Authority

This RFP is issued under the provisions of §103D, HRS, as amended, and its companion Chapter 3-122, Hawai‘i Administrative Rules (hereinafter “HAR”). All Offerors are charged with presumptive knowledge of all requirements of these cited authorities. Submission of a proposal shall constitute affirmation of such knowledge on the part of the Offeror.

1.3 RFP Organization

This RFP is organized into seven (7) sections:

- Section 1: Introduction, Terms, Acronyms and Key Dates – Provides Offerors with an overview of the procurement and contracting process.
- Section 2: General Requirements – Provides the Offerors responsibilities as applicable.
- Section 3: Scope of Work and Specifications – Provides Offerors with a general description of the tasks to be performed and defines the deliverables (as applicable).
- Section 4: Proposal Format – Describes the required format and content for the proposal application.
- Section 5: Evaluation Criteria – Describes how proposals will be evaluated.
- Section 6: Contractor Selection and Contract Award – Describes how Contract will be awarded.
- Section 7: Attachments and Exhibits – Provides the information and forms necessary to complete the application.

1.4 Terms and Acronyms

BAFO	Best and Final Offer
CEO	Chief Executive Officer
COGS	Certificate of Good Standing

1.6 Website References

The State Procurement Office (hereinafter “SPO”) website is www.spo.hawaii.gov. (Note: Website addresses may change from time to time. If a link is not active, try the State of Hawai‘i website at www.hawaii.gov).

	For	Go to
1	Tax Clearance Forms (Department of Taxation Website)	http://www.hawaii.gov/tax/ click “Forms”
2	Wages and Labor Law Compliance, Section 103-055, HRS (Hawai‘i State Legislature website)	http://www.capitol.hawaii.gov/ click “Bill Status and Documents” and “Browse the HRS Sections”
3	Department of Commerce and Consumer Affairs, Business Registration	http://www.hawaii.gov/dcca click “Business Registration”
4	Campaign Spending Commission	www.hawaii.gov/campaign
5	Hawai‘i Compliance Express	http://vendors.ehawaii.gov/hce/splash/welcom.html
6	SPO Forms	http://spo.hawaii.gov

1.7 RFP Schedule and Significant Dates

The schedule below represents the OHA’s best estimate of the schedule that will be followed. All times indicated is HST. If a component of this schedule, such as "Proposal Due Date/Time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and significant dates shall be reflected and issued in an addendum to the RFP. The OHA reserves the right to cancel any activity or modify the timetable at any time. The approximate schedule is as follows:

Release of Request for Proposals	May 19, 2017
Pre-Proposal Conference & Site Visit	June 9, 2017 – 9:00-11:00 a.m. HST
Due Date to Submit Questions	June 16, 2017
OHA’s Response to Questions	June 23, 2017
Proposals Due Date/Time	July 14, 2017 – 12:00 Noon HST
Proposal Evaluations	July 17, 2017 – July 28, 2017
Offerors’ Presentation/Discussion (if necessary)	TBD
Best and Final Offer (if necessary)	TBD
Notice of Award	August 2017
Contract Start Date	September 1, 2017

1.8 Pre-Proposal Conference

The purpose of the Pre-Proposal Conference is to provide the Offerors an opportunity to be briefed on this procurement and to ask any questions about this procurement. Attendance at the Pre-Proposal Conference is not mandatory; however, the Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

The Offerors are advised that anything discussed at the Pre-Proposal Conference does not change any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.

The Pre-Proposal Conference and Site Visit to follow will be held on:

Date: Friday, June 9, 2017
Time: 9:00 a.m. HST
Location: Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817

To attend or participate in the web and teleconference conference, please contact the RFP Coordinator or his/her designee by 12:00 Noon HST, Tuesday, June 6, 2017.

1.9 Submission of Questions

Offerors are encouraged to submit written questions pertaining to this RFP. Questions must be submitted in writing to the RFP Coordinator no later than the "Due Date to Submit Questions", identified in paragraph 1.7 on page 3, in order to generate an official answer.

All written questions will be responded to in an addendum to this RFP. The only official position of the OHA is that which is stated in writing and issued in this RFP as addenda thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon as such.

1.10 RFP Amendments

The OHA reserves the right to amend this RFP at any time prior to the proposal submission deadline. Interested Offerors will be notified of the availability of amendments through verbal or written communications. All amendments to this RFP will be posted to the OHA website www.oha.org/solicitations and SPO website <http://spo3.hawaii.gov/notices/notices>.

1.11 Cancellation of RFP

The RFP may be canceled and any or all proposals rejected in whole or in part, without liability to the OHA, when it is determined to be in the best interest of the OHA.

1.12 Submission of Sealed Proposals

Sealed proposals must be received via hand delivery or the USPS by the date and time designated in the procurement timeline. See Section 1.7 RFP Schedule and Significant Dates. Any procurement packet received after the designated date and time shall be rejected. All proposals must be in the OHA's possession by the submittal time deadline to be considered responsive. **Electronic mail and facsimile transmissions of the proposal shall not be accepted.**

The proposal packet must be submitted in a sealed envelope and properly identified as a sealed proposal in response to this RFP. Any RFP proposal packet **not properly sealed shall be automatically rejected**. Each qualified Offeror may submit only one (1) sealed proposal in response to this solicitation. More than one (1) sealed proposal will not be accepted from any Offeror. There shall be no exceptions to these requirements.

1.13 Rejection of Proposals

The OHA reserves the right to consider as acceptable and responsive only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the challenges involved and comply with the service specifications. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be rejected without further notice.

A proposal may be automatically rejected for any one (1) or more of the following reasons:

- 1) Cancellation of solicitation (HAR §3-122-95, HAR §3-122-96);
- 2) Rejection of an offer (HAR §3-122-97);
- 3) Reporting of anti-competitive practices (HAR §3-122-191, HAR §3-122-193, HAR §3-122-194, HAR §3-122-195);
- 4) Rejection for inadequate accounting system (HRS §103D-314(2));
- 5) Late proposals (HAR §3-122-16.08);
- 6) Inadequate response to request for proposals (HAR §3-122-95, HAR §3-122-96);
- 7) Proposal not responsive (HAR §3-122-97(1) and HAR §3-122-97(2)); and
- 8) Offer not responsible (HAR §3-122-97(2)).

1.14 Notice of Award

The award of a Contract and allowed renewal(s) or extension(s) thereof, is subject to the approval by the OHA's Ka Pouhana, Chief Executive Officer, Head of Purchasing Agency (hereinafter "HOPA"), and subject to the availability of funding.

1.15 Debriefing

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the Contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

1.16 Protest Procedures

Pursuant to HRS §103D-701 and HAR §3-126-4, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a Contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at:

Head of Purchasing Agency	Procurement Officer
Name: Kamana‘opono M. Crabbe, Ph.D.	Name: Phyllis Ono-Evangelista
Title: Ka Pouhana, Chief Executive Officer, Head of Purchasing Agency	Title: Procurement Manager
Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai‘i 96817	Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai‘i 96817

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Officer’s debriefing was completed.

1.17 Trade Secrets/Confidential Information

If an Offeror believes that any portion of their proposal contains information that should be withheld as confidential, the Offerors shall provide a written request for nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, shall be clearly marked, and shall be readily separable from the proposal packet to facilitate eventual public inspection of the non-confidential sections of the proposal packet. Note that price is not considered confidential and will not be withheld.

1.18 Intellectual Property Rights

The OHA reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for the OHA’s purposes.

The Offeror understands that the information obtained from these efforts is the sole property of the OHA, that any use of the information must be approved by the OHA and any information, materials, etc. used to complete the project shall be returned to the OHA.

1.19 Offeror’s Optional Services

The Offeror’s optional services are defined as services and/or goods proposed by Offeror(s) that are not included in the “Scope of Work” of the RFP and would be considered

enhancements thereof. Costs for the Offeror optional services, selected by the OHA will be added to the total amount of Contract or be included in the Contract as an optional services item to be exercised by the OHA if and when elected.

1.20 Property of OHA

All proposals become the property of the OHA.

1.21 Proposal Objectives

One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving the Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness, clarity and content.

When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 3, Scope of Work and Specifications.

The Offeror shall submit a proposal that includes an overall strategy, timeline, and plan for the work proposed as well as expected results and possible shortfalls.

The notice of award, if any, resulting from this solicitation shall be posted on the OHA website: www.oha.org/solicitations and SPO website <http://spo3.hawaii.gov/notices/notices>.

END OF SECTION

SECTION 2

General Requirements

2.1 General Requirements

A. Principal Place of Business

The brokerage firm shall maintain a principal place of business located in this State from which the brokerage firm conducts business and where the brokerage firm's books and records are maintained. The Place of business shall be in compliance with Chapter 467, HRS, and Chapter 99, HAR.

B. Furnishing Proof of Compliance

The Offeror(s) are advised that if awarded a Contract under this solicitation, the Offeror shall be required to be in compliance with all laws and governing entities doing business in the STATE, including HRS §103D-310(c), and the following additional HRS Chapters:

- 1) Chapter 237, General Excise Tax Law;
- 2) Chapter 383, Hawai'i Employment Security Law
- 3) Chapter 386, Workers' Compensation Law;
- 4) Chapter 392, Temporary Disability Insurance;
- 5) Chapter 393, Prepaid Health Care Act; and
- 6) §103D-310(c), Certificate of Good Standing (hereinafter "COGS") for entities doing business in the State.

C. Hawai'i Business or Compliant Non-Hawai'i Business

The successful Offeror(s) shall be one of the following:

1. Be registered and incorporated or organized under the laws of the State of Hawai'i (hereinafter "Hawai'i business").

Hawai'i business: A business entity referred to as a "Hawai'i business" is registered and incorporated or organized under the laws of the State of Hawai'i. As evidence of compliance the Offeror shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (hereinafter "DCCA"). A Hawai'i business doing business as a sole proprietorship is not required to register with the DCCA, and therefore not required to submit the certificate. A successful Offeror's status as sole proprietor or other business entity and its business street address will be used to confirm that the successful Offeror is a Hawai'i business.

