

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 8, 2017

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref: GL 5981

OAHU

Consent to Federal Interest Affecting Property Located on the Land Covered by General Lease No. S-5981; Consent to the Construction of the Lower Floor of Malama Recovery Building; Waianae District Comprehensive Health and Hospital Board, Incorporated, Lessee; Lualualei, Waianae, Oahu; TMK (1) 8-6-001:003

BACKGROUND:

Around 2011, Waianae District Comprehensive Health and Hospital Board, Inc. ("Lessee") obtained two federal grants for the construction of the substance abuse treatment center (Malama Recovery Building) and a two-story medical clinic building. At its meeting on April 21, 2011, under Agenda Item D-10, the Board authorized the Chairperson to execute two documents acknowledging the respective federal interests on the land under General Lease No. S-5981. The intent was to protect the federal interest which funded \$246,309 and \$7.9 million for the construction of the Malama Recovery Building and the clinic building respectively. Today, the above-mentioned improvements are serving the community.

In 2011, the concept of encumbering State lands with federal interest was relatively new to the Land Division. Therefore, the April 21, 2011 submittal discussed multiple issues, including perpetuity of the encumbrance, the fact that improvement (not land) is encumbered by such federal interest, possible buyout scenario in the event that improvement is not used for the purpose specified in the federal grant, fair market value of the improvement at the time of the buyout, and amendment of performance bond provision to protect the State's interest. All these issues were thoroughly discussed at the Board meeting in the presence of the counsel from the Lessee. In short, the 2011 approval gave the Lessee the ability to utilize the federal grants for the construction of two needed improvements at the facility.

A copy of the April 21, 2011 submittal, without the exhibits attached thereto, is attached as **Exhibit 1** for Board's reference.

Community Development Block Grant

In November 2015, the Lessee obtained a Community Development Block Grant (“CDBG”) funded through the Department of Housing and Urban Development and administrated by the City and County of Honolulu (“City”), in the amount of \$991,620. Lessee intends to use the grant to improve the currently vacant lower floor of the existing Malama Recovery Building. The Lessee and the City signed the Subrecipient Agreement (“SA”) (**Exhibit 2**) regarding the terms and conditions of the CDBG.

The construction involves nine (9) counseling rooms, reception area, wait area, restrooms, and lanais.

To protect the federal interest in the grant and ensure the proposed improvements mentioned above will be used in accordance with the conditions of the CDBG program, the City requires the Lessee sign two (2) documents, namely, CDBG Use Restriction Agreement (“URA”) and Restriction Agreement (“RA”). The URA is valid for the National Objective Period covering five (5) years, and the RA is valid for the City Compliance Period for a period of 15 years.¹ Copies of the latest draft version of the URA and RA are attached as **Exhibits 3** and **4** respectively.

Lessee also inquired with the Federal agency handling the completed second floor of the Malama Recovery Building, and received an email confirming that the proposed improvement mentioned above will not trigger any action on the existing Federal funded property, i.e. upper floor of the same building.

Land Division’s Response

Notwithstanding various issues raised in the April 21, 2011 submittal, the Lessee managed to complete and utilize the improvement in accordance with the terms and conditions of the grants. To date, staff is not aware of any noncompliance issue by the Lessee in relation to the grants. Staff believes the Lessee can utilize the subject CDBG and improve the facilities that continue to serve the community. Staff has no objection to the consent request.

Approval of Construction of New Improvement

Staff also recommends the Board approve, pursuant to the lease condition, the construction of the improvement described above and further depicted on Exhibit B in both the URA and RA.

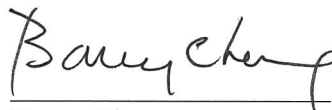
There are no other pertinent issues or concerns relating to the request.

¹ The duration of the RA varies with the amount of loan received, pursuant to the Revised Policy on Required National Objective Period Compliance developed by the City. The 15-year period shall commence upon the expiration or termination of the restriction period in the URA (see condition 1 on page 3 of Exhibit 4)

RECOMMENDATION: That the Board:

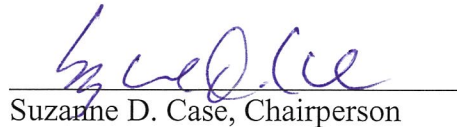
- A. Approve the construction of the Lower Floor of the Malama Recovery Building as described above pursuant to the terms and conditions of General Lease 5981.
- B. Authorize the Chairperson to execute Consent to CDBG Use Restriction Agreement Affecting Property Located on the Land Covered by General Lease No. S-5981 attached as Exhibit 3 herein, subject to the following:
 - 1. Review and approval by the Department of the Attorney General; and
 - 2. Other terms and conditions as prescribed by the Chairperson which best serve the interest of the State.
- C. Authorize the Chairperson to execute Consent to Regulatory Agreement Affecting Property Located on the Land Covered by General Lease No. S-5981 attached as Exhibit 4 herein, subject to the following:
 - 1. Review and approval by the Department of the Attorney General; and
 - 2. Other terms and conditions as prescribed by the Chairperson which best serve the interest of the State.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT 1

Board Submittal:

April 21, 2011, Item D-10

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 21, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref: GL 5981

OAHU

Two (2) Consent to Federal Interest Affecting Property Located on the Land Covered by General Lease No. S-5981; Consent to the Construction of the Malama Recovery Building and a Two-Story Medical Clinic Building; Modification of Improvement Bond Requirement; Termination of Notice of Acknowledgement of a Thirty (30) Year Federal Interest Affecting The Proposed Substance Abuse Treatment Center Only and as Part of General Lease No. S-5981; Waianae District Comprehensive Health and Hospital Board, Incorporated, Lessee; Lualualei, Waianae, Oahu; TMK (1) 8-6-1:3

BACKGROUND:

On March 11, 2010, as amended on July 8, 2010, the Board authorized the Chairperson execute a document acknowledging the federal interest for the proposed substance abuse treatment center ("Malama Recovery Building") on the land under General Lease No. S-5981. The intent was to protect the federal interest which funded \$246,309 for the construction of the Malama Recovery Building, consisting of approximately 2,448 square feet of interior space.

In an attempt to limit the federal interest to the value of the Malama Recovery Building, staff incorporated the thirty (30) year life of the building, as commonly used in a straight line depreciation method, into the document. The Notice of Acknowledgement was drafted accordingly, and it was executed and recorded in August 2010 (**Exhibit A1**).

Recently, the Lessee advised the staff that the thirty (30) years acknowledgement method was not accepted by the federal Department of Health and Human Services, Health Resources and Services Administration. According to the Lessee, the Notice did not meet the federal requirements and needed to be revised.

In the meantime, the Lessee also received another federal grant (about \$7.9 million) for the construction of a two-story medical clinic building, in addition to the Malama Recovery Building. Lessee requests the Board consent to encumbering the subject lease with the federal interest pertaining to the two improvements mentioned above and termination of the Notice of Acknowledgement, pursuant to the form attached as **Exhibit**

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *DAY*
April 21, 2011

EXHIBIT 1

D-10

A2.**REMARKS:****Federal Interest**

The Lessee provides the draft "Notice of Federal Interest" at **Exhibits B1 and C1** for the Malama Recovery Building and the two-story medical clinic building respectively (collectively "FI Buildings"). The said notices, which have been reviewed by the federal agency, require the FI Buildings not to be (1) used for purpose inconsistent with the statute and any program regulations governing the award under which the Property was acquired; (2) mortgaged or used as collateral without written permission of the federal agency; (3) not be transferred to another party without the written permission of the federal agency.

In addition, the Notice of Federal Interest stipulates that "Nothing contained herein shall be deemed to create or constitute a Federal interest or other encumbrance on the Land or otherwise cause or result in the imposition of any conditions on the use of the Land, it being acknowledged that such Federal interest and conditions on use are limited to the Property constructed with funds from the grant." The Property is designated and shown on the plan respectively on Exhibit B1 and C1 as the proposed Malama Recovery Building and the Project Location.

The above restrictions are no different from the State's standard lease conditions regarding the specific character of use, and restrictions for mortgage or transfer the lease without written consent of the lessor, i.e. the Board. However, the federal interest does not have any expiration date or any early termination clause in the relevant act governing the award.

According to §74.32 "Real Property", CFR 45, when the FI Buildings is no longer needed, the recipient of the award [Lessee] shall request disposition instruction from the federal agency. Among the possible disposition instruction, the recipient (Lessee or State) may compensate for the share of the federal government for the current market value of the federal interest; the recipient (Lessee or State) may sell the federal interest following the criteria set by the federal agency and pay for the current market value of the federal share in the improvement; the recipient (Lessee or State) may transfer the improvement to a federal agency or a third party as directed by the federal agency regulating the award. An excerpt of the law is attached as **Exhibit D**.

Although the Federal Interest is limited by defining the property as the federally funded improvements, the Department will incur a significant risk by consenting to the interest. The Department may be subject to liability, both financially and in regards to its ownership of the improvements. As stated earlier, the Federal Interest is granted in perpetuity, and is not limited to the duration of the lease. Although the Lessee is primarily responsible for meeting the requirements of the interest, if the Lessee either defaults or is otherwise unable to continue operating the healthcare and medical facility,

and the lease is terminated, the Department would be responsible to keep in the improvements in either its original intended use or another use that is approved by the federal granting agency. The other possible government entity that could possibly operate the healthcare and medical facility would be the Hawaii Health Systems Corporation. At this time, they have not been consulted in this matter. Most likely, they would have the same concerns as the Department. Securing legislative funding to operate the healthcare and medical facility will be difficult.

