



State of Hawai‘i

REQUEST FOR PROPOSALS

OHA RFP NO. NHRLF 2016-10

FOR

**TECHNICAL ASSISTANCE FOR NATIVE HAWAIIAN
REVOLVING LOAN FUND**

ISSUED DATE: JUNE 17, 2016

DUE DATE: JULY 20, 2016, 1:00 P.M. 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 RFP Coordinator via email, mail and/or hand delivery. If you do not register your company, you will not receive an addenda, if any, and your offer may be rejected and not considered for award.

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

REQUEST FOR PROPOSALS (RFP), NO. NHRLF 2016-10
FOR

Technical Assistance for Native Hawaiian Revolving Loan Fund

Notice is hereby given that pursuant to Chapter 103D, Hawai'i Revised Statutes (HRS), as amended, the Office of Hawaiian Affairs ("OHA"), will be accepting sealed proposals for the **Technical Assistance and Financial Literacy for Native Hawaiian Revolving Loan Fund**.

This Request for Proposal ("RFP") is provided to you for information 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 from the OHA's Procurement Unit on O'ahu, located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817, beginning **Friday, June 17, 2016**.

The OHA's Procurement Unit will conduct a Pre-Proposal Conference from 10:00 a.m. to 11:00 a.m. Hawai'i Standard Time ("HST") on **Wednesday, June 29, 2016**. 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 **3:00 p.m. HST, Tuesday, June 28, 2016**.

Sealed proposal(s) will be received at the OHA's Reception Desk at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i, 96817, until **1:00 p.m. HST on Wednesday, July 20, 2016**.

Electronic mail and facsimile transmission **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 and/or postmarked by the United States Postal Service must be received no later than **1:00 p.m. HST on Wednesday, July 20, 2016**.

The OHA reserves the right to reject any and all proposals and accept the proposals in whole or part in 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.
Ka Pouhana/Chief Executive Officer

TABLE OF CONTENTS

Section 1: Administration Overview	Page 4
Section 2: General Requirements	Page 10
Section 3: Scope of Work and Specifications	Page 16
Section 4: Proposal Format and Content.....	Page 28
Section 5: Evaluation Criteria	Page 36
Section 6: Contractor Selection and Contract Award.....	Page 39
Section 7: Attachments and Exhibits Pages	Page 41
 Attachment 1: OFFER FORMS OF-1	
 Attachment 2: OFFER FORMS OF-2	
Exhibit 1:	SAMPLE CONTRACT
Exhibit 2:	GENERAL CONDITIONS

END OF SECTION

SECTION 1

Administrative Overview

1.1 Introduction

The Office of Hawaiian Affairs (“OHA”) was established by the Hawai‘i State Legislature in 1979 under Chapter 210 of the Hawai‘i Revised Statutes. The OHA’s mission is “To mālama (protect) Hawai‘i’s people and environmental resources and the OHA’s Assets, towards ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally.

1.2 Authority

This Request for Proposal (“RFP”) is issued under the provision of §103D, Hawai‘i Revised Statutes (“HRS”), as amended, and its companion Hawai‘i Administrative Rules (“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: Administrative Overview – Provides the 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 the Offerors with a general description of the tasks to be performed and defines the deliverables (as applicable).

Section 4: Proposal Format and Content – 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 the proposal shall be evaluated by the OHA.

Section 7: Attachments and Exhibits – Provides the information and forms necessary to complete the application.

1.4 Terms and Acronyms

ANA	Administration for Native Hawaiians
BAFO	Best and Final Offer
BOD	Board of Directors
BOT	OHA Board of Trustees

CFR	Code of Federal Regulations
CPO	OHA Chief Procurement Officer
FAD	Financial Assets Division
FHB	First Hawaiian Bank
FICO	Fair Isaac Company
FIN	Federal Identification Number
FY	Fiscal Year
GET	General Excise Tax
GC	OHA General Conditions
HAR	Hawai'i Administrative Rules
HOPA	Head of the Purchasing Agency
HRS	Hawai'i Revised Statutes
HST	Hawai'i Standard Time
KP/CEO	Ka Pouhana/Chief Executive Officer
NHTF	Native Hawaiian Trust Fund
NHRLF	Native Hawaiian Revolving Loan Fund
OHA	Office of Hawaiian Affairs
PO	Procurement Officer
RFP	Request for Proposal
SLP	Strategic Lending Partner
SPO	State Procurement Office
TA	Technical Assistance
TAP	Technical Assistance Provider
State	State of Hawai'i, including its department, agencies, and political subdivisions

1.5 Contracting Office

The Contracting Office is responsible for overseeing the procurement and issuing the contract resulting from this RFP. The Contracting Office is listed below:

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

Telephone: (808)594-1993

The RFP Coordinator or his/her designated representative is listed below:

Charmaine Matsuura
Office of Hawaiian Affairs
Procurement Unit
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817

Telephone: (808)594-0273
Fax: (808)594-1878
Email: charmainem@oha.org

The Contract Administrator or his/her designated representative shall be responsible for overseeing the contract(s) resulting from this RFP.