2. Be registered to do business in the State of Hawai'i (hereinafter "compliant non-Hawai'i business").

Compliant non-Hawai'i business: A business entity referred to as a "compliant non-Hawai'i business," is not incorporated or organized under the laws of the State of Hawai'i, but is registered to do business in the State. As evidence of compliance, the Offeror shall submit a CERTIFICATE OF GOOD STANDING.

D. Certificate of Vendor Compliance

The successful Offeror(s) shall demonstrate compliance with the following:

- 1) Tax Clearance, Form A-6
- 2) Department of Labor and Industrial Relations, Application for Certificate of Compliance, Form LIR#27; and
- 3) Certificate of Good Standing issued by the DCCA.

The successful Offeror(s) may demonstrate compliance of the above by using the Hawai'i Compliance Express (hereinafter "HCE"). The HCE services allow business to register online through a simple wizard interface at:

<http://vendors.ehawaii.gov/hce/splash/welcome.html>.

The HCE provides the successful Offeror(s) with a "Certificate of Vendor Compliance" with current compliance status as of the issuance date, accepted for both contracting purposes and final payment. Businesses that elect to use the HCE services will be required to pay an annual fee of \$12.00 to the Hawai'i Information Consortium, LLC (hereinafter "HIC").

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

E. Funding Sources and Period of Availability

The sources of funding for the OHA's Trust Funds, as stipulated in the OHA's Annual Budget for Fiscal Year (hereinafter "FY") 2018, is from July 1, 2017 to June 30, 2018. The award of this Contract is subject to the availability of these funds. Any and all supplemental agreement(s) for additional funds shall be subject to the availability of funds.

F. Multiple or Alternate Proposals (Refer to HAR §3-122-4)

- Allowed Not allowed

G. Single or Multiple Contracts to be Awarded (Refer to HRS §103D-322)

- Single Multiple Single & Multiple

- H. Single or Multi-Term Contracts to be Awarded (Refer to HRS §103D-315)
 Single term (2 years or less) Multi-term (more than 2 years)

I. Contract Terms

Initial term of Contract:	Twenty-four (24) months
Length of each extension	Up to twelve (12) months, may be less than twelve (12) months when it is in the best interest of the OHA
Maximum length of Contract:	Sixty (60) months

J. Conditions for Contract Extensions

The Contract for the proposed services may be extended without the necessity of re-procuring, subject to appropriation and availability of the OHA funds, continued need for the services, and the OHA's determination of satisfactory performance of the contracted organization, unless the Contract was terminated.

The option to extend the service will be offered in writing by the OHA prior to the expiration of the Contract. No supplementary agreement shall be binding upon the OHA until the supplemental agreement has been fully and properly executed by all parties thereto prior to the start date of the supplemental agreement. The contracted organization shall not provide any services until the supplemental agreement is fully and properly executed.

The Contract resulting from this RFP is intended to commence in September 2017 and expire twenty-four (24) months later, subject to the availability of funds. Unless terminated, the Contract may be extended by a written amendment signed by both parties for up to twelve (12) months each time when in the best interest of the OHA, not to exceed a maximum period of sixty (60) months. The amount of money to be contracted under this Contract may be adjusted at the beginning of each extension period and shall be subject to appropriation and availability of funds.

When the interest of the OHA or the Contractor so require, the OHA or the Contractor may terminate the Contract for convenience by providing forty-five (45) calendar days prior written notice to the other party.

K. Additional Services and Fees

For services not described in the Contract, the Contractor and the OHA shall negotiate for additional needed services and fees which may arise during the course of the Contract. All agreements shall be in writing, executed by all parties, and shall be attached to the Contract as an amendment to expire at the same time as the original Contract or subsequent extension period.

L. Other Financial Related Materials - Accounting System

To determine the adequacy of an interested Offeror's accounting system, as described under the administrative rules, the Offeror shall submit a copy of their most recent financial audit as part of the proposal application.

M. Laws, Rules, Ordinances and Regulations

Reference to Federal, State, City, and County laws, ordinances, rules and regulations, and standard specifications shall include any amendments thereto in effect as of the date in this RFP.

2.2 Insurance

Prior to the Contract start date, the successful Offeror shall procure at its sole expense and maintain insurance coverage acceptable to the OHA in full force and effect throughout the term of the Contract. The successful Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) prior to a Contract. The type of insurance coverage is listed as follows:

A. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities, or contractual liability by the successful Offeror, its employees, and subcontractors during the term of the Contract.

This insurance shall include the following coverage and limits specified or required by any applicable law:

- 1) Bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence;
- 2) Personal and advertising injury of \$1,000,000 per occurrence; and
- 3) With an aggregated limit of \$2,000,000.

The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The successful Offeror shall be responsible for payment of any deductible applicable to this policy.

B. Automobile Liability Insurance

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.

C. Workmen's Compensation Coverage

The policy shall include coverage required by the State of Hawai'i and include Part B coverage as follows: Employers Liability with limits of \$100,000 for each accident, \$500,000 disease policy limit, and \$100,000 disease policy limit per employee.

D. Professional Liability Insurance

Professional liability insurance policy shall be maintained with a limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate which shall provide for losses as a result of the successful Offeror's negligent acts, errors or omissions.

E. The Certificate of Insurance shall contain the following clauses:

- 1) "Added insured – State of Hawai'i, the OHA, its Trustees, OHA's employees, representatives and agents."
- 2) "It is agreed that any insurance maintained by OHA shall apply in excess of, and not contribute with, insurance provided by this policy."

Failure of the successful Offeror to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the OHA to exercise any or all of the remedies provided in the Contract (including without limitation, terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the successful Offeror's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the successful Offeror shall be responsible for the full and total amount of any damage, injury, or loss caused by the successful Offeror's negligence or neglect in the provision of services under the Contract.

2.3 HRS §97: Limitations of Lobbying Activities

Per HRS §97-1(7): "Lobbying means communicating directly or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence legislative or administrative action or a ballot issue".

Per HRS §97-5: "No lobbyist shall accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action".

Therefore, anytime the Offeror, whose time is spent researching data or information specific to the testimony to be provided, drafting and providing testimony or participates in discussions with legislators or government employees or officials in support or opposition of any pending legislation, is not allocable to State Contracts and cannot be charged to the OHA for the purposes of the contracted services. The time spent in such lobbying activities

must be cost-allocated and cannot be paid for by the State and/or the OHA's funds. Such activities are clearly not within the scope of the Contract, nor are they allowed to be within the scope.

2.4 Wages, Hours, and Working Conditions

All Offerors for service Contracts shall comply with Section §103-55, HRS, which provides as follows:

Wages, hours, and working conditions of employees of the Offeror supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any Contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed shall be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

No Contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of Contract to perform services shall result in cancellation of the Contract, unless such noncompliance is corrected within a reasonable period as determined by the Procurement Officer. Final payment of a Contract or release of bonds or both shall not be made unless the Procurement Officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the Contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all Contracts to perform services in excess of \$25,000, including Contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of Section 76-16, paragraphs (7), (8), and (9) of Section 46-33, and paragraphs (7), (8), and (12) of Section 76-77, HRS.
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

2.5 Specific Qualifications and Requirements

- A. The Offeror's requirements shall include, but may not be limited to, the following:
1. The Offeror must be a Licensed Real Estate Brokerage with State of Hawai'i Department of Commerce and Consumer Affairs' (hereinafter "DCCA") Real Estate Branch for a minimum of ten (10) years.
 2. All Broker(s), property manager(s) and staff assigned to this Contract shall have prior experience in multi-property portfolios.
 3. All Offeror's brokers, property managers and agents assigned to this Contract shall be active Real Estate Brokers, Salespersons, and licensees.
 - a. All brokerage licensees and staff shall not have been convicted of any felonies and any "white collar" or financial crimes in nature.
 4. The Offeror's Leasing Broker/Agent(s) assigned to this Contract shall have prior experience in leasing industrial, office and commercial retail/restaurant leasing.
- B. The Offeror's qualifications shall include, but may not be limited to, the following:
1. The Offeror shall demonstrate prior experience/transactions with various State of Hawai'i departments or other self-sufficient State Agency (i.e. University of Hawai'i, Aloha Stadium Authority, Hawai'i Community Development, OHA, etc.) in the past five (5) years.
 2. The Offeror shall provide a list of properties and their description whom they have had prior experience with the State or Hawai'i or other self-sufficient State Agency (i.e. University of Hawai'i, Aloha Stadium Authority, Hawai'i Community Development, OHA, etc.) as a client.
 3. The Offeror's Leasing Broker/Agent(s) assigned to this Contract shall continually have up-to-date market trends and leasing comparable studies in the industrial, office and commercial retail/restaurant sectors available to share with the OHA.
 4. The Offeror shall have or shall hire staff dedicated to creating, preparing, and delivering all accounting and financial reports to the OHA.
 5. Proficiency with MS Word, MS Excel, MS Project, and Adobe Acrobat.

2.6 Economy of Presentation

Proposals shall be prepared in a straightforward and concise manner and describe the offering(s) and capabilities in a format that is reasonably consistent and appropriate to the purpose. Emphasis shall be on completeness and clarity of content. If any additional

information is required by the OHA regarding any aspect of the Offeror's proposal, it shall be provided within seven (7) business days after request.

2.7 Oral Presentation

Respondents to this RFP may be required to make an oral presentation of their proposal to ensure a thorough and mutual understanding. The OHA shall schedule the time and location for these presentations (if required) which occurs normally within ten (10) days following the proposals due date.

Failure to provide an oral presentation of their proposal to the OHA will result in the Offeror's proposal being rejected without further consideration.

2.8 Offeror's Authority to Submit an Offer

The OHA shall not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

2.9 Proposal Preparation Costs

All costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The OHA shall not reimburse such costs.

