

**GENERAL CONDITIONS FOR LEGACY LAND
CONSERVATION PROGRAM GRANT AGREEMENTS**

1. Awardee's Qualifying Standards.
 - a. The AWARDDEE is a state agency, county, or a nonprofit land conservation organization.
 - b. If the AWARDDEE is a non-profit land conservation organization, the AWARDDEE has been determined by the Internal Revenue Service to be a non-profit organization, and AWARDDEE has a governing board whose members have no material conflict of interest and serve without compensation.
2. Recordkeeping Requirements. The AWARDDEE shall, in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the AWARDDEE's performance under this Agreement. The AWARDDEE shall retain all records related to the AWARDDEE's performance under this Agreement for at least three (3) years after the date of submission of the AWARDDEE's Final Project Report.
3. Audit of AWARDDEE. The AWARDDEE shall allow the STATE full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant. This right of access shall last as long as the records and other related documents are retained. The AWARDDEE shall respond to any requests from the STATE for information regarding monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant within 60 days.
4. Nondiscrimination. No person performing work under this Agreement, including any employee or agent of the AWARDDEE, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Inspection of Property. The AWARDDEE shall permit the STATE and its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with chapter 173A, Hawaii Revised Statutes, and the terms of this Agreement. The STATE shall provide either written or verbal notice to the AWARDDEE forty-eight hours prior to entering the Property.
6. Conflicts of Interest. The AWARDDEE represents that neither the AWARDDEE, nor any employee or agent of the AWARDDEE, presently has any interest, and

promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the AWARDDEE's performance under this Agreement.

7. Compliance with Laws. The AWARDDEE shall comply with chapter 173A, Hawaii Revised Statutes, chapter 343, Hawaii Revised Statutes, and all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the AWARDDEE's performance under this Agreement.
8. Indemnification and Defense. The AWARDDEE shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of the AWARDDEE or AWARDDEE's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
9. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the AWARDDEE in connection with this Agreement, the AWARDDEE shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
10. Title insurance. AWARDDEE must obtain title insurance in the full amount of the purchase price, insuring that the title to the Property is vested in the AWARDDEE.
11. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of this Agreement, the AWARDDEE is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the AWARDDEE is in compliance with this Agreement.
 - b. The AWARDDEE and the AWARDDEE's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the AWARDDEE, and the AWARDDEE's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The AWARDDEE shall be responsible for the accuracy, completeness, and adequacy of AWARDDEE's performance under this Agreement. Furthermore, the AWARDDEE intentionally, voluntarily, and knowingly

assumes the sole and entire liability to the AWARDDEE's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the AWARDDEE, or the AWARDDEE's employees or agents, in the course of their employment.

- d. The AWARDDEE shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the AWARDDEE by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, (iv) real property taxes, and (v) conveyance taxes. The AWARDDEE is also responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The AWARDDEE shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The AWARDDEE shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, 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 AWARDDEE have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. The AWARDDEE 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, Hawaii Revised Statutes.
- f. The AWARDDEE shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, Hawaii Revised Statutes, and section 3-122-112, Hawaii Administrative Rules, that is current within six months of the date of issuance.
- g. In lieu of the above-certificates from the Department of Taxation and the Department of Labor and Industrial Relations, the AWARDDEE may submit proof of compliance through the State Procurement Office's designated certification process.
- h. The AWARDDEE is responsible for securing all employee-related insurance coverage for the AWARDDEE and the AWARDDEE'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.

12. Payment Procedures: Tax Clearance. All payments under this Agreement shall be

made only upon submission by AWARDDEE of (i) original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.

13. Publicity.

- a. The STATE Legacy Land Conservation Program shall be credited as a sponsor on all advertising and promotional materials and activities wherever and whenever possible. The AWARDDEE shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the AWARDDEE's brochures, advertisements, or other publicity of the AWARDDEE without consultation and written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources.
- b. The AWARDDEE consents to the STATE's use of AWARDDEE and the Property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program.

14. Confidentiality of Material.

- a. All material given to or made available to the AWARDDEE by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the AWARDDEE and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the AWARDDEE to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the AWARDDEE. Upon receipt of said notice, the AWARDDEE shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.

- b. If, for any cause, the AWARDDEE breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the AWARDDEE's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written notice to the AWARDDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the AWARDDEE of such termination at least thirty (30) calendar days before the effective date of such termination.
 - c. Upon termination of the Agreement, the AWARDDEE, within thirty (30) calendar days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the AWARDDEE shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the AWARDDEE under this Agreement.
 - d. If this Agreement is terminated for cause, the AWARDDEE shall not be relieved of liability to the STATE for damages sustained because of any breach by the AWARDDEE of this Agreement. In such event, the STATE may retain any amounts which may be due and owing to the AWARDDEE until such time as the exact amount of damages due to the STATE from the AWARDDEE has been determined. The STATE may also set off any damages so determined against the amounts retained.
16. Disputes. No dispute arising under this Agreement may be sued upon by the AWARDDEE until after the AWARDDEE's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar days after the CHAIRPERSON's receipt of the AWARDDEE's written request whichever comes first. While the CHAIRPERSON considers the AWARDDEE's written request, the AWARDDEE agrees to proceed diligently with the performance necessary to complete the Project unless otherwise instructed in writing by the CHAIRPERSON.
17. State Remedies. The AWARDDEE understands that in the event that it no longer meets all of the standards set forth in paragraph 1 of these General Conditions, or in the event that AWARDDEE fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to AWARDDEE or may seek reimbursement for

payments made to AWARDEE under this Agreement. In addition to the remedies set forth above, the STATE shall be entitled to pursue any other remedy available at law or in equity.

18. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the AWARDEE and the STATE.
19. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the CHAIRPERSON at the CHAIRPERSON's office in Honolulu, Hawaii or to the AWARDEE at the AWARDEE's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The AWARDEE are responsible for notifying the CHAIRPERSON in writing of any change of address.
20. Waiver. Prior to the disbursement of funds, the CHAIRPERSON, in his or her discretion, may waive certain conditions set forth in this Agreement. No waiver shall be effective unless in writing executed by the CHAIRPERSON. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the AWARDEE's obligations under the statutes.
21. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
22. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
23. Survival. AWARDEE's obligations and the STATE's remedies shall survive the funding of the grant and the acquisition of this Property by AWARDEE.
24. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the AWARDEE relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and

representations, which shall no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the AWARDEE other than as set forth or as referred to herein.

25. Counterparts. Furthermore, the parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signature to the original or the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
26. Suspension. Upon a breach of this Agreement, the STATE may impose sanctions against AWARDEE, including, but not limited to: suspension of all grant payments; and suspension of the AWARDEE's participation in STATE grant programs; until such time as all breaches are cured to the STATE's satisfaction. Sanctions may also include repayment of all state funds expended and any sanctions included as provisions herein.