However, if the Department is unable to find another State agency or organization to operate the healthcare and medical facility including the FI Buildings, the Department, as required by the CFR provision, would then have to:

- (a) compensate the Federal Government for that percentage of the current fair market value of the property attributable to the Federal share in the project or;
- (b) may be directed to sell the property under guidelines provided by the HHS awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal share in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds) or;
- (c) may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market values of the property.

At the very least, the Department may be responsible to compensate the Federal Government in order to restore its ability to dispose of the FI Buildings for an alternate use and potential income generation. Furthermore, the degree of financial liability may be significant. The Waianae District Comprehensive Health and Hospital Board received over \$8 million award from the Federal Government for the FI Buildings. It is not unreasonable to assume that any current market value of the FI Buildings during the buyout situation would be at least, if not greater than, of the same amount (\$8 million). The current budget deficit situation makes it difficult for the Department to secure legislative funding to compensate the Federal Government.

If the Department cannot provide compensation for the Federal Interest, then the Department may relinquish title to the property, either through a required sale or transfer to the Federal Government. In these cases, the Department will be compensated, but in a reduced amount to satisfy the Federal Interest. In addition, since the Federal Interest is perpetual, the Department will lose any future potential revenue generation the property may provide and hamper the Department's attempts to satisfy its public trust obligations.

Consent to the Construction of the FI Buildings

The Lessee requests the Board consent to the construction of the FI Buildings on the lands, as required by the Federal agency. It is a standard condition in the lease that the

Lessee shall submit building plans for any improvement to the Chairperson for approval. Staff does not have any objection to the requested consent by the Board on the improvement, since it will facilitate the receipt of the award from the Federal agency.

Modification of Improvement Bond

Pursuant to Condition 38 "Bond, Improvement" of GL 5981, the Lessee is required to procure an improvement bond of not less than \$5 million within 60 days of the approval of the construction plan, and such bond shall name the State as the obligee. This condition intends to ensure the completion of the improvements. However, as the duration of the Federal Interest is not limited to the construction period, the Department initially requested the Lessee secure a performance bond in the amount of \$8.1 million for the duration of the lease.

As confirmed from recent site visit, the Malama Recovery Building is completed. The estimated development cost for the proposed two-story medical clinic building is about \$12 million, of which \$7.9 million is the share of the federal interest. The Lessee informed staff, in a letter attached as **Exhibit E** that the cost for acquiring a performance bond in the requested amount would be between \$80,000 to \$160,000 annually, which is a substantial amount to its budget and would impose a significant financial burden. Therefore, the Lessee requests the Board waive the improvement and performance bond requirements pursuant to Condition 27 of the lease.

Staff Response

Condition 27 "Waiver, modification, reimposition of bond and liability insurance provisions" stipulates, "upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount, provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their tenor and form at any time throughout the terms of this lease."

The intention of requiring an improvement bond is to ensure the State's interest is protected from any possible claim or filing of lien on the State lands. While the Lessee might have paid the construction cost to the general contractor, there are possibilities that the sub-contractors or material suppliers would file a lien encumbering the fee interests in the event that the general contractor had failed to perform its obligation under the contract. Staff believes that in the construction industry, a lot of uncertainties could happen and there is no definite means to prohibit filing of liens arising from the construction on State land.

The Lessee responds that the concerns could be relieved by the procurement of a material and performance bond by the general contractor and a builder's risk insurance policy obtained by the Lessee pertaining to the construction and its costs. The material bond will cover the possible claim from the material supplier, while the Lessee can use the

performance bond to continue any uncompleted improvements. In addition, staff understands from the Risk Management Office that a builder's risk insurance policy cover any loss due to fire or other natural disaster. The builder's risk insurance policy can cover any theft of building material. If the general contractor could not perform its obligation under the contract, the Lessee could exercise its right to use the money bonded to ensure the completion of the improvement. In addition, the material supplier could claim the amount owed under the material bond mentioned above.

Staff believes that the State's interest would be protected provided that the State is named as an additional insured/obligee, as appropriate, in the material, performance bond, and builder's risk insurance policy mentioned above. The Lessee has checked with its insurance agent and notes that the builder's risk insurance policy and the bonds mentioned above may name the State as additional insured/obligee.

Staff recommends the Board amend Condition 38 to "cover other form of document acceptable to the Chairperson in the amount of the construction cost relating to the proposed two-story medical clinic building". The proposed amendment will provide the Chairperson with flexibility to accept a builder's risk insurance policy or similar document to ensure the construction is completed to the satisfaction of the Department.

Pursuant to Section 507-43(b), HRS, "the application [for a lien] and notice [of lien] shall be filed not later than forty-five days after the date of completion of the improvement against which it is filed." The requirement for naming the State as additional insured/obligee shall expire upon the end of the 45-day period as mentioned in Section 507-43(b), HRS.

The Department notes that while these measures will provide security with respect to the completion the improvements on the property, it will not relieve the Department of any potential liability with respect to the ongoing requirements of the Federal Interests as previously discussed.

There are no other pertinent issues or concerns relating to the request.

RECOMMENDATION: That the Board:

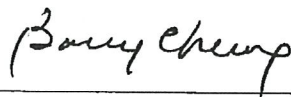
- A. Authorize the Termination of Notice of Acknowledgement of a Thirty (30) Year Federal Interest Affecting the Proposed Substance Abuse Treatment Center Only and as Part of General Lease No. S-5981 attached as Exhibit A2 herein, subject to the following:
 1. Review and approval by the Department of the Attorney General;
 2. Other terms and conditions as prescribed by the Chairperson which best serve the interest of the State.

- B. Consent to the construction of the Malama Recovery Center and the two-story medical clinic building under GL 5981.
- C. Authorize the Chairperson to execute two (2) Consent to Federal Interest Affecting Property Located on the Land Covered by General Lease No. S-5981 attached as Exhibit B2 and C2 herein, subject to the following:
1. Review and approval by the Department of the Attorney General;
 2. Other terms and conditions as prescribed by the Chairperson which best serve the interest of the State.
- D. Amend Condition 38 of General Lease No. 5981 to read as follow:

"38. Bond, Improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond or other form of document acceptable to the Chairperson in the amount of the construction cost relating to the proposed two-story medical clinic building, which bond or document shall name the State as obligee, conditioned upon the faithful observance and performance of the building requirement contained in this lease, the completion of the proposed two story medical clinic building [~~building(s) and improvements~~] on or before the specified date of completion free from all liens and claims, and that the Lessee shall hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the building requirement."

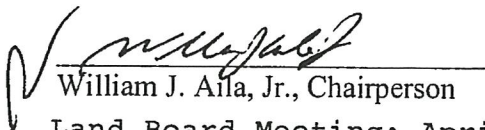
- E. The Lessee shall not be required to provide the improvement bond as noted in Condition 38 of the lease, upon the expiration of the filing period for the application for a lien in Section 507-43(b), HRS.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: April 21, 2011: D-10; Approved as Amended:

Based on Staff's explanation and recommendation at the meeting, the Board amended the written Recommendation section as follows:

Insert a new Recommendation B, amend the remaining recommendations accordingly as follows; deleted language is bracketed and stricken, and and new language is underscored. (continue on next page)

B. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment pursuant to the exemption notification attached as Exhibit F.

[B.]C. [Consent] Approval in Concept to the construction of the Malama Recovery Center and the two-story medical clinic building under GL 5981, and delegate to the Chairperson the discretion to review and approve the construction plans and specifications upon the Lessee's compliance with the requirements with Chapter 343, HRS for those improvements.

[C.]D. Authorize the Chairperson to execute two (2) Consent to Federal Interest [Affecting]in the aforementioned Improvements on the Property Located on the Land Covered by General Lease No. S-5981 attached as Exhibit B2 and C2 herein, subject to the following:

1. Review and approval by the Department of the Attorney General;
2. Other terms and conditions as prescribed by the Chairperson which best serve the interest of the State.

[D.]E. Amend Condition 38 of General Lease No. S-5981 to read as follow:

"38. Bond, Improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond or other form of document acceptable to the Chairperson in the amount of the construction cost relating to the proposed [two-story medical-clinic building]improvements, which bond or document shall name the State as obligee, conditioned upon the faithful observance and performance of the building requirement contained in this lease, the completion of the proposed [two-story medical-clinic building]improvements [building(s) and improvements] on or before the specified date of completion free from all liens and claims, and that the Lessee shall hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the building requirement."

[E.]F. [The Lessee shall not be required to provide] Delegate to the Chairperson the authority to use his/her discretion in releasing the improvement bond as noted in Condition 38 of the lease, upon the expiration of the filing period for the application for a lien in Section 507-43(b), HRS, and upon no liens or claims having been filed."