2.10 Tax Liability

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. The Contractor is advised that they are liable for the Hawai'i General Excise Tax (hereinafter "GET") at the current 4.712% for sales made on O'ahu, and at the 4.167% rate for the islands of Hawai'i, Maui, Moloka'i, and Kaua'i. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, the Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

The Offeror shall submit its current Federal I.D. No. and Hawai'i GET License I.D. number in the space provided on Attachment 1 - Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that the Offeror will pay such taxes on all sales made to the OHA.

END OF SECTION

SECTION 3

Scope of Work and Specifications

3.1 Background

In June 2012, the Office of Hawaiian Affairs purchased the property formerly known as the Gentry Pacific Design Center now known as Nā Lama Kukui (hereinafter “NLK”). The property, built in circa 1925, is a multi-tenant mixed-use commercial building which features street frontage along North Nimitz Highway (primary) and Iwilei Road (secondary). NLK has two (2) primary floors and a small third floor area (used as executive offices), having an aggregate gross building area of approximately 183,238 square feet and a gross leasable area of approximately 130,633 square feet.

The OHA desires to retain a property manager and leasing agent contractor to provide leasing and property management services for the property known as Nā Lama Kukui, located at 560 North Nimitz Highway, Honolulu, Hawai‘i 96817.

3.2 Overview and Need

A. Overview

Nā Lama Kukui (formerly known as the Gentry Pacific Design Center) comprises an aggregate gross building area of approximately 183,238 square feet and a gross leasable area of approximately 130,633 square feet. The structure, built in circa 1925, is a multi-tenant mixed-use commercial building which features street frontage along North Nimitz Highway (primary) and Iwilei Road (secondary). NLK has two (2) primary floors and a small third floor area (used as executive offices).

B. Need

1. Leasing for Nā Lama Kukui

In order to maximize the profitability of NLK, the OHA needs a Leasing Broker to procure tenants to lease available spaces. The Leasing Broker shall report to the OHA’s Commercial Property Management staff for all leasing activities that shall include, but may not be limited to, lease negotiations, property marketing, tenant move ins/outs, lease document delivery, and lease administration.

2. Property Management for Nā Lama Kukui

The OHA needs a licensed Property Manager to oversee the day to day management, coordinate repairs/improvements as necessary, preserve the value of NLK and provide accurate financial accounting and reporting to the OHA.

3.3 Timeframe

The selected Offeror shall have twenty-four (24) months from execution to complete the scope of work.

3.4 Scope of Work

The following section reflects the OHA's substantive expectations relative to specific areas of leasing and managing NLK. The OHA Contract Coordinator will meet/communicate with the successful Offeror to clarify any part of this sections as requested by the successful Offeror. The requirements shall include, but may not be limited to:

A. LEASING

EXCLUSIVE AGENCY TO LEASE PROPERTIES.

The Offeror shall perform the following leasing duties with respect to NLK on terms and conditions satisfactory to the OHA and in accordance with the OHA's Commercial Property Management Standard Operating Procedures (hereinafter "SOP") that shall include, but may not be limited to, the following:

1. General Duties

- a. As Leasing Agent, engage in the business of leasing the OHA properties by managing, coordinating, and supervising the conduct of the ordinary and usual business affairs pertaining to commercial leasing;
- b. Research, evaluate, and provide comprehensive market analysis, as requested by the OHA;
- c. Procure prospective Lessees to lease NLK;
- d. Negotiate terms on behalf of, or in conjunction with, the OHA in lease, license, right-of-entry or other agreement negotiations;
- e. Collect security deposits (if applicable) and Certificates of Insurance and verify with agreed upon terms;
- f. Make recommendations to the OHA on the following:
 - 1) Lease terms;
 - 2) Base rent;
 - 3) Options and extension terms;
 - 4) Tenant improvement requests;
 - 5) Capital improvements;
 - 6) Special conditions; and
 - 7) Marketing of NLK.
- g. Meet with the OHA on a bi-monthly basis to present and submit a bi-monthly leasing report, all leasing activity and commercial real estate market updates that may impact NLK; and

- h. Assist the Property Manager with Tenant move ins and move outs in accordance with the terms of the relative lease, license, right-of-entry, or other agreement.

2. Marketing

- a. The successful Offeror, at its sole expense, shall fully cooperate with the brokerage community and implement a comprehensive marketing program. The marketing program shall include, but may not be limited to the following components:
 - 1) Direct Tenant Solicitation: The successful Offeror shall commence a canvassing campaign, including its current clients;
 - 2) Broker Solicitation: The successful Offeror shall alert the commercial real estate community to the specific details of the availabilities by distributing marketing materials on a monthly basis to other brokers;
 - 3) Internet: The successful Offeror shall utilize its website to provide worldwide access to information about specific listings and background information about the property;
 - 4) LoopNet: NLK shall be listed as a premium listing on LoopNet, the online commercial property listing service used most by the commercial real estate community in Hawai'i. LoopNet has the broadest market coverage of any listing service on the Internet and delivers the widest possible exposure for NLK listings;
 - 5) Listings Email: The successful Offeror shall distribute a monthly listings report showing information for all current listings. This report is distributed via email once a month to the commercial real estate brokerage community in Hawai'i. This report is one of the most productive marketing resources available due to the number of people it reaches and reliance on it throughout the marketplace;
 - 6) Email Marketing: The successful Offeror, at its sole expense, shall utilize web-based email marketing to create and manage the targeted email campaigns for the property portfolio. The Offeror shall use a service that maximizes the property portfolio exposure and website hits/views can be tracked;
 - 7) Property Web Page: An individual web page shall be created for NLK. This link can be placed on all email and printed information as well as linked from an individual broker's web page; and
 - 8) Signage: The successful Offeror shall strategically place signs on the properties to obtain maximum exposure.
- b. All marketing material and strategies must be approved by the OHA, prior to the successful Offeror executing or releasing any marketing material to the public.

3. Lease Termination Agreements

When and if applicable and specified by the OHA, negotiate lease termination agreements with terminating tenants on terms and conditions satisfactory to the OHA.

4. Relocation Agreements

When and if applicable and specified by the OHA, negotiate lease relocation agreements with any tenant on terms and conditions satisfactory to the OHA. Each fully executed Relocation Agreement shall be considered an "Existing Lease" for purposes of determining a commission. A leasing commission for "Additional Space" shall be permitted to the extent that the square footage of the terminated tenant's relocation premises exceeds the square footage of the terminated tenant's original premises.

B. PROPERTY MANAGER

PROPERTY MANAGEMENT.

On terms and conditions satisfactory to the OHA, in accordance with the SOP, and at the OHA's sole cost, perform the following management duties with respect to NLK:

1. General Duties

- a. As the Property Manager, engage in the business of managing NLK. Manage, coordinate, and supervise the conduct of the ordinary and usual business affairs pertaining to commercial property management;
- b. Identify, recommend, and coordinate services required to maintain NLK, at the OHA's sole expense;
- c. Provide accurate accounting of all property operations;
- d. Meet with the OHA on a bi-monthly basis to present and discuss all relevant operations, incidents, actions, and events; and
- e. The Property Manager shall submit monthly reporting, including:
 - 1) Financial reports;
 - 2) General ledgers;
 - 3) Accounts receivables;
 - 4) Accounts payables;
 - 5) Check ledgers;
 - 6) Rent roll;
 - 7) Delinquency reports;
 - 8) Incident reports; and
 - 9) All operations activities.

2. Rent Bills and Collections

- a. Prepare and deliver to all tenants, persons, firms and entities occupying space on the OHA property under leases, licenses, rights-of-entries and/or other agreements in effect from time to time monthly bills setting forth rent, escalation payments, and other amounts payable by such Tenants under their respective leases, licenses, rights-of-entries, and/or other agreements. All rent collected by the Property Manager shall be promptly deposited in the operating accounts or the OHA trust accounts managed by the Property Manager; and
- b. Take actions to collect rent, to enforce the rights and remedies of the OHA under the terms set forth by the leases, licenses, rights-of-entries and/or other agreements or to protect the interests of the OHA that shall include, but may not be limited to: the preparation and delivery to Lessees, all "late payment", default and other appropriate notices, requests, bills, demands, and statements. Upon the OHA's approval, the Property Manager may retain counsel, collection agencies and such other persons and firms to enforce, by legal action, the rights and remedies of the OHA against any Lessee who is in default of any term or obligation set forth under a lease, license, right-of-entry and/or other agreement.

3. Employees

- a. The Property Manager, at the Property Manager's sole expense, shall employ personnel it deems necessary for the operation and maintenance of the property. The Manager shall pay such personnel wages and fringe benefits, and cover all the expenses associated with such employees. The Manager shall direct, supervise, and manage all personnel hired by it in the performance of their duties;
- b. The Manager, at the Property Manager's sole expense, shall maintain a fidelity bond insuring all employees handling monies on behalf of the OHA, in an amount not less than ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00). A certificate of insurance will be made available to the OHA one (1) week after signing the Contract. The Property Manager shall also maintain adequate workers compensation insurance for any employees who will be engaged in work at the property; and
- c. The Property Manager, at the Property Manager's sole expense, shall cause to be paid all wages and other benefits payable to the employees hired by the Property Manager, and maintain payroll records, remit to proper governmental authorities required income and social security withholding taxes, unemployment insurance payments, workmen's compensation payments and such other amounts with respect to the wages and other benefits payable to such employees as may be required under applicable laws, together in each case with required reports or other filings, and obtain, maintain and administer medical, disability and other insurance benefits and

other fringe benefits as may from time to time be required under any union or other agreements or arrangements pertaining to the Property Manager's employment of such personnel.

4. Professionals and Contractors

Procurement of Third-Party Contractors for Scheduled Maintenance

The Property Manager shall identify and, with the prior approval of the OHA and at the OHA's expense, enter into Contracts with third-party contractors for scheduled maintenance and supervise the administration and monitor the performance of work and/or services under such Contracts. Due care shall be exercised by the Property Manager in the selection of such professionals and other independent contractors. Upon procuring third-party service contractors, the Property Manager shall abide with the following:

- a. The Property Manager shall procure, except in cases of emergencies or when impractical or commercially unreasonable to do so, three (3) qualified bidders, for each service Contract. The Property Manager may, if practicable, combine two (2) or more subcontractors under one (1) Contract;
- b. The Property Manager, in the exercise of its reasonable judgment, shall not be required to accept the low bid if it does not provide the best value by meeting the Property Manager's criteria; and
- c. The OHA shall have final approval of all third-party service contractors.