Timmy Wailehua
NHRLF Manager
Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

Telephone: (808)594-1911
Email: timmyw@oha.org

1.6 Website References

The State Procurement Office (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 are Hawai‘i Standard Time (“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 in and issued in an addendum. 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	June 17, 2016
Pre-Proposal Conference	June 29, 2016 – 10:00 a.m. HST
Due Date to Submit Questions	July 6, 2016
OHA’s Response to Questions	July 13, 2016
Proposals Due Date/Time	July 20, 2016 – 1:00 p.m. HST
Proposal Evaluations	July 21, 2016 – July 29, 2016
Offerors’ Presentation/Discussion (if necessary)	August 1, 2016 – August 3, 2016 (if necessary)

Best and Final Offer (if necessary)	August 1, 2016 – August 4, 2016 (if necessary)
Notice of Award	August 2016
Contract Start Date	September 2016

1.8 Pre-Proposal Conference

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

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 will be held on:

Date: Wednesday, June 29, 2016
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 conference, please contact the RFP Coordinator or his/her designee by 3:00 p.m., HST, Tuesday, June 28, 2016.

1.9 Submission of Questions

Offerors are encouraged to submit written questions pertaining to the 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 6, in order to generate an official answer.

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

1.10 RFP Amendments

The OHA reserves the right to amend the RFP at any time prior to the proposal submission deadline. Offerors will be notified of the availability of amendments through verbal or written communications. All amendments to the RFP will be posted to both 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 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 United States Postal Service (“USPS”) by the date and time designated in the procurement timeline. 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/box** and **properly identified** as a sealed proposal in response to this RFP. Any RFP proposal packet **not properly sealed or submitted via email or facsimile 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 only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems 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 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) Applicant not responsible (HAR §3-122-97(2)).

1.14 Notice of Award

The award of a Contract and allowed renewal or extension thereof, is subject to the

approval by the OHA's Ka Pouhana/Chief Executive Officer ("KP/CEO") and Board of Trustees ("BOT"), 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 the written request.

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

1.16 Protest Procedures

Pursuant to HRS §103D-701 and HAR §3-126-3, 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 and the Procurement Manager at:

Head of Purchasing Agency	Procurement Manager
Name: Kamana'opono M. Crabbe, Ph.D.	Name: Phyllis Ono-Evangelista
Title: Ka Pouhana/Chief Executive Officer	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.

The notice of award, if any, resulting from this solicitation shall be posted on the OHA Solicitations and Awards website at: <http://www.oha.org/solicitations>.

END OF SECTION

SECTION 2

General Requirements

2.1 General Requirements

- A. Offeror is advised that in order to be awarded a contract under this solicitation, the Offeror shall be required to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS § 103D-310(c):

- 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 (“COGS”) for entities doing business in the State.

The OHA will verify compliance on Hawai‘i Compliance Express (“HCE”).

Hawaii Compliance Express. The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Services, Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the “Hawai‘i Compliance Express” is accepted for the execution of Contract and final payment.

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, the Offeror will not receive the award.

- B. The Offeror shall be one (1) of the following:
1. Be registered and incorporated or organized under the laws of the State of Hawai‘i (hereinafter referred to as a “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 (“BREG”). A Hawai‘i business doing business as a sole proprietorship is not required to register with the BREG, and therefore not required to submit the certificate. An Offeror’s status as sole proprietor or other business entity shall be confirmed by its business street address that the Offeror is a Hawai‘i business.

2. Be registered to do business in the State of Hawai‘i (hereinafter referred to as a “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.

C. Bid Security

No bid security is required to be submitted for this RFP, and no performance or payment security shall be required for the resulting contract.

D. Funding Sources and Period of Availability

The sources of funding include OHA Trust Funds, as stipulated in OHA’s Annual Budget for Fiscal Year (“FY”) 2016 with a period of availability from July 1, 2015 to June 30, 2016. 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.

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

☐ Allowed ☒ Not allowed

F. Type of Contract

Single or Multiple Contracts to be Awarded (Refer to HAR §103D-322)

☒ Single ☐ Multiple ☐ Single & Multiple

G. 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)

H. Contract Terms

Single Contract to be Awarded.

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 OHA
Number of possible extensions:	Three (3) extensions
Maximum length of Contract:	Not to exceed sixty (60) months

I. 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, or unless the Contract is 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 with 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 2016 and terminate in August 2018, subject to the availability of funds. Unless terminated, the Contract may be extended for three (3) additional twelve (12) month periods. 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.

J. Additional Services and Fees

For services not described in the Contract, the Offeror and the OHA shall negotiate for additional needed services and fees which may arise during the course of the Contract. Any agreement 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.

K. Other Financial Related Materials - Accounting System

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

L. 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 effective as of the date of the 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: Policy shall include coverage required by 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. Other insurance as required by the OHA

The Successful Offeror shall deposit with the Procurement Unit, on or before the effective date of the contract, certificate(s) of insurance necessary to satisfy the provisions of the contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the OHA during the entire

term of the contract. Upon request by the Procurement Unit, the Successful Offeror shall furnish a copy of the policy or policies.

The Successful Offeror shall immediately provide written notice to the Procurement Unit, and the Contract Administrator or the OHA, should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The certificates of insurance shall contain the following clauses:

- 1) "Additional Insured(s): Office of Hawaiian Affairs, its employees, and trustees."
- 2) "It is agreed that any insurance maintained by the 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 county councils, 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, any time the Successful 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 State or OHA funds and 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.