EXHIBIT 2

Subrecipient Agreement:

Community Development Block Grant (CDBG)
Program

SUBRECIPIENT AGREEMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
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EXHIBITS

Exhibit A	2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," implementing guidance formerly found in Office of Management and Budget ("OMB") Circulars A-110, A-122 and A-133.
Exhibit B	Restrictions on Lobbying
Exhibit C	24 CFR Part 570, Subpart K, "Community Development Block Grants – Other Program Requirements"
Exhibit D	Chapter 1, Article 18, Revised Ordinances of Honolulu 1990, as amended, "Sexual Harassment Policy for Employer Having a Contract with the City"

ATTACHMENT

Attachment 1	Program Progress Report, Quarterly Report Form
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SUBRECIPIENT AGREEMENT

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER 14.218

MALAMA RECOVERY BUILDING RENOVATION AND ACCESS

THIS SUBRECIPIENT AGREEMENT (this "Agreement") is by and between the CITY AND COUNTY OF HONOLULU ("City"), a municipal corporation of the State of Hawaii, the principal place of business of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, and Waianae District Comprehensive Health and Hospital Board, Incorporated (the "Subrecipient") 99-0148164 (TIN) Number, 072511389 (DUNS) Number, a Hawaii nonprofit corporation, the principal place of business of which is 86-260 Farrington Highway, Waianae, Hawaii 96792.

The City and County of Honolulu, by Resolution No. 15-115, CD1, authorized submittal of the City and County of Honolulu's Twenty-First (21st) Year Action Plan for Community Development Block Grant (CDBG), HOME Investment Partnerships, Emergency Solutions Grants and Housing Opportunities for Persons With AIDS program funds (the "Action Plan"). The Action Plan was approved by the U.S. Department of Housing and Urban Development (HUD) on July 22, 2015, and the resulting Funding Approval/Agreement for CDBG (Grant No. B-15-MC-15-0001) was executed on July 28, 2015, reserving a total of \$7,286,071 in FY 2016 funds. Of this total, the Action Plan allocated to Subrecipient the amount of \$991,620 for the purposes of construction of a lower level for the Malama Recovery building to house additional Behavioral Health counseling rooms which will better serve the residents of the Waianae Coast (the "Project").

The amount of \$991,620.00 is the current and total amount of Federal Funds obligated to the Subrecipient by the City and the total amount committed to this Subrecipient as part of this Federal Award. These funds are not for Research and Development.

IN CONSIDERATION of the mutual covenants and obligations herein contained and subject to the terms and conditions hereinafter stated, the City and the Subrecipient agree as follows:

SECTION I.

1. TERM OF AGREEMENT.

1. This Agreement shall be effective from NOV 18 2015 (date), the date of the pre-award letter from the City, and shall remain in effect through December 31, 2018 (the "Standard Term End Date"), unless earlier terminated by (a) the City's entry of the Project as completed into HUD's Integrated Disbursement and Information System ("IDIS") and the issuance of a National Objective

Period Certificate of Compliance with effective date prior to the Standard Term End Date; or (b) any action to terminate as set forth under Section II, Paragraph 28, NONCOMPLIANCE, SUSPENSION AND TERMINATION. The term of this Agreement and the provisions herein may be extended as specified in Section I, Paragraph 4, PROJECT PERIOD. Notwithstanding the foregoing, certain provisions of this Agreement shall remain in effect until the end of the Record Retention Period or National Objective Period, as specified in Section I, Paragraph 6, NATIONAL OBJECTIVE PERIOD, whichever is longer.

2. SCOPE OF SERVICES.

- a. Specific Services to be Provided. The Subrecipient shall perform the following services:

The Subrecipient must ensure that the "Endangered Species" mitigation measures, stated in the City's Environmental Review Record, is addressed by 1.) Designing the project to minimize the amount of time standing water is present during construction and 2.) Whenever possible use native species for landscaping. If native plants do not meet the landscaping objectives, utilize plants that have a low risk of becoming invasive. 3.) Utilize best management practices regarding sediment and erosion in aquatic environments.

Measureable results shall generally consist of capital improvement and expansion of the Center's current Behavioral Health Services. This improvement will meet the needs of the community and the Health Center's growing patient population and will assure that services continue to be available and accessible to residents of the community. Specifically, the expansion will add a bottom floor to the Malama Recovery Building to increase the number of Behavioral Health counseling rooms needed to serve the current and growing population needing mental health treatment. The project includes but is not limited to: construction of additional counseling rooms, meeting rooms, reception area, restrooms, two lanais, a break room, storage, electrical closet, site preparation, drainage grading, landscaping, parking lot paving, parking lot lighting, and building handicap access.

The services shall be provided in accordance with the Project's Proposal dated DECEMBER 12, 2012 which is incorporated herein by reference.

- b. Eligible Activity and National Objective. The Subrecipient certifies that the Project is eligible for CDBG funding as an activity that is described in 24 Code of Federal Regulations (CFR) § 570.201(c), acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, and that meets the CDBG national objective described in 24 CFR § 570.208(a)(1), an area benefit activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low- and moderate-income persons. The Subrecipient shall carry out the Project as described in this Agreement and in compliance

with all applicable CDBG regulations.

- c. **Special Documentation Requirements.** The Subrecipient shall comply with the documentation maintenance and retention requirements set forth in Section II, Paragraph 27, RECORDKEEPING, throughout the Project Period and either the Record Retention Period or the National Objective Period set forth in Section I, Paragraph 6, NATIONAL OBJECTIVE PERIOD, whichever is longer. Such records shall include:

- (1) **Eligibility of Activity.** Documentation of the area served by the facility; that the area served is primarily residential and at least 51% of the residents are low- and moderate-income; and that the facility serves all residents of the area.
- (2) **Compliance with National Objective.** Documentation that the entire area served by the activity: Boundaries of the service area and the basis for determining these boundaries.

Documentation that the entire area served by the activity is primarily residential.

Documentation of the income levels of the persons who reside in the area served by the activity; the percentage of low- and moderate— income persons and the data used to determine that percentage.

- (3) **Accomplishment and beneficiary data** as required by the City on Form PP-01 (Attachment 1) as required in Section II, Paragraph 3, REPORTS.

3. **COMMENCEMENT OF WORK.** The Subrecipient shall not perform any services required by this Agreement until the Agreement has been executed by all parties and until a written Notice to Proceed (“NTP”) has been issued to the Subrecipient by the City. The City will not issue a NTP until the City completes all environmental review requirements.

4. **PROJECT PERIOD.** All activities and services required by this Agreement shall be completed after the issuance of the NTP and before the Standard Term End Date (the “Project Period”). Any extension of the Project Period shall be subject to the City’s determination, at its sole discretion, that such extension will have no adverse effect on the City’s ability to meet HUD’s grant requirements; and, if approved, shall be effectuated by amendment to this Agreement.

5. **GRANT OF FUNDS.** Subject to all of the provisions hereinafter set forth, the City agrees to grant to the Subrecipient a total sum not to exceed NINE HUNDRED NINETY-ONE THOUSAND SIX HUNDRED TWENTY AND NO/100 DOLLARS (\$991,620.00) for actual costs incurred to undertake all the activities and work required by this Agreement.

- a. **Requirement for Timely Expenditure of Funds.** In accordance with HUD’s

requirement for the timely expenditure of funds, the City reserves the right to cease further funding under this Agreement, to terminate this Agreement and to require repayment of any unexpended funds, at any time upon its determination, in its sole and absolute discretion, that the Subrecipient is not in compliance with the Drawdown Schedule required in Section II, Paragraph 2, PERFORMANCE AND DRAWDOWN SCHEDULES.

- b. Federal Funds. The City and the Subrecipient agree that this Agreement (1) shall be construed as an agreement to pay the CDBG amount only out of federal funds to be received from the federal government when the federal funds are so received and (2) shall not be construed as a general agreement to pay out of any funds other than those received from the federal government.
- c. Budget. CDBG funds shall only be used for eligible costs incurred during the Project Period, and such costs shall be subject to the following budget allotments:

Budget Category	Allotment
Construction of Improvements	\$991,620.00
Indirect Cost	N/A
Total	<hr/> \$991,620.00

In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to the budget must be approved in writing by both the City and the Subrecipient.

Prior to the disbursement of any funds under this Agreement, the Subrecipient shall submit for City approval a Project budget in sufficient detail to provide a sound basis for the City to effectively monitor performance under the Agreement. The Project budget will be based on bid specifications approved by the City and the proposed construction contract, and shall accompany the Subrecipient's request for approval of the construction contract. The approved budget shall be deemed incorporated by reference herein.

- d. Indirect Cost Rate. Indirect cost rates are not applicable to the Project.
- e. All charges to the project shall be subject to approval by the City. Funds will be paid to the Subrecipient only upon submission of evidence substantiating the eligibility of such charges to the City's satisfaction.