5. Maintenance

- a. The Property Manager shall regularly use routine standards to maintain existing conditions of NLK at the OHA's expense;
- b. To the extent of the capacity of all equipment and systems located in or servicing the property, the Property Manager, shall use diligent efforts consistent with the existing conditions of the property to cause, at the OHA's expense, all such equipment and systems to be operated and maintained in good repair and cause to be provided or made available to the tenants those services which the OHA is required to make available under the property leases;
- c. The Property Manager shall enter into such service and maintenance Contracts as the Property Manager shall deem appropriate for the operation and maintenance of the property that shall include, but may not be limited to the following:
 - 1) Equipment and systems located in or servicing the property;
 - 2) Common area landscaping (i.e. maintaining plant, shrubs, and tree trimming);
 - 3) Common area cleaning;
 - 4) Common area utilities;

- 5) Exterior window cleaning;
- 6) Elevators (two (2) personnel and two freight elevators);
- 7) Refuse and recycling removal;
- 8) Security (property and common areas only);
- 9) Food and beverage vending machines; and
- 10) Pest extermination.

d. The Property Manger shall purchase in reasonable quantities and at reasonable prices all supplies, materials, tools and equipment as the Property Manger shall deem necessary or appropriate for the operation and maintenance of the property.

6. Repairs

- a. The Property Manager, at the OHA's expense, shall cause such ordinary and necessary repairs to be made to the property and all equipment and systems located in or servicing the property;
- b. The Property Manager, at the OHA's expense, shall cause such interior alterations and decorations to be made in the common areas of the property, as the Property Manager shall deem necessary or advisable for the operation and maintenance of the property; and,
- c. During an emergency situation(s), the Property Manager, at the OHA's expense and without the OHA's prior approval and without limitation as to cost, may cause to be made all repairs which are immediately necessary for the preservation or protection of the property, the safety of the OHA, tenants, and other persons in or about the property, or are otherwise required to avoid suspension of necessary services in the property, however, the Property Manager shall, before causing any such emergency repair to be made, use reasonable efforts under the circumstances to notify the OHA of the emergency situation within twenty-four (24) hours or by the first working day in order to try and obtain its approval of such repair.

7. Supervision of Tenants

- a. The Property Manager shall monitor tenants' compliance with the terms and provision of their respective leases, licenses, rights-of-entries and/or other agreements that shall include, but may not be limited to the Rules and Regulations of the property. The Property Manager shall notify, in writing, the respective tenants and the OHA of violations of such leases;
- b. The Property Manager shall enforce the OHA's rights and remedies in the event of tenant default on the terms and provisions of their respective leases, licenses, rights-of-entries and/or other agreements;
- c. The Property Manager shall plan and coordinate the moving in and moving out of the tenants in the property in accordance to the terms of the lease;
- d. The Property Manager shall monitor all tenant improvement activities to the premises in accordance to the terms of the lease, and in compliance with the

- rules and regulations of the property and all State, Federal and City and County applicable laws, statues, and codes; and
- e. The Property Manager shall attend to and attempt to resolve complaints, dispute, or disagreements by or among tenants.

8. Public Relations

The Property Manager shall represent the OHA in connection with matters of general public interest which pertain to the property and shall attempt to amicably resolve any complaints, disputes or disagreements in connection therewith, all of the foregoing actions to be taken by the Property Manager after notice and discussion with the OHA and, to the extent the OHA directs, subject to the OHA's reasonable control.

9. Compliance

- a. At the OHA's sole cost and expense, the Property Manager shall cause to be taken all such appropriate actions in and about or affecting the property, as the Property Manager shall deem advisable, to comply with legal requirements that shall include, but may not be limited to, environmental requirements as applicable, property, building, zoning codes and requirements of any Board of Fire Underwriters or similar agency; and,
- b. Notwithstanding the cost or expenditure limitations set forth elsewhere in this Agreement, the property manager may, at the OHA's expense and without the OHA's prior approval, take or cause to be taken any such actions, without limitation as to cost, if failure to do so would or might, in the Property Manager's judgment, expose the OHA or the Property Manager to criminal liability or civil penalty; provided, however, that in each such instance the manager shall, before taking or causing to be taken any such action, use reasonable efforts under the circumstances to notify the OHA of the need for such action and obtain the OHA's approval.

10. Payment of Expenses

The Property Manager shall pay all property costs and expenses incurred that shall include, but may not be limited to, the Property Manager's compensation with funds from the operating accounts. The Property Manager shall use its diligent efforts to obtain and credit to the account of the OHA in each case, all discounts, rebates and other favorable financial terms which may be granted in respect of any costs or expense the Property Manager shall incur.

11. Due Diligence and Audits

When requested by the OHA, the Property Manager shall assist in due diligence work to prepare the property for sale, for refinancing, or to provide assistance in connection with financing, facilities, lease or internal audits, and the OHA agrees

to compensate the Property Manager for such services at a fee mutually agreed upon in writing prior to the delivery of these additional services.

12. Operating Budgets

- a. The Property Manager shall prepare and submit to the OHA, a pro forma budget for the operation and maintenance of the property. The Property Manager will manage the property consistent with and subject to the cost limitations set forth in the OHA's approved budget.
- b. The Property Manager shall prepare and submit to the OHA for its approval a proposed pro forma budget of revenues and costs pertaining to the operation and maintenance of the property during each Fiscal Year. Each such budget shall be substantially in the same form as the approved budget in effect for the prior Fiscal Year and shall set forth project expenditures on annual and monthly basis and shall not, except for informational purposes, include estimates for costs and expenses for which the OHA will be reimbursed by tenants under leases.

13. Property Takeover Checklist

The Property Manager shall turnover to the OHA Coordinator at 12:00 Noon HST on the last day of the Contract such items that shall include, but may not be limited to:

- a. All keys to all properties and facilities;
- b. Alarm codes for needed entry for any facilities or buildings;
- c. Current rent roll, delinquent rent list, prepaid accounts and escrow holdings;
- d. Names, addresses and contact information of owner(s);
- e. Lists of actions taken on delinquent rent list to include such information as five (5) day notices, court date, attorney used, etc.;
- f. Copies of all current month's deposit slips with detail for both the operating/rental & escrow accounts;
- g. List all movement for current month to include new move ins and recent move outs;
- h. Current vacancy list, including status of each unit;
- i. List of pending leases, including current leasing incentive pledged;
- j. List of any rental concession promised to current tenants;
- k. List of and funds for any pending deposit refunds or rent credits due to previous tenants;
- l. All account balances for the property shall include, but may not be limited to: operating account, reserve account, and petty cash;
- m. All current lender(s) correspondence shall include, but may not be limited to: most recent payment detail of mortgage payment(s) to including principle, interest, and loan escrow amounts;
- n. Copies of all current insurance policies;

- o. Detailed information of any pending claims on the property, whether reported to insurance or not;
- p. Copy of last physical inspection by lender and any physical needs assessment provided by lender;
- q. Aged payables list and originals of all unpaid invoices;
- r. All blue prints, plans, surveys, appraisals and environmental inspections including lead paint;
- s. Any maps of service valves (i.e. water shut-off, irrigation sprinklers controls, fire suppressant systems, etc.) on property;
- t. Copies of all inspection reports, warnings, violations, notices given to the Property Manager during management period from any government agency (i.e. EPA, DEQ, City, County, Federal, State, etc.);
- u. Copies of all utility accounts, including account numbers;
- v. Copies of all property Contracts that shall include, but may not be limited to:
 - 1) All advertising sources;
 - 2) Grounds maintenance;
 - 3) Security patrol services;
 - 4) Alarm services;
 - 5) Waste removal;
 - 6) Laundry equipment/facility;
 - 7) Telephone and/or internet service;
 - 8) Exclusive marketing agreements;
 - 9) Rental or lease to purchase equipment such as copiers, electronics, and office furniture, and maintenance Contracts for copiers, computers and any other Contract for services or equipment;
- w. All software paid for by the OHA, including original licenses and cds.
- x. Passwords to access all software used under previous management;
- y. Current back up of all software for the property, accounts payable software;
- z. All accounting records, including original paid invoices while under previous manager; and
- aa. All communication devices under property accounts, i.e. pagers, two-way radios, cell phones, etc.

C. SHORT TERM LEASE AND RENTAL DUTIES

On terms and conditions satisfactory to the OHA and in accordance to the SOP, the successful Offeror and property management shall perform the duties with respect to short-term leases, licenses, rights-of-entries, or other agreements of NLK. "Short-term" shall be defined as equal to, or shorter than, ten (10) days from the commencement date through the termination date of its respective agreement.

1. The Leasing Agent and the Property Manager shall notify the OHA promptly of any and all requests for short-term uses of the properties.

2. The OHA shall conduct negotiation of terms directly with each prospective lessee, licensee, or grantee, and handle the document processing and delivery of all pertinent documents.
3. The Property Manager shall assist and coordinate short-term lessee, licensee, or grantee with access and enforce the terms of the agreement and represent the OHA with respect to the OHA's rights and remedies in the event of lessee, licensee, or grantee default.

END OF SECTION

SECTION 4

Proposal Format

4.1 General Instructions for Completing Applications

A. Submission

When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks identified in this RFP. The Offeror's proposal must demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in this RFP.

The submission of a proposal shall constitute the Offeror's indisputable representation of compliance with every requirement of the RFP and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work to the Offeror.

An Offeror shall submit one (1) original proposal, marked "ORIGINAL", four (4) copies of the original marked "COPY", and one (1) cd and/or flash drive containing the submitted proposal in a portable document form ("pdf"). It is imperative that an Offeror submit only one (1) original with the required number of copies. The outer envelope or packaging of the proposals shall be **sealed and clearly marked with the RFP number** and title, the Offeror's name, address, email address and telephone number.