END OF SECTION

SECTION 3

Scope of Work and Specifications

3.1 Background

A. The Native Hawaiian Revolving Loan Fund (“NHRLF”)

The NHRLF is the result of Congress establishing a revolving loan fund on November 29, 1987 in amendments (Public Law [P.L.] 100-175) to the Native American Programs Act of 1974 (P.L. 93-644). These amendments required the Administration for Native Americans (“ANA”) to award a five-year demonstration grant to establish the NHRLF. On June 24, 1988, ANA issued a program announcement to solicit applications from eligible agencies to become the Loan Administrator of the NHRLF. To be eligible under these interim final regulations, an agency of the State of Hawai‘i or a community-based Native Hawaiian organization must further the purpose of promoting the economic and social self-sufficiency of Native Hawaiians.

On September 30, 1988, ANA awarded the first year grant in the amount of \$957,000 to the OHA. On January 24, 1989, ANA published the final regulations. The OHA became the NHRLF’s Loan Administrator, as defined in 45 Code of Federal Regulations (“CFR”) 1336.62. Between October 1988 and October 2001, ANA and the OHA provided nearly \$23 million in total cash contributions for the NHRLF program. Although ANA has not provided any additional funds since October 2001, the OHA continued to provide in-kind contributions through internal support services that have greatly benefitted the NHRLF program. This includes the use of administrative services, such as accounting to ensure the accuracy of financial reports, supervision from executive members within the OHA, non-federal financial contributions towards disallowances issued by ANA, and the cost of banker’s insurance to provide additional protection for the NHRLF staff. Interest earned on un-lent funds has increased total capital to approximately \$27.6 million.

B. Native American Programs Act Amended

In 1992, Congress amended the Native American Programs Act and included the following provisions to require the OHA to:

1. Serve as the grantee;
2. End the five-year limitation on the demonstration project; and
3. Contribute non-federal funds equal to the federal grant.

The OHA originally operated the NHRLF as a stand-alone program staffed by four (4) employees offering a single product: a five-year business term loan with a

2% interest rate and \$75,000 limit. In 2004, the ANA Commissioner conducted a NHRLF program review documenting twenty-four (24) findings and recommendations in fund management, fund administration, marketing and outreach, and technical assistance. Major findings included:

1. Interest and fee income was insufficient to ensure long-term sustainability;
2. 31% delinquency rate compared to an average of 3.5% for loan funds of similar size;
3. Application-to-loan disbursement process took a minimum of eight (8) months. This created a four-year backlog of pending applications, a hardship on potential borrowers, and the cancellation or withdrawal of applications; and
4. The NHRLF did not offer the variety of necessary financial products to meet the capital needs of Native Hawaiian communities.

C. Strategic Lending Partner (SLP) Concept

In 2005, the OHA began to address these findings and recommendations and developed the Strategic Lending Partner concept. This partnership was envisioned to leverage a commercial bank's economies of scale and operational efficiency, community banking capabilities, market knowledge and reach. In 2006, ANA and the OHA developed a Business Plan (i.e., policies) and Operational Guidelines (i.e., procedures) to implement the SLP concept.

Through FY 2007, the OHA disbursed a cumulative total of 417 loans totaling approximately \$18.9 million averaging \$45,000 per loan; 70% of principal was repaid, 15% was written-off, and of the total \$2.9 million in outstanding loans, less than half were current. Collectively, these loans financed nearly 1,200 jobs.

In 2007, the OHA awarded the SLP contract to First Hawaiian Bank ("FHB"). On November 17, 2007, the newly-restructured NHRLF program launched the OHA Mālama Business Loans and OHA Mālama Consumer Loans (for home improvement or education). The key features of the business and consumer loans included a 5% interest rate and 5-year term for loans between \$2,500 and \$75,000. The new underwriting criteria were a maximum 45% debt-to-income coverage ratio and a minimum six hundred (600) credit score.

For a loan origination fee, the SLP is able to offer loan services from origination through collections at a low marginal cost to its existing operations at all 58 of its branches throughout Hawai'i. The partnership has provided the following benefits:

1. Market-based loan underwriting criteria and improved objectivity;
2. Automated loan processing; and
3. Quick loan decision making.

Applicants with a credit score greater than or equal to 650 are considered Tier 1 borrowers. Applicants with a credit score less than 650 and greater than or equal to 600 are deemed Tier 2 borrowers. To ensure a Tier 2 borrower's repayment, they are referred to a Technical Assistance ("TA") provider for credit counseling, budgeting and other financial consulting services.

D. Mālama Loan Program

In FY 2008 (November 2007 to June 30, 2008), OHA launched a restructured NHRLF program and called it the Mālama Loan Program. The restructured program streamlined the application process, submitting applications to the NHRLF Board of Directors ("BOD") for their review via e-mail instead of at quarterly meetings, and establishing a dedicated secure data line between the OHA and its SLP. As a result, the time between completed application submission and loan closure were dramatically reduced from an average of seven months during the previous 19 years to an average of 20 days in FY 2008. The program disbursed 349 loans with a value of \$7.2 million, nearly matching the 417 loans disbursed in the previous 19 years.

E. Troubled National and Local Economies in FY2009 and FY2010

In FYs 2009 and 2010, the troubled national and local economies affected NHRLF activities with a downward trend in all loan categories - home improvement, education, and business loans. The local economy showed no signs of recovery as disbursements continued to stall. A comparison between FYs 2008 and 2010 results in a decline of 64% in the value and a decline of 56% in the number of loans closed. As a result, FY 2010 still retained approximately \$20 million of capital funds available. In FY 2011, ANA approved the implementation of three (3) major changes to the loan fund to spur loan disbursements and release more financing to Native Hawaiian individuals and businesses: 1) lower the interest rate from 5% to 4%, 2) add a debt consolidation loan product, and 3) add a larger business term loan product, subsequently named the "Hua Kanu Business Loan." These changes were implemented in late FY 2011. Also occurring in FY 2011, the NHRLF contracted a technical assistance provider to guide applicants on loan readiness.