6. NATIONAL OBJECTIVE PERIOD.

- a. As used in Section II, Paragraph 12, USE, DISPOSITION AND REVERSION OF ASSETS, and elsewhere in this Agreement, the "National Objective Period" is the time period during which the Subrecipient shall comply with the surviving terms and conditions of this Agreement. The National Objective Period shall not commence until such time that a monitoring has been conducted and a Certificate of Compliance has been issued by the City that states the agency is servicing the beneficiaries as proposed and required under this Agreement. The National Objective Period shall continue for a period of five (5) years thereafter. During the National Objective Period, the Subrecipient shall continue to use real or personal property acquired, constructed or improved, as applicable, with CDBG funds for the purposes described in Section I, Paragraph 2 of this Agreement. The National Objective Period shall be extended for any period of time that the City, with the concurrence of HUD, or HUD determines that the Subrecipient has not complied with the terms of this Agreement. The length of the extension shall correspond to the time period during which the Subrecipient was found to be noncompliant with the terms of this Agreement. Notwithstanding the closeout of the grant or the expiration or termination of this Agreement, the following provisions of this Agreement shall continue in effect throughout the term of the National Objective Period: Section I, Paragraphs 2, 6.a and 7 and Section II, Paragraphs 3, 4, 6, 9, 10, 12-18, 22-25, 27, 29 and 31-34.
- b. In furtherance of the CDBG National Objective, the City shall require an extended compliance period as provided under City policy upon completion of the National Objective Period, during which extended period the Project must continue to be operated as if the National Objective Period were still in effect ("City Compliance Period"). The length of the City Compliance Period is based on the total amount of CDBG funds expended on the Project, as follows:

CDBG AWARD	CITY COMPLIANCE PERIOD
Less than \$249,999	5 years
\$250,000 - \$499,999	10 years
\$500,000+	15 years
All New Construction or Real Property Acquisition Activities	20 years

If at any time during the City Compliance Period the Subrecipient fails to use the Real Property in a manner that meets the National Objective set forth in Section 1, Paragraph 2.b of this Agreement, the City Compliance Period shall be extended to ensure that the total additional years of compliance match the baseline number of years set forth in the table above. In that event, the Subrecipient shall pay the City an amount equal to the current fair market value of the Real Property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of or improvement to, the Real Property, subject to the approval of the City.

7. ACCESS TO RECORDS.

Funded agencies are required to make its facilities, books, and records available for Project monitoring and inspection by the City, HUD, and the Comptroller General of the United States and/or their representatives throughout the term of this Agreement and any applicable City Compliance Period.

8. CDBG USE RESTRICTION AGREEMENT AND REGULATORY AGREEMENT.

To secure the Subrecipient's performance of its obligations under this Agreement, the Subrecipient shall execute a CDBG Use Restriction Agreement and a Regulatory Agreement. The CDBG Use Restriction Agreement shall be effective upon execution and shall continue for the duration of the five (5) year National Objective Period. The Regulatory Agreement shall be effective as of the date of completion of the National Objective Period and shall continue for the duration of the City Compliance Period. The documents shall be recorded at the Bureau of Conveyances of the State of Hawaii under the appropriate recording system prior to the issuance of the written NTP.

9. NONCOMPLIANCE OR TRANSFER OR CHANGE OF USE.

If the Subrecipient materially fails to comply with any of the terms of this Agreement, the City may take any of the actions set forth in Section II, Paragraph 28, NONCOMPLIANCE, SUSPENSION AND TERMINATION, including, without limitation, disallowing all or part of the cost of the Project, in which case the City may enforce any and all rights and remedies available in law or equity to recover the same. The City reserves all rights and remedies specified under the CDBG Use Restriction Agreement to enforce compliance with the provisions of this Agreement.

The Subrecipient is subject to the restrictions on Transfer or Change of Use of the Real Property set forth in Section II, Paragraph 12, USE, DISPOSITION AND REVERSION OF ASSETS, and to like restrictions in the CDBG Use Restriction Agreement. In the event of a transfer or change of use without consent of the City, the City may require payment or retransfer of the Real Property as provided in said Section II, Paragraph 12, and reserves all rights and remedies under this Agreement, or under the CDBG Use Restriction Agreement to enforce said obligations.

10. SUBRECIPIENT AGREEMENT CLOSEOUT.

The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during the Project Period including the period

subject to the program income requirements.

11. SPECIAL REIMBURSEMENT CONDITIONS.

The Subrecipient will perform and complete the activities in conformance with the Schedule for Obligations and Expenditure of Project Funds Tied to Milestones below:

Construction:	Milestone Date	CDBG Expenditure
Site Work	July to Oct. 2017	\$30,000
Parking lot & Lighting	Oct. to Dec. 2017	\$180,000
Handicap Access	Oct. to Dec. 2017	\$46,000
Construction of 2,448 square feet	Nov 2017 to June 2018	\$735,620

If the Subrecipient fails to meet any of the deadlines above, the Subrecipient shall have ninety (90) days to reimburse the City for any CDBG funds expended on the Project.

12. NOTIFICATIONS.

Any notice required or permitted by the provisions of this Agreement to be made shall be written and shall be either personally delivered or mailed postage prepaid by certified mail, return receipt requested, to the other party at the address and to the person designated by each party. No other method of notification shall be effective. The parties designate the following addresses and persons for notices:

- (1) CITY AND COUNTY OF HONOLULU
Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813

ATTENTION: Director

With a copy to:

CITY AND COUNTY OF HONOLULU
Department of Budget and Fiscal Services
Federal Grants Unit
530 South King Street, Suite 208
Honolulu, Hawaii 96813

- (2) Waianae District Comprehensive Health and Hospital Board,
Incorporated
86-260 Farrington Highway
Waianae, Hawaii 96792

ATTENTION: Executive Director

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SECTION II.

1. CONDITIONAL COMMITMENT OF FUNDS.

- a. Pursuant to 24 CFR Part 58, no Project cost may be incurred by the Subrecipient until it has been formally notified by the City that the City has obtained the appropriate level of environmental clearance from HUD; or the City has determined, as the responsible entity, that the Project is categorically excluded subject to or categorically excluded not subject to 24 CFR § 58.5.

Notwithstanding anything herein, the parties hereto agree and acknowledge that this award does not constitute a commitment of funds or site approval, and that such commitment of funds or site approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58. The parties further agree that the provision of any funds to the Project is conditioned on the City's determination to proceed with, modify or cancel the Project based on the results of a subsequent environmental review.

- b. The Project must complete an environmental review in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321, *et seq.*) and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58.
- c. Decisions, actions or commitments of resources by either the Subrecipient or any participant in the development process that may have an adverse impact on the environment or limit the choice of reasonable alternative sites is prohibited until the appropriate level of environmental clearance has been received and the appropriate NTP has been issued by the City. Prohibited activities include, but are not limited to, the following:
 - (1) Start of construction;
 - (2) Demolition;
 - (3) Relocation;
 - (4) Conversion;
 - (5) Rehabilitation and repair, except as specifically designated and permitted by a Notice to Proceed issued by the City;
 - (6) Site-specific architectural and/or engineering drawings and/or designs;

- (7) Acceptance of construction bids;
 - (8) Advertising for construction bids;
 - (9) Initiating the development of or approving final plans and specifications; or
 - (10) Acquisition of property.
- d. Violations of this provision may result in the termination of this agreement and the revocation of funds awarded.

2. PERFORMANCE and DRAWDOWN SCHEDULES.

- a. Within thirty (30) days after the date of the NTP, the Subrecipient shall submit for approval by the City:
 - (1) A Performance Schedule specifically indicating the timeframe and the expenditures required to complete each major phase of the activities delineated in Section I, Paragraph 2, SCOPE OF SERVICES; and,
 - (2) A Drawdown Schedule indicating when payments for Project expenditures will be requested.
- b. The Subrecipient acknowledges that its timely performance of this Agreement is essential to compliance by the City with the terms of its grant agreement with HUD, and that its failure to timely perform could affect the availability to the City of future HUD funding. The Subrecipient shall diligently perform this Agreement to provide the services or carry out the activities described in the SCOPE OF SERVICES, in accordance with the approved Performance Schedule, and shall adhere to the approved Drawdown Schedule. Failure to diligently adhere to either of these Schedules shall constitute grounds for termination of this Agreement in accordance with Section II, Paragraph 28, NONCOMPLIANCE, SUSPENSION AND TERMINATION.
- c. Any request by the Subrecipient to approve amendments to the Performance or Drawdown Schedules must be accompanied by a showing of good cause. The City may grant or deny such requests in its sole discretion. No such extension or amendment shall be effective unless in writing and signed by the City.

3. REPORTS. Beginning after the date of the NTP, the Subrecipient shall:
- a. Within fifteen (15) days after the end of each month during which CDBG costs have been incurred and invoices received, submit a Financial Status Report/Payment Request to the City on Form PR-01 detailing the Project's financial status. The Financial Status Report/Payment Request shall be submitted as required below in Paragraph 7, METHOD OF PAYMENT. The final Financial Status Report/Payment Request shall be submitted within forty-five (45) days after the expiration of the Project Period; and
 - b. By the end of the month following each completed calendar quarter during which this Agreement remains in effect, submit a Program Progress Report, on Form PP-01, for the type of program funded. This report shall describe the status of the Scope of Service requirements, compliance with the National Objective, beneficiary demographics and include a narrative report on the Project's progress (as applicable). The final Program Progress Report shall be submitted within forty-five (45) days after the expiration of the Project Period unless otherwise provided for in the Section I, Paragraph 2, SCOPE OF SERVICES.
 - c. On a quarterly basis, submit a Section 3 Summary Report (HUD form 60002), if the Subrecipient meets the Section 3 threshold set forth in Section II, Paragraph 21, LABOR, TRAINING AND BUSINESS OPPORTUNITY, and is required to comply with the Section 3 requirements for new employment, training, or contracting opportunities resulting from this Agreement.
 - d. Additional reports required by the City and CDBG Program regulations shall be provided by the Subrecipient as requested.
4. INSPECTIONS AND MONITORING. During normal business hours, all of the Subrecipient's records relating to this Agreement shall be made available for examination by the City, HUD, and the Comptroller General of the United States and/or their representatives.