All corrections to a proposal shall be initialed in ink by the person signing the proposal for the Offeror. Any illegible or otherwise unrecognizable corrections or initials may cause the rejection of the proposal.

Before submitting a proposal, each Offeror must:

1. Thoroughly examine the solicitation documents. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documentation.
2. Be familiar with Federal, State, and County, laws, ordinances, rules and regulations that may in any manner affect cost, progress, or performance of the work.

Proposals shall be submitted to the OHA in the prescribed format outlined in this RFP. A written response is required for each item unless indicated otherwise. No supplemental literature, brochures, or other unsolicited information should be included in the proposal packet.

4.2 The Proposal Application Sections

- A. The proposal forms shall be completed and submitted to the OHA by the required due date and time and in the form prescribed by the OHA. Electronic mail and facsimile transmissions shall not be accepted.
- B. The Offerors shall submit their proposals under the Offeror's exact legal name that is registered with the State of Hawai'i DCCA and shall indicate that this is its exact legal name. Failure to do so may delay proper execution of the Contract.
- C. The Offeror's authorized signature shall be an original signature in ink. If the proposal is unsigned or the affixed signature is a facsimile or a photocopy, the proposal shall be automatically rejected. If the proposal is not signed by an authorized representative as shown on the corporate resolution, the proposal shall be automatically rejected.
- D. A proposal security deposit is not required for this RFP.
- E. Proposal shall be typed on plain, white, letter-size paper with one-inch margins on all sides in twelve (12) point font and printed on one (1) side only.
- F. Proposals shall be submitted on white, 8 ½" x 11" paper and shall be bound by a spiral binding. **Do not submit proposals in a three (3)-ring binder.** Submission of a proposal in this manner is disfavored by the OHA.
- G. Tabbing of sections is required.
- H. Documents that require submission on 11" x17" paper to be legible is allowable.
- I. The numerical outline for the application, the titles/subtitles, and the Offeror name and RFP identification information on the top right hand of the corner of each page should be included.
- J. Consecutive page numbering of the proposal application should begin with page one (1) and end with the last numbered page of the complete proposal.
- K. Other supporting documents may be submitted in an Appendix, including visual aids, to further explain specific points in the proposal; if used, they should be referenced.

4.3 Required Review

Before submitting a proposal, each Offeror shall thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of this RFP. The Offeror shall also become familiar with State, Federal, and County laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

Should the Offeror(s) find defects and questionable or objectionable items in this RFP, the Offeror(s) shall notify the OHA's Procurement Unit in writing prior to the deadline for written questions specified in this RFP. See Section 1.7 RFP Schedule and Significant Dates. This will allow the issuance of any necessary corrections and/or amendments to this RFP by addendum, and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which award could not be made.

4.4 Proposal Forms

To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions provided in this RFP or in any subsequent addendum may be rejected without further consideration.

- A. Offer Form, Page OF-1. Offer Form, OF-1 is required to be completed using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs in the appropriate space on Offer Form, OF-1 (Section 7, Attachment 1). Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate the Offeror's intent to be bound.

- B. Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (Section 7, Attachment 2). The price shall be the all-inclusive cost, including the GET, to the OHA. No other costs will be honored. Any unit price shall be inclusive.

4.5 Proposal Contents

Proposals must:

- A. Include a cover letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
- B. Include a signed Offer Form OF-1 with the complete name and address of the Offeror's firm and the name, mailing address, telephone number, and fax number of the person the OHA should contact regarding the Offeror's proposal. See Section 7, Attachment 1, Offer Form OF-1, for a copy of the form.
Include a completed Offer Form OF-2. See Section 7, Attachment 2, Offer Form OF-2, for a copy of the form.
- C. If subcontractor(s) will be used, append a statement to the cover letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
1. The general scope of work to be performed by the subcontractor; and

2. The subcontractor's willingness to perform for the indicated.
- D. Provide all of the information requested in this RFP in the order specified.
- E. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.

4.6 Proposal Requirements

A. Mandatory Administrative Requirements

1. Offer Forms OF-1;
2. Offer Form OF-2;
3. Cover Letter in the form of a standard a business letter and submitted on the Offeror's official business letterhead and signed by a duly authorized representative;
4. Table of Contents;
5. Tabbing of Sections;
6. Executive Summary – provides a program overview; and
7. Licenses shall be provided for the following personnel who will be assigned to this Contract:
 - a. Broker(s) in Charge or Principle Broker(s) – Hawai'i Real Estate Broker License.
 - b. Property Manager(s) and Agent(s) – Hawai'i Real Estate Salesperson License.

B. Proposal Requirements

1. Section 1 – Experience
 - a. Prior experience related to the RFP.
 - b. Past Projects.
 - c. Knowledge of culture, market trends (local, state and national), managing and leasing properties.
 - d. Letters of recommendations (two (2) minimal for lead and each subcontractor).

2. Section 2 – Action Plan
 - a. Overall Timeline.
 - b. Understanding of the purpose and scope of the RFP.
 - c. Incorporating all elements from the scope of work.
3. Section 3 – Price Proposal
 - a. Cost breakdown associated with the scope of work.
 - b. Pricing compatible with industry standard.
4. Section 4 – Staffing Qualifications and Organization
 - a. Resumes of staff assigned to the project.
 - b. Licenses of staff assigned to the project.
 - c. Organizational Chart.
 - d. Most recent Financial Statement of all firms in Offeror’s team.
 - e. HCE Certificate of Vendor Compliance for all firms in Offeror’s team (as stated in Section 2.1).

4.7 Receipt and Register of Proposals

Proposals will be received and receipt verified by two (2) or more procurement officers on or after the date and time specified in Section 1, or as amended.

The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award pursuant to section §103D-701, HRS.

4.8 Best and Final Offer

If the OHA determines a Best and Final Offer (hereinafter “BAFO”) is necessary, it shall request one (1) from the Offeror. Any BAFO received after the deadline or not received shall not be considered.

4.9 Modification Prior to Submittal Deadline or Withdrawal of Offers

The Offeror may modify or withdraw a proposal before the proposal due date and time.

Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.

4.10 Mistakes in Proposals

Mistakes shall not be corrected after award of Contract.

When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal.

If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

Once discussions are commenced or after BAFOs are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

If discussions are not held, or if the BAFO upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

If discussions are not held, or if the BAFO upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the OHA. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

END OF SECTION

SECTION 5

Evaluation Criteria

5.1 Evaluation of Proposals

An evaluation committee approved by the OHA's Ka Pouhana/CEO/HOPA or designee will evaluate all responsive and responsible proposals. The evaluation of such proposals will be based solely on the evaluation criteria set out in this RFP. The evaluation committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three (3) highest ranked, responsible Offerors.

5.2 Initial Evaluation

Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. The proposals that do meet the mandatory requirements will be evaluated and scored in accordance with the criteria, Section 5.4 – Evaluation Sections, by members of an Evaluation Committee.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three (3) responsive and responsible Offerors who submitted the highest-ranked proposals. If there are fewer than three (3) acceptable or potentially acceptable proposals, the OHA shall not be required to hold discussions with the Offerors who submitted unacceptable proposals.

Discussion may be conducted with priority listed successful Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the best and final offer, if necessary.

5.3 Administrative Requirements Check

The OHA shall conduct an initial review to ensure that all proposals meet the minimum threshold requirements. Proposals shall be reviewed to ensure submittal of all required attachments, certifications, forms, and narrative sections. Mandatory requirements are determined by a pass or no pass criteria. Any proposals received by the OHA that do not include all of the mandatory requirements listed below, shall be deemed unacceptable and shall not pass. Statements which indicate that mandatory certifications will be submitted upon Contract award shall be unacceptable.

- A. Mandatory Administrative Requirements for this RFP:
1. Offer Forms OF-1;
 2. Offer Form OF-2;
 3. Cover Letter in the form of a standard a business letter and submitted on the Offeror's official business letterhead and signed by an authorized representative;
 4. Table of Contents;
 5. Tabbing of Sections;
 6. Executive Summary; and
 7. Licenses for the following personnel that will be assigned to this Contract:
 - a. Broker(s) in Charge or Principle Broker(s) – Hawai'i Real Estate Broker License.
 - b. Property Manager(s) and Agent(s) – Hawai'i Real Estate Salesperson License.

5.4 Evaluation Sections

Category

Section 1- Experience	Possible Points	35 Maximum Points
<ul style="list-style-type: none"> • Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrated prior experience related to developing management plans and leasing strategies for other clients with similar properties in nature and complexity to the OHA's Nā Lam Kukui property portfolio. 	10	
<ul style="list-style-type: none"> • Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrated prior experience related to networking and collaborating with other brokers, prospective clients, and respective business owner communities relative to the types of properties in the OHA's Nā Lam Kukui property portfolio. 	10	
<ul style="list-style-type: none"> • Up to 8 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates the capability to effectively procure, manage, and coordinate 3rd party vendors for common maintenance tasks to protect and enhance the value of the property portfolio. 	8	

<ul style="list-style-type: none"> Up to 4 points will be awarded based on the Offeror's proposal which clearly and concisely understands and is aware that the OHA falls under the Hawai'i State policies and the procedures it must adhere to. 	4	
<ul style="list-style-type: none"> Up to 3 points will be awarded based on the Offeror's proposal that includes two (2) letters of recommendations for lead and each subcontractor. 	3	
Section 2 – Action Plan	Possible Points	25 Maximum Points
<ul style="list-style-type: none"> Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrated how it will meet the goals and objectives related to the scope of work, and how the proposed service is designed to meet the problem/need identified in the service specifications. 	10	
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrated a thorough understanding of the purpose and scope of the RFP. 	5	
<ul style="list-style-type: none"> Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely included, at minimum, ties all the elements of Section 3, Scope of Work and Specifications (executive summary, leasing summary, property management reporting/activity log and financial reports, ledgers and rent roll). 	5	
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates an intricate knowledge of local, state, and national market trends for various sectors of commercial real estate. 	5	
Section 3 – Price Proposal	Possible Points	20 Maximum Points
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror's proposal which clearly and concisely provided a cost breakdown associated with the services provided 	15	
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror's proposal which clearly and concisely adheres to the wages compatible with industry standard. 	5	

Section 4 – Staffing Qualifications and Organization	Possible Points	20 Maximum Points
<ul style="list-style-type: none"> Up to 10 points will be awarded based on the Offeror’s proposal which clearly and concisely provided the qualifications (including experience) for staff assigned to the program and has the resumes and relevant professional background/experience of each staff, including staff to manage the day-to-day operations, including the organizational chart. 	10	
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror’s proposal which clearly and concisely provided the resumes and licenses for their staff assigned to the program. 	5	
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror’s proposal which clearly and concisely included their most recent financial statement and their Certificate of Vendor Compliance. 	5	
<ul style="list-style-type: none"> TOTAL POINTS 	100	100 Maximum Points

5.5 Financial/Price Proposal Review

The financial/price proposal review will be evaluated for financial and contractual acceptability and for reasonableness of the price proposal. The proposal with the lowest cost factor shall receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower rating for cost.