F. In-house Loan Program

Through FY 2015, OHA has successfully revolved the Fund twice by lending a cumulative \$57 million to more than 2,000 Native Hawaiian. As of FY 2016, the Fund had approximately \$13 million in outstanding loans and \$16 million available for lending. One of the biggest change to the NHRLF Loan program that occurred in FY 2016 was the decision to bring the loan program in-house and no longer use our strategic lending partner, First Hawaiian Bank. As a result, the NHRLF Staff is now responsible for all aspects of the loan program including underwriting, marketing and servicing.

One of the constant is the requirement for technical assistance to be provided to certain approved applicants as a pre-condition for receiving the loan.

3.2 The TAP Required Services

The Technical Assistance Provider (“TAP”) must be willing to provide, in coordination with the OHA’s NHRLF staff members, all services outlined in this proposal. The TAP must be able to provide these services on a statewide basis to any individual, group, or family household as directed by the NHRLF staff members. The TAP is responsible for detailing how each of the services required under this proposal will be accomplished. The TAP must provide a detailed description of the methods used to provide the following services:

A. Mālama Loans Technical Assistance:

The Mālama Loan Program provides business loans, as well as, consumer loans for such purposes as Debt Consolidation, Education, and Home Improvement. All applications would be underwritten by the NHRLF Staff to determine using the following criteria indicated below:

The NHRLF Staff will underwrite all Mālama loan applications, evaluating an applicant’s Fair Isaac Company (“FICO”) score and Debt-to-Income Ratio to determine if a borrower is qualified. The criteria for credit qualifications are as follows:

1. Tier 1 – FICO score of 650 and above;
2. Tier 2 – FICO Score between 600 and 649;
3. Tier 3 – FICO Score below 600 (Denied); and
4. Debt to Income Ratio up to 45% and could reach 50% upon the NHRLF BOD approval.

The TAP shall provide credit counseling and financial literacy to the following:

1. All Tier 2 rated individual, debt consolidation, and business Debt Consolidation borrowers must pay-off and close high interest revolving credit. The TAP shall obtain the correct payoff amount and prepare the close account notice to the credit company since debt consolidation loans are paid directly to the vendor;
2. All start-up businesses (operating for three (3) years or less);
3. Tier 1 rated individual and businesses (if necessary); and
4. Certain Denied borrowers.

The Offeror must provide a detailed description of the type of service to be provided for each type of groups indicated above. The description must include topics of discussion, length of service, and the hourly rate being applied. A distinction must be made between services provided to an individual and a business owner(s).

Pre Loan Technical Assistance

The TAP shall be responsible for providing a minimum of one (1) hour of technical assistance for selected approved applicants to help mitigate the credit risk of some type of borrowers. The type of services offered shall include, but not be limited to, the following.

1. Business Development, Expansion, and Financials One-on-One Counseling;
2. Individualized Goal Progress and Forecasting Review;
3. Individualized Credit Review;
4. Individualized Tax and Auditing Preparation
5. Fundamentals of Farming Business Management (Risk Management, Financial Record Keeping, etc.)
6. Individualized Agricultural Business Plan Development or Review

The TAP will assess which borrower(s) will be required to receive post loan technical assistance.

In the event a borrower is denied a loan. The TAP is to report and/or work with NHRLF and strategic partner(s) to provide borrower an alternate for possible credit building and future reapplication of the loan.

The TAP will be responsible to track and monitor Tier 2 Consumer borrowers by pulling yearly soft credit pulls due to risk based pricing structure. If borrower(s) credit score increases to a Tier 1, the borrower(s) will have an opportunity to reapply for a loan to take advantage of better risk based price on loan interest. The Offeror will be required to report on the status of each Tier 2 Consumer borrower.

Estimated number of clients for each **Mālama Loan** group is as follows:

Service Type	# of TA Clients/Year
Consumer Loans*	
Tier 1	34
Tier 2	43
Debt Consolidation (Tier 1)	85
Denied Consumer Loans	5
TOTAL CONSUMER:	167
Business Loans*	
Tier 1	10
Tier 2	13
Start Up (3yrs or less)	13
Denied Business Loans	2
TOTAL BUSINESS:	38

*Fee based commission is not allowed for these loan products.

B. Hua Kanu Business Loans:

The Hua Kanu Business Loan Program is exclusive to 100 percent (100%) Native Hawaiian-owned qualified businesses. The Hua Kanu is intended to provide access to larger loans, ranging between a minimum of \$200,000 and \$1 million. The TAP will be required to assist the applicant complete their loan application packet. This packet will contain all of the required forms and documents utilized by First Foundation Bank. In addition, the packet must include all of the documents, forms, and reports utilized to make a determination. In addition, the TAP will be required to complete a detail assessment of the Applicant and make a unbiased recommendation to the NHRLF Staff.