On a semi-annual basis until the final report for this CDBG funded activity is accepted by the City, the City will make a determination as to whether the Subrecipient (a) has complied with the terms of this Agreement; and (b) has the continuing capacity to complete the CDBG funded activities in a timely manner.

5. PROCUREMENT AND SUBCONTRACTING. The Subrecipient shall not procure or subcontract any part of the services under this Agreement without the prior written consent of the City. Written consent of the City will specify the clearance of the subcontractor from the United States General Services Administration's (GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs.

Procurement policies and procedures shall comply with the requirements at 2 CFR §§ 200.317-326 at a minimum.

- a. Procurement Transactions. All procurement transactions shall be conducted in a manner to provide, to maximum extent practical, open and free competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors or individuals that draft specifications, requirements, statements of work, invitations for bids and/or Requests for Proposals should be excluded from competing for such procurement. The Subrecipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the Subrecipient, price and other pertinent bid/offer factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for his/her bid/offer to be evaluated by the Subrecipient. Any and all bids/offers may be rejected when it is in the Subrecipient's interest to do so.
- b. Procurement Procedures. The Subrecipient shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:
 - (1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - (2) Solicitation of goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.
 - (3) The type of procuring agreements used, e.g., fixed price contracts or purchase contracts, may be determined by the Subrecipient, but must be appropriate for the particular procurement and foremost for promoting the best interest of the Federal CDBG Program. The "cost-plus-a-percentage-of-cost" method shall not be used.
 - (4) Contracts shall be made only with responsible licensed contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past

performance, financial and technical resources or accessibility to other necessary resources.

- (5) All proposed sole source contracts or where only one bid or proposal is received shall be subject to prior approval at the discretion of the City.
- (6) A price or cost analysis in connection with every procurement action shall be documented and maintained for review by the City or HUD Officials.
- (7) Procurement records and files for purchases in excess of \$10,000 shall include the following:
 - (a) Basis for contractor selection;
 - (b) Justification for lack of competition when competitive bids or offers are not obtained; and
 - (c) Basis for award cost or price.
- c. Subcontracts and Administration of Subcontracts. All subcontract agreements entered into by the Subrecipient shall be in writing. No cost incurred prior to the execution of a written subcontract agreement shall be eligible for payment with funds under this Agreement. The Subrecipient shall maintain a system for subcontract administration to ensure that each subcontractor conforms to the terms, conditions and specifications of its subcontract, and to ensure adequate and timely follow-up of purchases.
- d. Construction Services. For any procurement of construction services in excess of \$2,000, the Subrecipient shall provide written notification of the procurement to the City at least 30 days before the request for bids for such services is issued.
- e. Women- and Minority-Owned Businesses. The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

6. INSURANCE REQUIREMENTS.

a. The Subrecipient shall procure or cause to be procured and maintain (as provided herein), throughout the Project Period, all insurance to cover the operations under this Agreement, that may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverages below.

- (1) Workers Compensation and Employers Liability Insurance. The Subrecipient shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee, \$1,000,000 aggregate, for bodily injury by disease.
- (2) Commercial General and Umbrella Liability Insurance. The Subrecipient shall maintain commercial general liability ("CGL") and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella liability insurance described in subparagraph (3) below, if any.
- (3) Business Automobile and Umbrella Liability Insurance. The Subrecipient shall maintain business auto liability (including no fault coverage) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by Subrecipient in the performance of this contract. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- (4) Property Insurance. The Subrecipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment

acquired with Federal funds, as provided to property owned by the Subrecipient.

b. The insurance specified above shall:

- (1) Provide that such insurance is primary coverage with respect to all insured for claims arising from Subrecipient's negligent acts, omissions and/or misconduct; and that any insurance (or self-insurance) carried by the City shall be excess and non-contributing;
- (2) Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in a.(2) and a.(3) above;
- (3) Not be terminated, canceled, nor renewed or substantially changed without THIRTY (30) DAYS prior written notice to the City, except for non-payment of premium;
- (4) Be written on an "Occurrence" form of policy, unless otherwise specifically approved by the City; and
- (5) Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-, or otherwise as approved by the City.

c. The Subrecipient will provide and maintain current certificates of insurance prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the Term as required herein, to the City.

d. The City reserves the right to require additional kinds or amounts of insurance, as reasonably determined by the City to be appropriate.

7. METHOD OF PAYMENT. The Subrecipient shall submit Financial Status Report/Payment Requests (herein referred to as Payment Requests) to the City in accordance with CDBG program requirements, which shall be subject to verification by a designated City official.

a. Certification. Each Payment Request shall be authenticated as to accuracy and certified by the Subrecipient that the work for which payment is requested was performed in accordance with the terms of this Agreement. Only Payment Requests that are completely documented, accurate, and certified as required shall be paid by the City.

- b. Immediate Cash Needs. The Subrecipient shall submit Payment Requests for immediate cash needs only. Immediate cash needs include eligible costs that have been paid by the Subrecipient for reimbursement by the City, costs for goods and services that have been received and are payable at the time the request for payment is prepared, and special disbursement needs for which the Subrecipient has received prior written approval from the City.
- c. Timely Disbursement of Funds Received. Upon receipt of funds from the City, the Subrecipient shall, within three (3) business days, issue payments for all of the costs included in the payment request for which funds were received. The Subrecipient's failure to pay vendors on a timely basis as required in this Paragraph may result in interest penalties payable to the U.S. Treasury based on its Prompt Pay Interest Rate calculator.
- d. Payment Request Requirements. Each Payment Request shall include the following:
- (1) Payment Request Form (Form PR-01). The Payment Request Form shall be fully completed; certified by an authorized official of the Subrecipient; and submitted to the City's Department of Community Services in the original and four (4) copies.
 - (2) Copies of Invoices. Copies of all itemized bills, invoices and receipts that support the Payment Request shall be attached and identify the Project and, if applicable, the nature of work or materials provided by the subcontractor(s).
 - (3) Payroll Summary Reports. Requests for payment of salary and payroll tax costs shall be accompanied by Payroll Summary Reports providing in detail the salary costs for each staff member to be paid with funds provided through this Agreement.
 - (a) Payroll Summary Reports shall be prepared by report period and include by position: total salary or wages paid, the CDBG share of salary or wages (by percent of total and amount), prior charges, the budgeted amount, and the budget balance; and a computation of applicable payroll taxes and fringe benefits.
 - (b) An authorized Subrecipient official shall certify that the information contained in such Payroll Summary Reports is true and correct, and that the hours of work reported reflect the actual hours of time spent by employees to achieve the objectives of the Project as documented by employee

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timesheets duly signed by the employee and a responsible supervisory official.

- (c) Payroll costs shall be substantiated through timesheets signed by the employee and a responsible supervisory official.
 - e. Documentation Requirements. Throughout the Project Period and Record Retention Period, the Subrecipient shall maintain in its files documentation (including bills, invoices, receipts, and timesheets) that substantiates that costs charged to this Agreement are correct and in accordance with the terms of this Agreement.
 - f. Final Payment. After completion of the work in the Scope of Services, the City will release the final payment to the Subrecipient subject to the receipt of the Subrecipient's Tax Clearance and Non-Gratuity Affidavit and, after expiration of the mechanic's and materialmen's statutory lien period.
 - g. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 2 CFR § 200.302.
8. WITHHOLDING OF PAYMENTS. The City may withhold any and all payments to the Subrecipient if the costs set forth in a Payment Request are unreasonable, are inconsistent with HUD letter of credit procedures, or do not comply with applicable Federal guidelines, or if the Payment Request does not comply with the terms of this Agreement.
9. PROGRAM INCOME (24 CFR § 570.500). "Program Income" means gross income received by the Subrecipient directly generated from the use of CDBG funds.
- a. Program Income includes, but is not limited to the following:
 - (1) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
 - (2) Proceeds from the disposition of equipment purchased with CDBG funds;
 - (3) Gross income from the use or rental of real or personal property acquired by the Subrecipient with CDBG funds, less the costs incidental to the generation of Program Income;

- (4) Gross income from the use or rental of real property, owned by the Subrecipient that was constructed or improved with CDBG funds, less costs incidental to the generation of the income;
 - (5) Payments of principal and interest on loans made with CDBG funds;
 - (6) Proceeds from the sale of loans made with CDBG funds;
 - (7) Proceeds from the sale of obligations secured by loans made with CDBG funds;
 - (8) Interest earned on Program Income pending its disposition; and
 - (9) Funds collected through special assessments made against properties owned and occupied by the households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of public improvements.
- b. Subrecipient shall report all Program Income and shall pay all Program Income received to the City on a quarterly basis within thirty (30) days after the end of each quarter, by cashier's check made payable to the City and County of Honolulu.
 - c. In no event shall any of the income, earnings or assets of the Project, including surplus funds or Program Income as herein described, be distributed by the Subrecipient to, or for the benefit of its corporate directors, officers, members, employees or consultants. Discretionary use of Program Income by the Subrecipient is strictly prohibited.
10. COSTS INCIDENTAL TO THE GENERATION OF PROGRAM INCOME. Costs incidental to the generation of Program Income are those costs determined by the City as necessary costs to operate the activities allowed under this Agreement, and shall be reviewed annually by the City on the basis of the Subrecipient's submission of audited financial statements. The audited financial statements shall be made available to the City within sixty (60) days after the close of the Subrecipient's fiscal year.
11. RECEIPT OF FUNDS FROM A THIRD PARTY FOR CDBG FINANCED ACTIVITY. In the event the Subrecipient receives funds from a third party for any part of the services described in the Scope of Services, the Subrecipient shall reimburse the City the total amount of the funds received from that third party. If, however, the Subrecipient expended its own funds, in addition to the funds provided by the City in order to complete the Scope of Services, the Subrecipient may retain third party funds equal to the amount of its expenditures.