The points allocated higher to higher priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price as follows:

$$\frac{\text{Price of the lowest price proposal} \times 10}{\text{Price of the proposal being rated}}$$

In determining whether a proposal is responsive, the OHA will evaluate the costs and its supporting documentation against realistic operational expenses. The OHA will also review the most recent audited statements of the Offeror.

5.6 Technical Review

The Offeror's proposal shall be in the form prescribed by this solicitation and shall contain a response to each of the areas identified that affects the evaluation factors for award.

- A. The technical proposal will be evaluated to determine if the Offeror possesses the capability to successfully perform the requirements of the solicitation. The technical criteria are shown below:
 - 1. Experience;
 - 2. Action Plan;
 - 3. Cost Proposal; and
 - 4. Staffing Organization and Qualifications.
- B. Proposals will be evaluated for technical and contractual acceptability. Proposals shall be prepared in accordance with the instructions given in the RFP and shall meet all requirements set forth in this RFP.
- C. Pursuant to section 3-122-112, HAR, Responsibility of Offerors, the Successful Offeror shall produce documents to demonstrate compliance with this section.
- D. Past Performance. The OHA may evaluate the quality of each Offeror's past performance. The assessment of an Offeror's past performance will be used as one means of evaluating the credibility of the Offeror's approach to work accomplishment in the management plan. A record of marginal or unacceptable past performance may be an indication that the promises made by the Offeror are less than reliable. Such an indication will be reflected in the OHA's overall assessment of the Offeror's proposal. However, a record of acceptable or even excellent past performance will not result in a favorable assessment of an otherwise unacceptable technical proposal.

In investigating an Offeror's past performance, the OHA may consider information in the Offeror's proposal and information obtained from other sources, including past and present customers and their employees; other government agencies, including state and local agencies; consumer protection organizations and better business bureaus; former subcontractors; and others. Evaluation of past performance is a subjective assessment based on a consideration of all relevant facts and circumstances. The OHA may seek to determine whether the Offeror has consistently demonstrated a commitment to customer satisfaction and timely delivery of quality goods and services at fair and reasonable prices.

The OHA's conclusions about the overall quality of the Offeror's past performance may be influential in determining the relative merits of the Offeror's proposal and in selecting the Successful Offeror whose proposal is considered most advantageous to the OHA.

Past performance includes the Offeror's record of conforming to specifications and to standards of good workmanship; the Offeror's adherence to Contract schedules, including the administrative aspects of performance, the Offeror's control of costs, including costs incurred for changes in the scope of services; the Offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and, generally, the Offeror's business-like concern for the interests of the client.

5.7 Evaluation Criteria

The evaluation criteria and the associated points are listed in Section 5.4 Evaluation Section. The award will be made to the most responsible and responsive Offeror whose proposal is determined to be the most advantageous to the OHA based on the evaluation section.

5.8 Kūkākūkā (Discussion with Priority Listed Offerors)

The OHA may invite priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The OHA, in its sole discretion, shall schedule the time and location for these discussions, generally within the timeframe indicated in this RFP schedule and significant dates. The OHA may also conduct discussions with priority listed Offerors to clarify issues regarding the proposal before requesting Best and Final Offers (hereinafter "BAFO"), if the OHA determines a BAFO is necessary.

5.9 Method of Award

All proposals submitted will be evaluated on the basis of the evaluation criteria listed in Section 5.4 Evaluation Section. Proposals shall conform to all terms and conditions contained in the Request for Proposals. Proposals which do not conform to all requirements expressed in this solicitation may be rejected without further evaluation, deliberation or discussion.

- A. All proposals will be reviewed for reasonableness. Offerors who are not within the competitive range will be notified that their proposals are unacceptable, negotiations/discussions are not contemplated, and any revisions of their proposals will not be considered.
- B. Award will be made to the responsive and responsible Offeror whose proposal, conforming to the solicitation and will be most advantageous to the OHA with consideration to price and other evaluation criteria set out in this RFP.

Pursuant to chapter 3-122-59 HAR, if there is only one responsible Offeror submitting an acceptable proposal, an award may be made to the single Offeror, rejected and new requests for proposals may be solicited if certain conditions are not met; the proposed procurement may be cancelled; or an alternative procurement method may be conducted.

- C. The OHA reserves the right to award a Contract on the basis of the initial offers received without discussion. Offers are solicited on an "all or none" basis. Failure to submit offers for all items and quantities listed shall be cause for rejection. Proposals should be submitted initially on the most favorable terms of a price and technical standpoint, which the Offeror can submit to the OHA.

5.10 Final Evaluation and Award

The Evaluation Committee shall re-evaluate and re-score the Priority List considering original proposal, Kūkākūkā, and any subsequent BAFO, if any. The final evaluation will be based on the same criteria as the initial evaluation. The Offeror with the highest score, and represents the greatest value and benefit to OHA and its beneficiaries, will be selected to receive the award. The RFP Coordinator will notify all other Offerors in writing that a different Offeror has been selected.

END OF SECTION

SECTION 6

Contractor Selection and Contract Award

6.1 Award of Contract

Method of Award. Award will be made to the responsible and responsive Offeror whose proposal is determined to be the most advantageous to the OHA based on the evaluation criteria set forth in the RFP. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

6.2 Proposal as Part of the Contract

This RFP and all or part of the successful proposal may be incorporated into the Contract.

6.3 Public Examination of Proposals

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to HRS §103D-701.

If a person is denied access to a State procurement record, the person may appeal the denial to the office of information practices in accordance with HRS §92F-42(12).

6.4 Debriefing

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for the award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the Contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days, as specified in HRS §103D-303(h).

6.5 Approvals

Any Contract arising out of this offer may be subject to the approval of the Department of the Attorney General, and to all further approvals, including the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

6.6 Contract Execution

The CONTRACTOR receiving award shall enter into a formal written Contract in the form as in Exhibit D – Sample Contract. No performance or payment bond is required for this Contract.

No work is to be undertaken by the Contractor prior to the effective date of Contract. The OHA is not liable for any work, Contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the Contract for the additional extension period.

6.7 Monitoring and Evaluation

The successful Offeror's performance under the Contract will be monitored and evaluated by the OHA Contract Administrator or his/her designated representative, the OHA's auditors, and/or other designated representatives.

Failure to comply with all material terms of the Contract may be cause for suspension or termination, as provided in the General Conditions included as Exhibit B in this RFP. The successful Offeror may be required to submit additional written reports, including a corrective action plan, in response to monitoring conducted by the OHA. These additional reports shall not be considered a change to the scope of work and shall continue for the duration of time as deemed necessary by the OHA.

When interest of the OHA or the Contractor so require, the OHA or the Contractor may terminate the Contract for convenience by providing forty-five (45) calendar days prior written notice to the other party.

6.8 Payment

Contract payment may be made on a quarterly basis or as determined by negotiation with the successful Offeror.

6.9 Contract Invalidation

If any provision of this Contract is found to be invalid, such invalidation will not be construed to invalidate the entire Contract.

END OF SECTION

SECTION 7

Attachments and Exhibits

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2
- Exhibit A: SAMPLE CONTRACT
- Exhibit B: GENERAL CONDITIONS

**ATTACHMENT 1:
OFFER FORM, OF-1**

FROM: _____

TO: Head of Purchasing Agency
Kamana'opono Crabbe, Ph. D
Ka Pouhana, CEO, HOPA
Office of Hawaiian Affairs, State of Hawai'i
560 North Nimitz Highway Suite 200
Honolulu, Hawai'i 96817

RE: Office of Hawaiian Affairs, State of Hawai'i
OHA RFP NO. NLK 2017-11
REAL ESTATE BROKERAGE TO MANAGE AND LEASE THE OFFICE OF
HAWAIIAN AFFAIRS' NĀ LAMA KUKUI PROPERTY

Dear Dr. Crabbe:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawai'i Revised Statutes, concerning prohibited State Contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

Sole Proprietor Partnership *Corporation Joint Venture

*State of incorporation: _____

Other _____

Hawai'i General Excise Tax License I.D. No. _____

Federal I.D. No. _____

**ATTACHMENT 1:
OFFER FORM, OF-1
(CONTINUED)**

Payment address (other than street address below):

Business address (street address):

Respectfully submitted:

Exact Legal Name of Company (Offeror)**

Authorized (Original) Signature

Name & Title: _____

Date: _____

Telephone No.: _____

Fax No.: _____

E-mail Address: _____

**If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded Contract will be executed.

**ATTACHMENT 2:
OFFER FORM, OF-2**

Total Contract cost for accomplishing the development and delivery of the services	\$ _____ Total
Contract period:	_____ to _____

COMPENSATION BREAKDOWN

1. Leasing Compensation Rates

a. New Lessees

Term	Commission
3 years or more	
More than 1 year, up to 3 years	
One year or less	

b. Existing Lessee-renewal

Extension Term	Commission
3 years or more	
1 year, up to 3 years	
One year or less	

2. Property Management Fees

Management Fee Item	Amount
Manager monthly fee, plus GET (excluding fee on any security deposits, late fees, interest and past due rent)	
Manager fee for review and/or supervision of alterations and/or improvements requested or performed by Tenants (in absence of a construction manager retained by the OHA) if the cost of such work is \$10,000 or less.	