The TAP shall have the expertise to review all of the following documents to make a determination on the financial strength of the business, the risk in lending, and the overall strength of the company:

1. All principals of the business must be of Native Hawaiian ancestry;
2. FICO Score (for all principals, owners, and guarantors);
3. Tier 1 – FICO score of 650 and above;
4. Tier 2 – FICO Score between 600 and 649;
5. Tier 3 – FICO Score below 600 (Denied);
6. Debt to Income Ratio Not to exceed 45%;
7. Debt Service Coverage Ratio (DSCR) calculation required to provide a global aspect of the business in regards to available Cash flow to pay current debt obligations. DSCR to be greater than 1 indicating a positive cash flow; and
8. Loan to Value Not to Exceed 100%.

9. Collateral;
 - a. Real Estate;
 - b. Equipment;
 - c. Contracts;
 - d. Account Receivables;
 - e. Inventory; and
 - f. Personal Property.
10. Cash-Flow Analysis;
11. Profit and Loss Statements;
12. Two (2) Years Tax Returns; and
13. Updated Business Plan.

The Offeror must demonstrate its ability to evaluate, analyze and make a sound and reasonable recommendation for financing. Please provide a sample of a completed business evaluation.

Estimated number of clients for **Hua Kanu Business Loans** is as follows:

Service Type	# of TA Clients/Year
Hua Kanu*	4

*Fee based commission is not allowed for this loan product.

C. Post-Loan Monitoring Services:

The TAP must be able to monitor borrowers of whom TA is required which consists of any loan starting FY 2017. Included in monitoring will be annual soft credit pulls, frequency follow ups and reporting findings to NHRLF staff. TAP will monitor borrowers dependent upon need and Individual Service Plan (ISP). An ISP will be provided by NHRLF staff to TAP for monitoring frequency which could be monthly, quarterly, semi-annually or annually. ISP's will provide borrowers financial literacy training and/or counseling which is then preceded with a certificate of completion. If borrower does not complete the program, the TAP shall inform NHRLF staff and report any delinquencies or defaults.

The Offeror must detail the type of technical assistance that will be provided to gain valuable information regarding their current financial situation and the impact the loan had on the borrower.

Service Type	# of TA Clients/Year
Post-Loan Monitoring Services	
50% of Total Portfolio	561
Service Rate	33%
TOTAL POST-LOANS:	185

D. Defaulted Loans Services:

Delinquent loans identified by the NHRLF staff will be sent a Late Notification and Demand Letter (any loan that reaches 45 days with no payment). These loans of consideration will be reported to ANA. Provided that ANA approves the list of identified loans to be counseled by TAP, the TAP will implement their financial counseling to these defaulted loan borrowers.

The Offeror must provide a Financial Counseling plan with a detailed description of the type of services that will be provided to defaulted borrower(s). The description should indicate services, lessons, counseling, topics of discussion, final resolutions and monitoring if required.

Service Type	# of TA Clients/Year
Defaulted Loans	
Total Portfolio (1,121 est)	1,121
Default Rate	11%
TOTAL DEFAULTS:	124

E. Statewide Delivery of Services:

The TAP must be able to provide technical assistance to loan Applicants, borrowers, and/or clients of the NHRLF program on all six (6) of the major islands; Hawai'i, Kaua'i, O'ahu, Maui, Moloka'i, and Lana'i. The TAP may utilize any of the methods indicated below to fulfill the Statewide requirement:

1. Existing staff capacity to implement and to maintain contracted services Statewide; or
2. Existing staff capacity to implement and to maintain contracted services Statewide are provided by a subcontractor; or
3. Existing staff capacity to implement and to maintain contracted services Statewide are provided by another organization(s) through a partnership arrangement with the applicant; or
4. Combination of the aforementioned three (3) methods above.

The Offeror must detail how, and by which method, Statewide services will be provided in order to meet the needs of the OHA's beneficiaries on the Neighbor Islands.

F. Demonstration of Capacity must include the following:

The Offeror must demonstrate the capacity of key staff members and any other key person and/or entity that shall be involved in fulfilling the requirements of this proposal.

1. Identifying key staff members along with details of their roles and responsibilities. A detailed description of their professional experience that demonstrates their ability to perform.
2. If subcontractors or other organizations are being used, the formal agreements must be included. Evidence must be provided that these subcontractors and/or organizations have the capacity to perform.

G. Outreach Activities:

The TAP shall be responsible for participating in a minimum of four (4) annual outreach events in Native Hawaiian communities annually. The type of services shall include, but not be limited to, the following services:

1. Business Plan Development Fundamental Workshops
2. Cash Flow and Profitability Fundamental Workshops
3. Understanding Your Credit Score Workshops
4. Budgeting Workshops
5. Homebuyer Education Workshops
6. Credit Building Workshops
7. Debt Management Workshops
8. Money Management Workshops

The TAP shall detail the type of outreach activities they feel would be beneficial to attracting new applicants and to gain more exposure of the NHRLF program. The TAP shall demonstrate their experience in coordinating and participating in outreach events.

H. Reporting:

The TAP will provide business borrower and NHRLF with an 'Oihana Financial Literacy Program Certificate (Record of Completion) upon completion of ISP. The Offeror must demonstrate their ability to meet the reporting requirements.