12. USE, DISPOSITION AND REVERSION OF ASSETS. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR §§ 570.502, 570.503 and 570.504, as applicable, which include but are not limited to the following:

- a. The Subrecipient is prohibited from disposing of any real or personal property acquired with CDBG funds received under this Agreement, without first receiving prior written consent of the City.
- b. Should the Subrecipient cease to use any real or personal property acquired with CDBG funds for the purposes described in this Agreement, the Subrecipient shall, at the option of the City, either:
 - (1) Pay the City the current fair market value of the asset; or,
 - (2) Transfer the control of the asset to another eligible nonprofit upon the written approval of the City, or
 - (3) Transfer the control of the asset to the City.

The election of one of these options shall be at the sole and absolute discretion of the City.

- c. Upon expiration of the Project Period or earlier termination of this Agreement, the Subrecipient shall transfer to the City:
 - (1) Any CDBG funds on hand at the time of expiration or termination; and
 - (2) Any accounts receivable attributed to the use of CDBG funds.
 - (3) If applicable, beginning on the effective date of the National Objective Period Certificate of Compliance, any real property acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the Subrecipient in the form of a loan) in excess of \$25,000 shall be used to meet one of the national objectives in 24 CFR § 570.208 and for the purposes described in Section I, Paragraph 2, SCOPE OF SERVICES, for a period of five (5) years thereafter, or for such longer period of time as may be specified by the City in Section I, Paragraph 6, NATIONAL OBJECTIVE PERIOD. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the

property. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period, or longer National Objective Period.

- (4) In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (A) transferred to the City for the CDBG program or (B) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

13. USE RESTRICTION AGREEMENT.

Reserved.

14. CONFLICT OF INTEREST. The Subrecipient agrees to abide by the provisions of 2 CFR § 200.112 and 24 CFR § 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this Paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Subrecipient, or any designated public agency.

15. STATUTORY AND REGULATORY COMPLIANCE. The Subrecipient shall comply with all applicable City, State and Federal laws, rules and regulations, including without limitation, those mandated by HUD regarding the CDBG

Program. In cases where City, State and/or Federal laws, rules or regulations address similar issues, the Subrecipient shall comply with the most stringent law, rule or regulation.

- a. The Subrecipient acknowledges receipt of the following documents, all of which are attached and incorporated herein. The Subrecipient shall comply with the applicable standards, requirements and restrictions set forth in these attachments.
 - (1) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," implementing guidance formerly found in Office of Management and Budget ("OMB") Circulars A-110, A-122 and A-133 (Exhibit A);
 - (2) Restrictions on Lobbying (Exhibit B);
 - (3) 24 CFR, Part 570, Subpart K, "Community Development Block Grants – Other Program Requirements" (Exhibit C);
 - (4) Chapter 1, Article 18, Revised Ordinances of Honolulu 1990, as amended, "Sexual Harassment Policy for Employer Having a Contract with the City" (Exhibit D); and
- b. The Subrecipient acknowledges that the above are only some of the rules and regulations governing the administration of the CDBG Program. The Subrecipient agrees to comply with all applicable directives of the CDBG Program and with all rules and regulations found in 24 CFR Part 570, including, but not limited to:
 - (1) The applicable uniform administrative requirements, as described in 24 CFR § 570.502; and
 - (2) The Federal laws and regulations described in 24 CFR Part 570, Subpart K, except that:
 - (a) The Subrecipient does not assume the City's environmental responsibilities described at 24 CFR § 570.604; and
 - (b) The Subrecipient does not assume the City's responsibility for initiating the intergovernmental review process for HUD's programs and activities found at 24 CFR Part 52.
- c. The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the

conduct of political activities in violation of Chapter 15 of Title V of the United States Code (the "Hatch Act").

16. NONDISCRIMINATION. The Subrecipient will not discriminate against any program beneficiary or prospective program beneficiary on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability or handicap, age, marital/familial status with regard to public assistance. The Subrecipient will take affirmative action to ensure that its program is free from such discrimination.
17. FAITH-BASED ACTIVITIES (24 CFR § 570.200(j)). The Subrecipient agrees that, in connection with CDBG assistance under this Agreement:
 - a. It will not discriminate against any program beneficiary or prospective program beneficiary on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and
 - b. It will provide no religious instruction or counseling, conduct no religious worship or service, engage in no religious proselytizing, and exert no other religious influence in the provision of service. If the Subrecipient conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this Agreement, and participation must be voluntary for the beneficiaries of the programs or services funded under this Agreement.
 - c. It will comply with the "Faith-based Activities" provision of the applicable HUD regulations found at 24 CFR § 570.200(j).
18. FAIR HOUSING. Any housing or housing services offered by Subrecipient must be made available without discrimination based on race, color, national origin, age, sex, religion, familial status, or disability, or on any basis prohibited by State law, in accordance with fair housing laws. In providing rental housing the Subrecipient shall not discriminate against a rental applicant based on the fact that he or she receives a direct rental subsidy, such as a Section 8 voucher or HOME tenant-based rental assistance (TBRA), in accordance with 24 CFR § 92.252(d). In addition, Subrecipient acknowledges that the following fair housing and nondiscrimination laws apply to its provision of housing or housing services: Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended and implementing regulations at 24 CFR Part 100; Title VI of the Civil Rights Act of 1964; The Age Discrimination Act of 1975, as amended and implementing regulations at 24 CFR Part 146; Executive Orders 11063 and 12259- Equal Opportunity in Housing, and implementing regulations at 24 CFR Part 107; Section 504 of the Rehabilitation Act of 1973 (Section 504) and implementing regulations at 24 CFR Part 8; and Title II of the Americans with Disabilities Act (ADA). Subrecipient agrees to comply with all applicable provisions of these statutes and rules.

19. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION. During the performance of this Agreement, the Subrecipient agrees as follows:
- a. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, or on any other basis prohibited by State law. The Subrecipient will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin, and without regard to any other basis prohibited by State law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the City setting forth the provisions of this nondiscrimination clause.
 - b. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, and without regard to any other basis prohibited by State law.
 - c. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice regarding the Subrecipient's commitments under Executive Order 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Subrecipient will comply with all provisions of Executive Order 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor (hereafter, collectively "Executive Order 11246").
 - e. The Subrecipient will furnish all information and reports required by Executive Order 11246, and will permit access to its books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.
 - f. In the event the Subrecipient is found to be in noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Subrecipient may be declared ineligible for further government contracts in accordance with procedures

authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or as otherwise provided by law.

- g. The Subrecipient will include the provisions of subparagraphs (a) through (f) of this Paragraph in every subcontract or purchase order unless exempted pursuant to section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Subrecipient becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the City the Subrecipient may request the United States to enter into such litigation to protect the interest of the United States.
20. LABOR STANDARDS. Contracts for construction funded in whole or in part with Federal funds are generally subject to the requirements of the Davis-Bacon and Related Acts (DBRA). The Davis-Bacon Act provides that contracts in excess of \$2,000, involving construction, rehabilitation, alteration and/or repairs including painting and decorating of public buildings or public works, which involve the employment of laborers and/or mechanics shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions. The Subrecipient shall provide certification of compliance with labor provisions before the City makes any payment under this Agreement. Projects involving rehabilitation of fewer than eight (8) residential units are not subject to the foregoing requirements.

The Subrecipient acknowledges that this Agreement and any subcontract awarded under this Agreement is also subject to the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708, the Copeland (Anti-Kickback) Act (40 U.S.C. § 276c), and the Fair Labor Standards Act of 1938. The Subrecipient agrees to comply with the provisions thereof.