<p>Manager fee for review and/or supervision of alterations and/or improvements requested or performed by Tenants (in the absence of a construction manager retained by Owner) if the cost of such work is over \$10,000.</p>	
<p>Manager fee to perform due diligence services in the sale or other disposition of the Property by Owner or for the purpose of Owner obtaining financing, other than providing standard financial, accounting and other reports.</p>	

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

The Contract for the proposed services may be extended without the necessity of re-soliciting or solicitation, subject to appropriation and availability of funds to OHA, continued need for the services, and OHA’s determination of satisfactory performance of the contracted organization, or unless this Contract is terminated. The option to extend the service shall be offered in writing by OHA prior to the expiration of the Contract. No Contract or amendment to a Contract shall be binding upon OHA until the Contract has been fully and properly executed by all parties thereto prior to the start date of the Contract. The contracted organization shall not provide any services until the Contract is fully and properly executed.

Offeror

Name of Company

Exhibit A – Sample Contract

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT NUMBER _____

BETWEEN

OFFICE OF HAWAIIAN AFFAIRS

AND

[NAME OF CONTRACTOR]

SAMPLE

Exhibit A – Sample Contract

This Contract, executed and entered into as of this _____ day of _____, 2017, by and between, the Office of Hawaiian Affairs (“OHA”), a body corporate under the Constitution of State of Hawai‘i, by its Ka Pouhana, Chief Executive Officer (“CEO”) and Head of Procurement Agency (“HOPA”), pursuant to the Chief Procurement Officer Delegation of Authority and Revised Operational Authority Delegation Hierarchy dated February 9, 2017, 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 [NAME OF CONTRACTOR] (“CONTRACTOR”), a [Type of Business i.e. Sole Proprietor, Limited Liability Partnership/Corporation, Non-Profit], by its [Position i.e. Executive Director], whose principal place of business and mailing address is [Contractor’s Address], [City], Hawai‘i [Zip Code], Sole Proprietor’s Social Security No. XXX-XX-[____]; LLP/C/Non or For-Profit Federal Tax ID No. [__ - _____].

WITNESSETH:

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

WHEREAS, the 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 expenditure of funds as proposed in this Contract 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 OHA is in need of [Description of PR];and

Exhibit A – Sample Contract

WHEREAS, the OHA has awarded this Contract through competitive sealed proposals submitted for [Solicitation No.] pursuant to Hawai'i Revised Statutes as amended and its companion Hawai'i Administrative Rules; and

WHEREAS, the CONTRACTOR has been evaluated as a responsible and responsive Offeror whose proposal is advantageous for the OHA, such evaluation factors as capacity, qualifications and resources to perform the terms and conditions agreed to under this Contract.

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 the OHA, provide all the goods and services set forth in Attachment – S1 which is hereby made a part of this Contract.
2. Time of Performance. The performance required of the CONTRACTOR under this Contract shall be completed in accordance with the time schedule set forth in Attachment – S2 which is hereby made a part of this Contract.
3. Compensation. The CONTRACTOR shall be compensated according to the Compensation provision set forth in Attachment – S3 which is hereby made a part of this Contract.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Contract.
5. CONTRACTOR's Acknowledgment Statement. The CONTRACTOR's Acknowledgment Statement is attached and is made a part of this Contract.
6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto and made a part of this Contract. In the event of a conflict

Exhibit A – Sample Contract

between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Notices. Any written notice required to be given by any party to this Contract 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 Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's business and mailing address as set forth in the first paragraph of this Contract. A notice shall be deemed to have been received THREE (3) days after mailing or at the time or actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the OHA in writing of any change of address.

8. Counterpart Execution. The OHA and CONTRACTOR agree that this Agreement may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All such counterparts together shall constitute one and the same document. The parties further agree to accept facsimile executed documents as if they were originally signed documents and such facsimile signatures shall be deemed to be original and effective to bind the parties. The party submitting the facsimile signature shall provide the other party with originally signed replacement documents within FIVE (5) business days from the date of receipt by the other party of the facsimile executed documents.

THIS SPACE INTENTIONALLY LEFT BLANK

COUNTERPART EXECUTION

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

OFFICE OF HAWAIIAN AFFAIRS

Date: _____, 2017

By _____
KAMA'ANA'OPONO M. CRABBE, Ph.D
Its Ka Pouhana, Chief Executive Officer

“OHA”

APPROVED AS TO FORM:

By _____, 2017
ALBERT TIBERI
Its Ka Paepae Puka, Senior Legal Counsel

Date: _____, 2017

THIS SPACE LEFT INTENTIONALLY BLANK

COUNTERPART EXECUTION

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

[NAME OF CONTRACTOR]

Date: _____, 2017

By

[NAME OF SIGNING AUTHORITY]
Its [Position]

“CONTRACTOR”

THIS SPACE INTENTIONALLY LEFT BLANK

CONTRACTOR'S ACKNOWLEDGMENT

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

On this _____ day of _____, 2017, before me personally appeared [NAME OF SIGNING AUTHORITY], to me personally known, who, being by me duly sworn, did say that such person is the [Position] of [NAME OF CONTRACTOR], 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.

(Notary signature)

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

(Official Stamp or Seal)

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: _____ OR Undated at time of notarization

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

Signature of Notary

Date of notarization

Printed Name of Notary

(Official Stamp or Seal)

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 [NAME OF CONTRACTOR], 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: _____

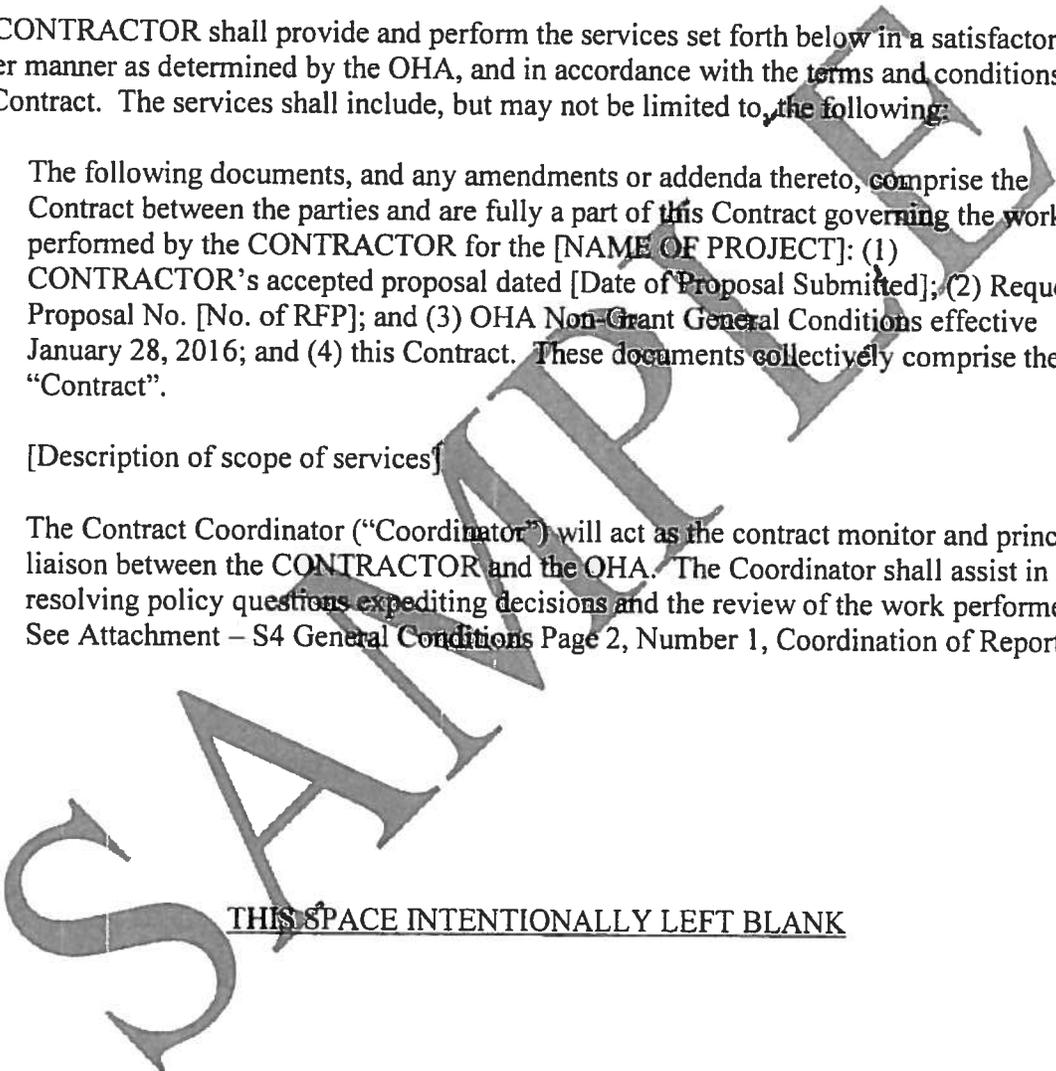
Date: _____

SCOPE OF SERVICES

Project: [Project Name]
Description: [Description of Project]
Location: TMK No: [NO.]

The CONTRACTOR shall provide and perform the services set forth below in a satisfactory and proper manner as determined by the OHA, and in accordance with the terms and conditions of this Contract. The services shall include, but may not be limited to, the following:

- A. The following documents, and any amendments or addenda thereto, comprise the Contract between the parties and are fully a part of this Contract governing the work to be performed by the CONTRACTOR for the [NAME OF PROJECT]: (1) CONTRACTOR's accepted proposal dated [Date of Proposal Submitted]; (2) Request for Proposal No. [No. of RFP]; and (3) OHA Non-Grant General Conditions effective January 28, 2016; and (4) this Contract. These documents collectively comprise the "Contract".
- B. [Description of scope of services]
- C. The Contract Coordinator ("Coordinator") will act as the contract monitor and principal liaison between the CONTRACTOR and the OHA. The Coordinator shall assist in resolving policy questions expediting decisions and the review of the work performed. See Attachment – S4 General Conditions Page 2, Number 1, Coordination of Reports.