1. Record of Completion
Upon completion of the technical assistance, the TAP must submit, via e-mail, a Record of Completion document to the NHRLF staff. The form will detail the services provided to the applicant and the TAP will make a recommendation regarding the applicant's credit strength and creditworthiness. The NHRLF staff will review the Record of Completion as part of their underwriting analysis to make a final determination if the applicant should proceed with closure of their loan.\

2. **Additional Technical Assistance Applicant**
The TAP may also recommend for addition technical assistance, however, any additional services must be approved by NHRLF staff prior to service delivery.
3. **Technical Assistance Provider Performance Survey**
Upon completion of TA services, the TAP must provide the beneficiary an evaluation form that will be completed by them and mail to the NHRLF office.
4. **Monthly Report**
By the 5th of the preceding month, the TAP shall submit a monthly report that summarizes the following activities that shall include, but may not be limited to:
 - a. Total Number of clients served;
 - b. Number of clients served on each Island;
 - c. Number of clients referred;
 - d. Average time from referral to closure;
 - e. Breakdown of clients served by loan purpose; and
 - f. Itemized billing for the month.
5. **Time of Performance**
Once the NHRLF staff refers a client, the TAP will have twenty (20) working days to complete all required services and submission of the Record of Completion to the NHRLF staff. If the mandatory '*Oihana Financial Literacy Program* ISP is not completed, loan will be considered in default and procedure will be consistent with loans ≥ 45 days delinquent

3.3 Customer Service to Clients

The TAP is required to provide technical assistance on personal financial and business consulting services through either of the following methods:

- A. In-person at the TAP's local office(s), at the borrower's premises, or a third party location (i.e., community center). The TAP's offices shall have trained staff who shall:
 1. Provide information on the NHRLF, including without limitation information on the application process, underwriting criteria, loan options, loan terms and conditions, and closing process;
 2. Answer questions from loan applicants, borrowers, and other interested parties;
 3. Assist loan applicants and borrowers in completing forms;
 4. Provide other services reasonably requested by the NHRLF;
 5. Will provide services Statewide; and
 6. The TAP may subcontract service provision to sub-partners.

- B. Over the TAP's Internet website. The website shall provide information regarding:
 - 1. Providing status updates on the information on the NHRLF; and
 - 2. Allowing application package and information to be downloaded; and
 - 3. Linking the applicant's web-sites to other relevant links that are mutually agreed to by the parties. TAP may provide coverage on each island through its partners in physical space, web access, and other tools.
- C. All other methods approved by the NHRLF.

3.4 Record Keeping and Recording

Record Keeping and Reports to the NHRLF

- A. The TAP shall detail how they plan to provide accurate records to report on a timely basis of the following reports:
 - 1. Within seven (7) calendar days after the end of each reporting month, the TAP will submit a Technical Assistance Monthly Report including the following information (A) in total and (B) by island:
 - a. Number of outreach sessions and number of attendees;
 - b. Number of application packages distributed;
 - c. Number of one-on-one pre-application sessions;
 - d. Number of referrals for loan closing;
 - e. Number of clients served; and
 - f. Number of TA hours provided to each loan applicant and/or borrower.
 - 2. Status of Statewide delivery system services provided including:
 - a. Average # of days between referral to TAP and referral for loan closing;
 - b. Funds expended in month and percentage to total funds;
 - c. Funds expended year-to-date and percentage to total funds; and
 - d. Issues or recommendations.
 - 3. Within seven (7) calendar days after the end of each reporting month, the TAP will submit a Technical Assistance Log including the following information for each client:
 - a. Client name;
 - b. Client address;
 - c. Client phone number;
 - d. Client email address;
 - e. Loan amount;
 - f. Loan purpose;
 - g. Attended outreach session? (Y or N);
 - h. One-on-one application session? (Y or N);

- i. Application date;
- j. TA Provider contact name;
- k. Date of client task plan approval;
- l. Date plan completed;
- m. Date referral sent to NHRLF;
- n. Post loan closing TA? (Y or N); and
- o. Post loan closing TA completion date.

As a substitute, the TAP may provide the NHRLF secure web access to a comprehensive database which tracks the real-time status of the same data. Web access must allow for the ability to export the database information in excel format and to print the information for programmatic purposes.

The TAP will be responsible for soliciting a Technical Assistance Client Survey (format provided by the NHRLF) upon completion of each TAP service and then responsible for forwarding the completed survey to the NHRLF at least on a monthly basis. NHRLF to provide TAP recommendations upon review of customers feedback and survey.

The Successful Offeror shall also be responsible for other reports reasonably requested by the NHRLF.

END OF SECTION

SECTION 4

Proposal Format and Content

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" three (3) 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 and 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.

Any and 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 local, State and federal laws, ordinance, 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.

B. 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.

C. 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 and any use of the information must be approved by OHA.

D. Offeror Optional Services

Offeror 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.

4.2 The Proposal Application Sections

- A. The proposal forms must 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 Department of Commerce and Consumer Affairs and shall indicate this 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 submitted on the corporate resolution, the proposal

shall be automatically rejected.

- D. A proposal security deposit is not required for this RFP.
- E. Proposal must be typed on plain, white, 8 ½" x 11" paper with one-inch margins on all sides in 12 point font. Printed on one (1) side only.
- F. Proposals must be submitted shall be bound by either in a three (3) ring binder or spiral binding. Tabbing of sections is required.
- G. Documents that require submission on 11" x 17" paper to be legible is allowable.
- H. 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.
- I. Consecutive page numbering of the proposal application should begin with page one and end with the last numbered page of the complete proposal.
- J. 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 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.

4.4 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), normally within ten (10) days following the Proposal's 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.