21. LABOR, TRAINING AND BUSINESS OPPORTUNITY. If this Agreement provides for an award in an amount in excess of \$200,000, compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued thereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and shall be binding upon the City, the Subrecipient and any subcontractor of the Subrecipient whose subcontract exceeds \$100,000. Failure to fulfill these requirements shall subject the City, the Subrecipient and covered subcontractors, and their successors and assigns, to those sanctions specified in the HUD grant

agreement. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all covered subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs. The Subrecipient shall attempt to reach the Section 3 minimum numerical goals found at 24 CFR § 135.30 by: 1) striving to award 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) striving to offer 30 percent of new employment opportunities to Section 3 businesses.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or

understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

The Subrecipient will include this Section 3 clause in every covered subcontract and will take appropriate action pursuant to the subcontract upon a finding that a covered subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

22. FLOOD DISASTER PROTECTION. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001, *et seq.*), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
23. ENVIRONMENTAL CONDITIONS. The Subrecipient agrees to comply with the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; and the Federal Water Pollution Control Act, as amended, 33 U.S.C., § 1251, *et seq.*, as amended, and all regulations and guidelines issued thereunder.
24. LEAD-BASED PAINT (24 CFR § 570.608). The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR § 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted. The Subrecipient further agrees that any repair, renovation or painting activities that disturb lead-based paint in "target housing", as that term is defined in the Toxic Substances Control Act (TSCA), section 401 or in a "child-occupied facility", as that term is defined in EPA regulations implementing said Act, shall be carried out in strict compliance with those implementing regulations, which are

set forth in 40 CFR Part 745, beginning 40 CFR § 745.80. These regulations require, among other things, the use of certified renovators, dust sampling technicians, and renovation firms.

25. HISTORIC PRESERVATION. The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470, *et seq.*) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

26. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT. The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR § 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

27. RECORDKEEPING. The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR § 570.506, that are pertinent to the activities to be funded under this Agreement.

- a. Records to be Maintained. The Subrecipient shall maintain records that document compliance with the requirements of this Agreement, which shall include, but not be limited to, the following:
- (1) Records providing a full description of each activity undertaken; the amount of CDBG funds budgeted, obligated, and expended for the activity and the provision in 24 CFR Part 570, Subpart C under which it is eligible;
 - (2) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
 - (3) Records required to determine the eligibility of activities;

- (4) Records required to document the acquisition, improvement, use or disposition of the real property acquired or improved with CDBG assistance;
 - (5) Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program;
 - (6) Financial records as required by 24 CFR § 570.502 and 2 CFR Part 200; and
 - (7) Other records necessary to document compliance with Subpart K of 24 CFR Part 570 and this Agreement.
- b. **Record Retention.** The Subrecipient shall retain all records pertinent to this Agreement for a period of four (4) years after the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR § 91.520, in which the specific activities pursuant to this Agreement are reported on for the final time, rather than from the date of submission of the final expenditure report for the award. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person, meaning any displaced individual, family, partnership, corporation, or association, must be kept for five (5) years after the displaced person has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the applicable record retention period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the applicable retention period, whichever occurs later.
- c. **Client Data.** The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
- d. **Disclosure.** The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or the Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such persons receiving service and, in the case of a minor, that of a responsible parent/guardian.

- e. Property Records. The Subrecipient shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR §§ 570.503 and 570.505, as applicable.

28. NONCOMPLIANCE, SUSPENSION AND TERMINATION (24 CFR § 570.503(b)(6)).

- a. If the Subrecipient materially fails to comply with any term of this Agreement, whether stated herein or in a Federal statute or regulation, an assurance, or application, proposal, or elsewhere; or, if the Subrecipient shall become bankrupt, or abandons the Project or suspends performance of this Agreement, the City may, at its sole discretion take any one or more of the following actions:
 - (1) Withhold cash payments pending correction of deficiency by the Subrecipient;
 - (2) Disallow all or part of the cost of the activity or action not in compliance;
 - (3) Suspend or terminate, wholly or partially, the current award of this Agreement with the Subrecipient;
 - (4) Withhold additional awards to the Subrecipient; and
 - (5) Terminate this Agreement without service or notice or legal process and without prejudice to any other legally available remedy or right of action; and
 - (6) Exercise any and all rights and remedies available to the City in law or equity, all of which the City hereby expressly reserves.
- b. Upon termination of this Agreement, all finished or unfinished documents, data, studies, and reports purchased or prepared by the Subrecipient for the Project shall be transferred to the City.
- c. This Agreement may also be terminated in whole or in part by the City with the consent of the Subrecipient, in which case the parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated. In all cases of partial termination, if the City determines that the remaining portion of the Agreement will not accomplish the purposes for which the Agreement was made, the City will terminate the Agreement in its entirety.

29. AUDITS.

- a. The Subrecipient shall comply with the audit requirements of 2 CFR Part 200, Subpart F. Single Audits shall be conducted annually at the Subrecipient's expense. A full copy of the audit report shall be submitted to the City within thirty (30) days after its receipt by the Subrecipient. Findings and deficiencies noted in audit reports shall be addressed by the Subrecipient to the City's satisfaction within ninety (90) days after receipt of the report by the Subrecipient. Additional findings and requests for corrective action that may result from the City's review of the audit report shall be addressed within ninety (90) days after the Subrecipient's receipt of written notification of such findings from the City.
- b. Subrecipients determined to be exempt from the requirements of 2 CFR Part 200, Subpart F shall submit to the City certified financial statements prepared by an independent Certified Public Accountant for each fiscal year during which CDBG funds provided through this Agreement are expended. These statements are due within ninety (90) days after the end of each applicable fiscal year. At the Subrecipient's option, these financial statements may be limited to funds provided by the City's CDBG Program.
- c. Failure of the Subrecipient to comply with the above requirements shall constitute a violation of this Agreement and shall be subject to Section II, Paragraph 28, NONCOMPLIANCE, SUSPENSION AND TERMINATION.

30. EFFECTS OF SUSPENSION AND TERMINATION (24 CFR § 570.503(b)(6)).

- a. The cost to the Subrecipient resulting from the obligations incurred by the Subrecipient during suspension or after termination of this Agreement are not allowable unless the City authorizes such costs in the Notice of Suspension or Termination issued to the Subrecipient.
- b. The Subrecipient's cost during the suspension or after termination which are necessary and not reasonably avoidable, are allowable if the costs resulting from obligations which were properly incurred by the Subrecipient before the effective date of suspension or termination, are not in anticipation of it, and, in the case of termination, are noncancellable.
- c. Determination of eligible Subrecipient costs during suspension or after termination of this Agreement shall be determined solely by the City.

31. INDEMNITY. The Subrecipient shall indemnify, defend and hold harmless the City and HUD, and their respective officers, agents and employees from any liability, actions, claims, suits, damages, or costs arising out of or resulting from the acts or omissions of the Subrecipient, its officers, employees, agents or contractors occurring during or in connection with the Project activities that may be funded, in

whole or in part, from grant funds provided to the Subrecipient under this Agreement, including but not limited to actions by HUD against the City to recover said funds and actions by HUD against the City resulting from Subrecipient's breach of this Agreement or failure to comply with any laws, rules, regulations or program guidelines related to the CDBG Program. The provisions of this Paragraph shall survive the termination of this Agreement.

32. CITY'S COSTS AND EXPENSES. The Subrecipient will pay to the City on demand all costs, including reasonable attorneys' fees, incurred by the City in enforcing any of the terms of this Agreement, in remedying any breach of the terms of this Agreement by the Subrecipient, in recovering possession of the property on which the Project is situated, taxes, or other charges payable by the Subrecipient, or in connection with any litigation commenced by or against the Subrecipient to which the City shall be party without any fault on its part.
33. CITY RECOGNITION. The Subrecipient shall ensure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
34. MISCELLANEOUS TERMS.
 - a. Amendment. Except as herein otherwise expressly provided in subparagraph (f) below and as may be expressly provided elsewhere in this Agreement, this Agreement may be amended only by a written amendment executed by both parties.
 - b. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
 - c. Assignment. Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior written consent of each other party.
 - d. Authorization. Each party warrants to each other party that the individuals executing this Agreement on behalf of the respective parties are authorized to do so. The Subrecipient and the person signing for the Subrecipient below represent and warrant that there are no restrictions, agreement, limitations on the Subrecipient's right or ability to enter into and perform the terms of this Agreement.
 - e. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than

one party is obligated by any provisions stated in this Agreement, those parties shall be jointly and severally liable for the performance of those obligations. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of that party, the respective heirs, personal representatives, successors, and assigns of that party.

- f. City's Right to Amend to Conform to Law. Notwithstanding any provision herein to the contrary, during the Term, the City reserves the right, at any time, to amend this Agreement in order to assure compliance with all HUD, City and County of Honolulu, State of Hawaii and other Federal statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to the Subrecipient. The Subrecipient agrees that it shall immediately take any and all reasonable steps to comply with such amendments and not to jeopardize the grant or loan as the case may be.
- g. Consent; Subsequent Agreement. If a subsequent consent or agreement required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.
- h. Construction. Each party named in this Agreement acknowledges and agrees that:
 - (1) Each party is of equal bargaining strength;
 - (2) Each party has actively participated in the negotiation and preparation of this instrument;
 - (3) Each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate;
 - (4) Each party and the party's legal counsel and advisors have reviewed this instrument; and
 - (5) Each party has agreed to be bound by the terms stated in this instrument following such party's review and obtaining advice.
- i. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and, properly acknowledged, if necessary, taken together, shall constitute a single Agreement.
- j. Dates. If any date stated in this instrument falls on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.