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TIME OF PERFORMANCE

Project: [Project Name]
Description: [Description of Project]
Location: TMK No: [NO.]

- A. The CONTRACTOR shall render the services required under this Contract from [Date] through and including [Date] unless this Contract is sooner terminated.
- B. 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 Contract.
- C. Option to Extend: The Time of Performance of this Contract may be extended at negotiated fees, subject to the availability of funds, 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 the OHA to exercise any and all extensions.

Initial term of Contract: [NO. OF MONTHS WRITTEN OUT] (#) months

Length of each extension: Up to [NO. OF MONTHS WRITTEN OUT] (#) months, may be less than [NO. OF MONTHS WRITTEN OUT] (#) months when it is in the best interest of the OHA

Maximum length of Contract: Not to exceed [NO. OF MONTHS WRITTEN OUT] (#) months

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COMPENSATION

Project: [Project Name]
 Description: [Description of Project]
 Location: TMK No: [NO.]

- A. The OHA agrees to pay the CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed, [DOLLAR AMOUNT WRITTEN OUT AND NO/100 DOLLARS] (\$[AMOUNT]) inclusive of all actual reasonable ordinary necessary costs and expenses, including general excise tax currently at the rate of [4.712% (for Oahu only) or 4.166% (for neighbor islands)], for services satisfactorily rendered under this Contract.
- B. Compensation shall be paid pursuant to the schedule set forth below and upon presentment of invoice and satisfactory performance of the work described in ATTACHMENT – S1 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:

Payment Number	Period Due	Amount
1	[Date] to [Date]	[\$[AMOUNT]]
2	[Date] to [Date]	[\$[AMOUNT]]
3	[Date] to [Date]	[\$[AMOUNT]]
Total		[\$[AMOUNT]]

PAYMENT SCHEDULE

[Period]
 [Date] to [Date] **PAYMENT AMOUNT: \$**

Deliverables:

[Period]
 [Date] to [Date] **PAYMENT AMOUNT: \$**

Deliverables:

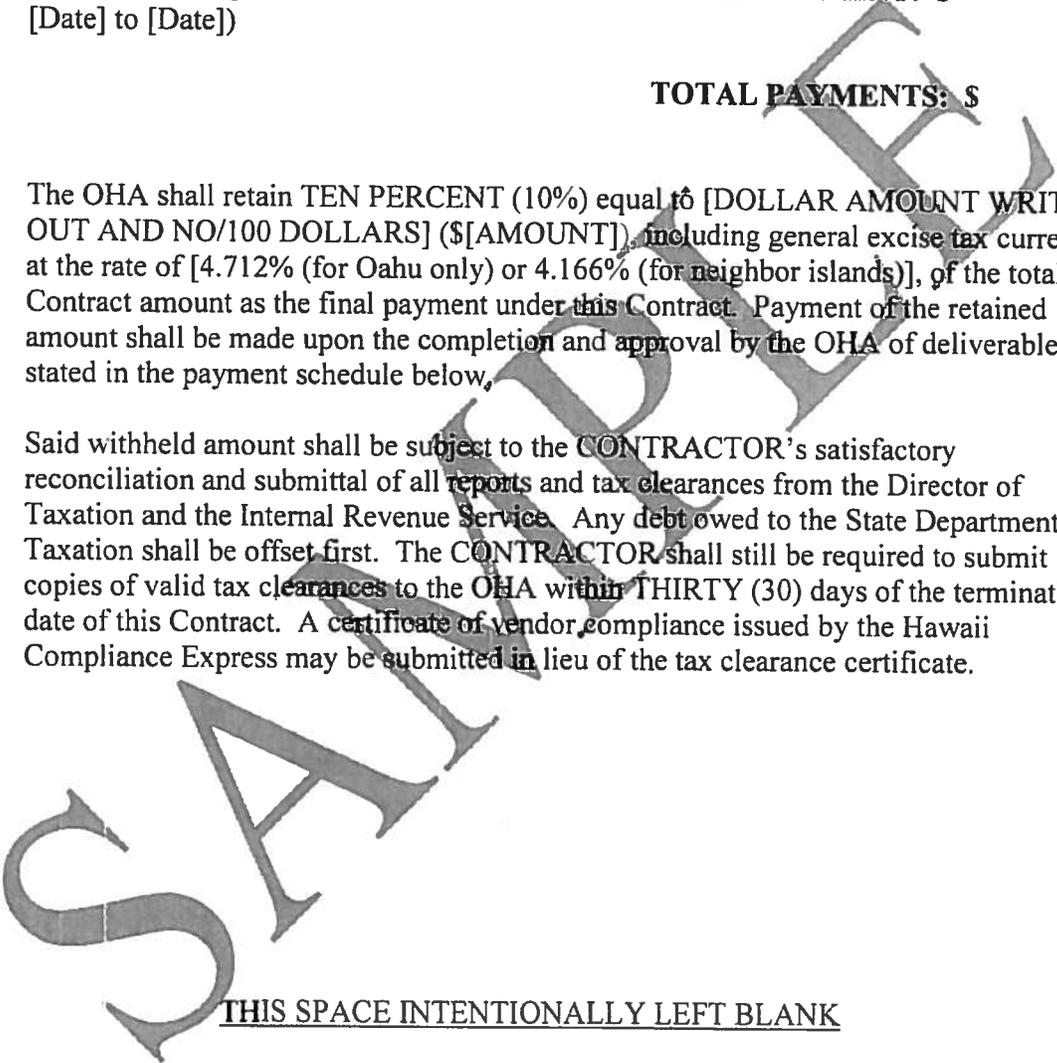
[Period]
[Date] to [Date] **PAYMENT AMOUNT: \$**

Deliverables:

[Date] (Final Report Due for Period
[Date] to [Date]) **FINAL PAYMENT: \$**

TOTAL PAYMENTS: \$

- C. The OHA shall retain TEN PERCENT (10%) equal to [DOLLAR AMOUNT WRITTEN OUT AND NO/100 DOLLARS] (\$[AMOUNT]), including general excise tax currently at the rate of [4.712% (for Oahu only) or 4.166% (for neighbor islands)], 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 the OHA of deliverables as stated in the payment schedule below.
- D. Said withheld amount shall be subject to the CONTRACTOR's satisfactory reconciliation and submittal of all reports and tax clearances from the Director of Taxation and the Internal Revenue Service. Any debt owed to the State Department of Taxation shall be offset first. The CONTRACTOR shall still be required to submit copies of valid tax clearances to the OHA within THIRTY (30) days of the termination date of this Contract. A certificate of vendor compliance issued by the Hawaii Compliance Express may be submitted in lieu of the tax clearance certificate.



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ATTACHMENT - S5

SPECIAL CONDITIONS

Project: [Project Name]
Description: [Description of Project]
Location: TMK No: [NO.]

- A. OHA Contract No. _____ includes the following OHA Right of Entry (“ROE”) which is attached hereto as Exhibit 1, and incorporated herein by reference shall be a part of the Contract between OHA and the CONTRACTOR.
- B. Exhibit 1 ROE between OHA and the CONTRACTOR shall govern the services provided on [NAME OF PROJECT].
- C. In the event of a conflict between the Contract and the ROE Exhibit 1, the Roe Exhibit 1 shall prevail.

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SAMPLE

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

The work performed under this Contract shall be coordinated with OHA's "head of purchasing agency" or Designee as listed in the Scope of Services (Attachment - S1) 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 Contract. 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 Contract.

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 Contract. 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 Contract 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 Contract.

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 Contract 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 - S1) of this Contract, the amount due and owing and certifying that the services requested under the Contract have been satisfactorily performed in conformance with this Contract. 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 invoice 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 Contract 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 Contract, 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 Contract for purposes of entertainment or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Contract, 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 Contract, 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 Contract; 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 Contract. 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 Contract. 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 Contract 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 Contract, 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 Contract.

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 Contract. 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, Hawai'i 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 Contract, 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 Contract shall be effective unless such assignment is first approved by OHA.

8. INDEMNIFICATION AND INJURIES

The CONTRACTOR shall defend, 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 Contract. 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 Contract.

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 Contract 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 Contract, pay all costs and expenses incurred by or imposed on OHA, including attorneys' fees.

9. INSURANCE

A. **INSURANCE REQUIREMENT:** At all times during the term of this Contract, CONTRACTOR shall obtain and maintain in full force and effect, any and all insurance to cover CONTRACTOR's operations under this Contract 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 Contract, 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 Contract. 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 Contract 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 Contract shall be construed as limiting the extent of CONTRACTOR's responsibility for payment of damages resulting from its operations under this Contract 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 Contract.

10. CONFIDENTIALITY OF MATERIAL

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Contract 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 Contract. A violation of this Section shall be a material violation of this Contract.

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 Contract, 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 Contract shall remain in full force and effect after termination of this Contract.

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 Contract. 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 Contract.

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 Contract shall remain in full force and effect for the entire duration of this Contract and/or extensions under this Contract.

12. RETURN OF RECORDS/PROPERTY OF OHA

Upon expiration or termination of this Contract, 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 any discoveries, inventions or developments produced in whole or in part under this Contract (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 Contract, 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 Contract. 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 103D-703, HRS, and chapter 3-126, 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 Contract 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 Contract (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 Contract. 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 CONTRACT

If, for cause, the CONTRACTOR fails to satisfactorily fulfill in a timely and proper manner the CONTRACTOR's obligation under this Contract or breaches any promises, terms or conditions of this Contract 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 Contract 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 Contract 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 Contract, 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract.

18. AMENDMENT

This Contract 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 performed and for cost and expenses incurred beyond the initial term of this Contract.

19. ENTIRE CONTRACT

This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written relative to this Contract. This Contract supersedes any prior written or oral Contracts, conditions, understandings, promises, warranties or representations whether express or implied between parties.

20. APPLICABLE LAW

This Contract 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 Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.