4.5 Offeror's Authority to Submit an Offer

The OHA will 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.

4.6 Required Review

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

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

4.7 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 State shall not reimburse such costs.

4.8 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 Offeror is advised that they are liable for the Hawai'i GET at the current 4.712% for sales made on O'ahu, and at the 4.166% 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.

Federal Identification Number ("FIN") and Hawai'i General Excise Tax License Identification Number ("GE TAX I D"): The Offeror shall submit its current FIN 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 Offeror will pay such taxes on all sales made to the OHA.

4.9 Property of OHA

All proposals become the property of the OHA.

4.10 Proposal Objectives

One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving 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.

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.

4.11 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. Attachment 1: Offer Form, Page OF-1. Offer Form, OF-1 (Section 7, Attachment 1) is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-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 Offeror's intent to be bound.

- B. Attachment 2: 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 State. No other costs will be honored. Any unit prices shall be inclusive.

4.12 Proposal Contents

Proposals shall:

- 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 Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal. See Section 7, Attachment 1, for a copy of the form.
- C. Include a completed Offer Form OF-2. See Section 7, Attachment 2 for a copy of the form
- D. 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;
 - 2. The subcontractor's willingness to perform for the indicated.
- E. Provide all of the information requested in this RFP in the order specified.
- F. Organize proposal 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.

4.13 Proposal Requirements

- A. Minimal Requirements
 - 1. Offer Forms OF-1
 - 2. Offer Forms OF-2
 - 3. Cover letter in the form of a standard business letter and submitted on official business letter head and shall be signed by an authorized representative.
 - 4. Table of Contents
 - 5. Tabbing of Sections
 - 6. Executive Summary – Program Overview
 - 7. HCE Certificate of Vendor Compliance
- B. Proposal Application Requirements
 - 1. Section 1 – Qualifications and Experience
 - 2. Section 2 – Standards of Conduct
 - 3. Section 3 – Other Requirements
 - 4. Section 4 – Appendices
 - a. Form ADV Parts I and II
 - b. Sample Report
- C. Most Recent Financial Statement

4.14 Receipt and Registration of Proposals

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

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

4.15 Best and Final Offer

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

4.16 Modification Prior to Submittal Deadline or Withdrawal of Offers

The Offeror may modify or withdraw a proposal before the proposal due date and time. The request to withdraw by the Offeror shall be provided to the OHA in writing.

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

4.17 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 best and final offers 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 best and final offers 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 best and final offers 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 State and 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/Chief Executive Officer ("KP/CEO") 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 highest ranked, responsible Offerors.

5.2 Minimum Requirements Check

Upon the RFP submission due date and time, two (2) OHA procurement staff will inspect each RFP to ensure that all the minimum requirements, such as necessary forms, information and signatures have been met. Those proposals that do not meet minimum requirements will be immediately disqualified and the Offerors of the disqualified proposals shall be informed in writing.

Statements which indicate that mandatory certifications will be submitted upon Contract award shall be unacceptable.

5.3 Priority Listing

The proposals that do meet the minimum requirements will be evaluated and scored in accordance with the criteria in Section 5.5 below by members of an Evaluation Committee. The Evaluation Committee may be comprised of the OHA employees and/or non-governmental person(s). Upon scoring all proposals that have met the minimum requirements, the Evaluation Committee may place the proposals with the highest three (3) scores on a Priority List.

5.4 Discussion Priority Listed Offerors

The OHA may invite priority listed Offerors to discuss their proposals to ensure a thorough and 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 (BAFO), if the OHA determines a BAFO is necessary.

5.5 Evaluation Criteria

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

Evaluation Categories and Thresholds

<u>Evaluation Categories</u>	<u>Possible Points</u>
Mandatory Requirements	Pass or Reject
Executive Summary (Program Overview)	
<i>Proposal Application</i>	100 Points
	70 points
1. Qualifications and Experience	20
The Offeror must provide evidence demonstrating their ability to provide meaningful and appropriate technical assistance Statewide.	
a. The interested Offeror clearly demonstrates the capacity of its staff, and/or subcontractors to provide Statewide technical assistance.	40
b. The interested Offeror clearly detailing their plan to provide technical assistance, financial literacy, and other required services to Native Hawaiian individuals, businesses, and families.	10
c. The Interested Offeror clearly demonstrates having successfully performed the proposed services in the past.	
<hr/>	
2. Standards of Conduct	
a. Proposal will be reviewed for overall compliance with the RFP requirements.	Yes or No
b. The interested Offeror demonstrated the applicant's ability to clearly and concisely describe their training program is culturally relevant, procedures for follow-up and monitoring, and communication process between the TAP, NHRLF Staff, and the Beneficiary.	10 points

3. Cost

- | | |
|--|------------------|
| a. Proposal will be reviewed for overall compliance with the RFP requirements. | Yes or No |
| b. The interested Offeror will be awarded based on the applicant's ability to provide the required services at a reasonable per hour rate. The Offer must also identify the total number of clients able to be served. | 20 points |

TOTAL POSSIBLE POINTS**100 POINTS**

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 this RFP.

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 an OHA 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 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.

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

6.5 Approvals

Any contract arising out of this offer may be subject to the approval of the OHA Corporate Counsel as to form, and to all further approvals, including the approval of the OHA KP/CEO, as required by statute, regulation, rule, order, or other directive.

6.6 Contract Execution

Contractor receiving award shall enter into a formal written contract in the form as in Exhibit 3. No performance or payment bond is required for this contract.

No work is to be undertaken by the successful Offeror 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 successful Offeror prior to the official starting date.

If an option to extend is mutually agreed upon, the successful Offeror 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 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 successful Offeror so require, the OHA or the successful Contractor may terminate the contract for convenience by providing forty-five (45) calendar days prior written notice to the other party.

6.8 Payment

Incremental payments shall be made to the awarded successful Offeror on a quarterly basis, upon receipt of reports that meet the expectations of the RFP. The receipt of quarterly reports shall be due based on the timeline submitted by the successful Offeror in the proposal, or as amended.

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

1. Attachment 1: OFFER FORM, OF-1
2. Attachment 2: OFFER FORM, OF-2
3. Exhibit 1: SAMPLE CONTRACT FORM
4. Exhibit 2: GENERAL CONDITIONS

OFFER FORM, OF-1

FROM: _____

TO: OHA Procurement Officer:
Kamana'opono Crabbe, Ph.D.
Ka Pouhana/Chief Executive Officer
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. NHRLF 2016-10, Technical Assistance for Native Hawaiian Revolving
Loan Fund

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. _____

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:

OFFER FORM, OF-2

Total contract cost for accomplishing the development and delivery of the services	\$ _____
Contract period: 2 years	_____ to _____

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 the OHA, continued need for the services, and the 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 the OHA prior to the expiration of the contract. No contract or amendment to a contract shall be binding upon the 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

SAMPLE CONTRACT

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT NUMBER _____

BETWEEN

OFFICE OF HAWAIIAN AFFAIRS

AND

XXXXXXXXXXXXXX

This Contract, executed and entered into as of this ____ day of _____, 2016, 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, 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 Hawai‘i corporation, by its President, whose principal place of business and mailing address is [XXXXXX], Honolulu, Hawai‘i 96[XXX], Federal Tax ID No. [99 – XXXXXX]

W I T N E S S E T H:

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 OHA is in need of services for “Technical Assistance for Native Hawaiian Revolving Loan Fund” as described in this Contract and its attachments; and

WHEREAS, the OHA has awarded this Contract through competitive sealed proposals submitted for RFP No. NHRLF 2016-10 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 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 Agreement 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 as and made a part of this Contract. In the event of a conflict 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 ADMINISTRATOR shall be sent to the ADMINISTRATOR's business and mailing address as set forth in the first paragraph of this Agreement. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's business and mailing address as set forth in the first paragraph of this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying OHA in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

OFFICE OF HAWAIIAN AFFAIRS

Date: _____, 2016

By _____
KAMANA'OPONO CRABBE, Ph.D.
Its Ka Pouhana/Chief Executive Officer

"OHA"

[NAME OF CONTRACTOR]

Date: _____, 2016

By _____
[NAME]
Its [Title]

"CONTRACTOR"

APPROVED AS TO FORM:

ERNEST M. KIMOTO
Ka Paepae, Corporate Counsel

Date: _____, 2016

CONTRACTOR'S ACKNOWLEDGMENT

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

On this _____ day of _____, 20____, before me personally appeared [SIGNER'S NAME], to me personally known, who, being by me duly sworn, did say that such person is the President 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 CONTRACTOR’S NAME, 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: _____

ATTACHMENT - S1

SCOPE OF SERVICES

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

- A. 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.
- B. [Describe scope of services]
- C. The Contract Coordinator (“Coordinator”) listed below 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.

OHA CONTRACT COORDINATOR

[Name]

[Title]

Ph: [Phone No.]

Email: [email address]

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ATTACHMENT - S2

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 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 TWELVE (12) months when it is in the best interest of the OHA

Maximum length of Contract: [NO. OF MONTHS] (#) months

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ATTACHMENT - S3**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 SCHEDULE

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

- 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 Agreement. 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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SPECIAL CONDITIONS

(CONTRACT BETWEEN OHA AND [CONTRACTOR'S NAME])

OHA and The CONTRACTOR mutually agree to.... (If Applicable)

All other Conditions shall remain in full force and effect.

Office of Hawaiian Affairs
GENERAL CONDITIONS
(NON-GRANT GOODS AND SERVICES)
--- Table of Contents ---

	<u>PAGE(S)</u>
1. COORDINATION AND REPORTS	2
2. RECORDS MAINTENANCE, RETENTION, AND ACCESS.....	2
3. ADDITIONAL COMPENSATION AND PAYMENTS TERMS.....	3
4. OTHER CONDITIONS OF USE OF FUNDS	4
5. RESPONSIBILITY FOR ACCURACY, COMPLETENESS, AND ADEQUACY	4
6. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.....	4
7. SUBCONTRACTS AND ASSIGNMENTS.....	5
8. INDEMNIFICATION AND INJURIES.....	6
9. INSURANCE.....	6
10. CONFIDENTIALITY OF MATERIAL.....	8
11. CONFLICT OF INTEREST AND DISCLOSURE.....	8
12. RETURN OF RECORDS/PROPERTY OF OHA.....	9
13. DISPUTES.....	9
14. TERMINATION OF CONTRACT.....	10
15. WAIVER OF VIOLATIONS	11
16. SEVERABILITY	11
17. WAIVER OF CONTRACTUAL RIGHT	11
18. AMENDMENT	11
19. ENTIRE CONTRACT	11
20. APPLICABLE LAW	11

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.