- k. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks inside parentheses and subsequently are capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless clearly inappropriate in context.
- l. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any cause not within the reasonable control of that party, including, but not limited to, fire, an act of God, public enemy, or war, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default of its obligations stated in this Agreement; provided, however, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten (10) days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If no notice is given by the delayed party, no time extension shall be granted.
- m. Gender; Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as context dictates.
- n. Independent Contractor/Non-Agency. The parties acknowledge that the Subrecipient is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.
- o. Integration. This Agreement contains all of the agreements of the parties pertaining to its subject matter. Each party acknowledges that no person or entity has made any oral or written representation on which it has relied in entering into this Agreement which set forth herein.
- p. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.
- q. Memorandum. If required by the provisions of this Agreement or requested by any party, a memorandum of this Agreement shall be executed by the parties, the signatures properly acknowledged by a Notary Public, and recorded in the Bureau of Conveyances, State of Hawaii.

- r. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.
- s. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement shall not confer rights on any person or entity except the parties herein or obligate either party herein to any person or entity except another party herein.
- t. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.
- u. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.
- v. Paragraph Titles. The titles of each provision stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction and interpretation of the provisions stated in this Agreement.
- w. Required Actions by the Parties. Each party named in this Agreement agrees to execute the instruments and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.
- x. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that is made impossible by the absence of the omitted provision.
- y. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

- z. Survival. Each representation and warranty stated in this Agreement made by a party shall survive the termination of this Agreement, unless otherwise specifically stated.
- aa. Time is of the Essence. Time is of the essence with respect to the Subrecipient's obligations under this Agreement.

[Remainder of Page Left Blank Intentionally]

CERTIFICATION AS TO AVAILABILITY OF FUNDS

Contract to grant funds to Waianae District Comprehensive Health and Hospital Board, Incorporated, for the purposes of construction of a lower level for the Malama Recovery building to house additional behavioral health counseling rooms on 86-260 Farrington Highway, Waianae, Hawaii 96792, which houses the Malama Recovery building which will better serve the residents of the Waianae Coast.

Certification is hereby made that sufficient funds are or will be available to pay the above described contract when due and payable; availability of funds are assured by the Federal Government. Grant under Community Development Block Grant funds, Resolution No. 15-115, CD-1.

Funds provided in Account No.(s) 310/4581-16-3021-X

\$991,620.00*

Certified by:

a *MLH* 10/4/16
CM Fiscal Officer

[Signature]
Department Head

*Payments to the contractor will be made as cash is received and deposited into the City Treasury.

HONOLULU, HAWAII

FUND _____

ACCOUNT NO. _____

BFS CONTRACT NO. _____

Director of Budget & Fiscal Services

00028J -5F

0000

CIP

FY16

CERTIFICATION AS TO AVAILABILITY OF FUNDS

Contract to grant funds to Waianae District Comprehensive Health and Hospital Board, Incorporated, for the purposes of construction of a lower level for the Malama Recovery building to house additional behavioral health counseling rooms on 86-260 Farrington Highway, Waianae, Hawaii 96792, which houses the Malama Recovery building which will better serve the residents of the Waianae Coast.

Certification is hereby made that sufficient funds are or will be available to pay the above described contract when due and payable; availability of funds are assured by the Federal Government. Grant under Community Development Block Grant funds, Resolution No. 15-115, CD-1.

Funds provided in Account No.(s) 310/4581-16-3021-X

\$991,620.00*

Certified by: _____

CM Fiscal Officer

Department Head

*Payments to the contractor will be made as cash is received and deposited into the City Treasury.

FUND Community Development Fund (310)

ACCOUNT NO. *310/4581-16-X (3021)

CONTRACT NO. CT-DCS-1700406

AMOUNT: \$991,620.00

HONOLULU, HAWAII


JUN 30 2017

Director of Budget & Fiscal Services

Subrecipient Agreement
Community Development Block Grant Program
WAIANAE DISTRICT COMPREHENSIVE HEALTH AND HOSPITAL BOARD,
INCORPORATED
Malama Recovery Building Renovation and Access

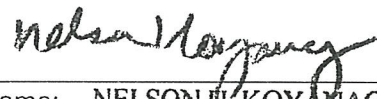
The City and the Subrecipient have executed this Agreement on
JUN 30 2017, 2017.

APPROVED AS TO CONTENT
Department of Community Services



Director

CITY AND COUNTY OF HONOLULU

By 
Name: NELSON H. KOYANAGI, JR.
Its: DIRECTOR OF BUDGET AND FISCAL SERVICES

APPROVED AS TO PROGRAM
REQUIREMENTS




Federal Grants Coordinator

APPROVED AS TO FORM AND
LEGALITY



Deputy Corporation Counsel
BRIAN D. ANCHETA

WAIANAE DISTRICT COMPREHENSIVE
HEALTH AND HOSPITAL BOARD,
INCORPORATED



Authorized Subrecipient Official
Richard P. Bettini, MPH, MA
President & Chief Executive Officer

STATE OF HAWAII

)
) SS.

CITY AND COUNTY OF HONOLULU)

On June 27, 2017, before me personally appeared
Richard P. Bettini, to me personally known, who, being by me duly
sworn or affirmed, did say that such person(s) executed the foregoing instrument as the
free act and deed of such person(s), and if applicable, in the capacity shown, having
been duly authorized to execute such instrument in such capacity.

STATE OF HAWAII NOTARY CERTIFICATION

Subrecipient Agreement Community Development Block Grant (CDBG) Program Catalog of Federal

Doc. Description: Domestic Assistance (CFDA) Number 14.218 Malama Recovery Building Renovation and Access

Date of Document: undated at notarization # Pages: 40 _

Date of Notarization: June 27, 2017

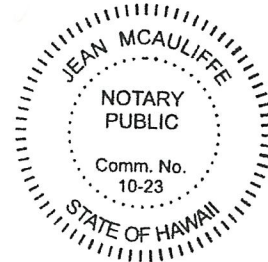
Jean McAuliffe
Notary Public Signature

Print Name: Jean McAuliffe

Notary Public, State of Hawaii, _____ First _____ Circuit

Notary Commission No. 10-23

My Commission Expires 2-7-2018



(Stamp or Seal)

EXHIBIT 3

Community Development Block Grant
(CDBG) Use Restriction Agreement:

Malama Recovery Building Renovation and Access
(Five (5) Year Term)

[illegible]

)

4/19/2016

CDBG Use Restriction Agreement
Malama Recovery Building Renovation and Access
(Five (5) Year Term)

THIS USE RESTRICTION AGREEMENT ("**Agreement**") is by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("the **City**"), and Waianae District Comprehensive Health and Hospital Board, Incorporated, (the "Subrecipient") 99-0148164 EIN, a Hawaii nonprofit corporation, the principal place of business of which is 86-260 Farrington Highway, Waianae, Hawaii 96792 ("**SUBRECIPIENT**").

The City and SUBRECIPIENT entered into that certain Subrecipient Agreement dated [REDACTED], 2016 and identified as Contract No. **CT-DCS-** [REDACTED] (the "**Subrecipient Agreement**"), pursuant to which the City authorized the use of Community Development Block Grant (CDBG) funds to SUBRECIPIENT in the amount of NINE HUNDRED NINETY-ONE THOUSAND SIX HUNDRED TWENTY AND NO/100 DOLLARS (\$991,620.00) (the "**CDBG Funds**") for use by SUBRECIPIENT to acquire and/or rehabilitate a portion of the real property leased to SUBRECIPIENT pursuant to General Lease No. S-5981 dated August 3, 2010, between the State of Hawaii, by its Board of Land and Natural Resources, as lessor, and SUBRECIPIENT, as lessee, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-116650, and located at 86-260 Farrington Highway, Waianae, Hawaii 96792 (the "**Leased Real Property**"). The Leased Real Property is located on the land identified as Tax Map Key No. (1) 8-6-001:003, as more particularly described in Exhibit A attached hereto and made a part hereof.

CDBG funds will be used to support capital improvement and expansion of the Center's current Behavioral Health Services. This improvement will meet the needs of the community and the Health Center's growing patient population and will assure that services continue to be available and accessible to residents of the community. Specifically, the expansion will add a bottom floor to the Malama Recovery Building to increase the number of Behavioral Health counseling rooms needed to serve the current and growing population needing mental health treatment. The project includes but is not limited to: construction of additional counseling rooms, meeting rooms, reception area, restrooms, two lanais, a break room, storage, electrical closet, site preparation, drainage grading, landscaping, parking lot paving, parking lot lighting, and building handicap access (the "**Project**"). The location of the Project is more particularly identified on the map attached as Exhibit B hereto and made a part hereof.

The use of the CDBG Funds by SUBRECIPIENT for the Project requires SUBRECIPIENT to comply with all CDBG program, use and affordability requirements, as set forth in the Subrecipient Agreement and in 24 Code of Federal Regulations (CFR) Part 570. The purpose of this Agreement is to secure SUBRECIPIENT's performance of such obligations under the Subrecipient Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

- 1. Term; Release.** This Agreement shall be effective upon execution, which shall be the agreed upon the date that (a) a monitoring has been conducted, and (b) a Certificate of Compliance has been issued by the City that states that SUBRECIPIENT is servicing the beneficiaries as proposed and required under the Subrecipient Agreement, and shall terminate **five (5) years** thereafter (such period, the "**Term**"). The Term shall be extended for any period of time that the City, with the concurrence of the United States Department of Housing and Urban Development ("**HUD**"), or HUD determines that SUBRECIPIENT has not complied with the terms of this Agreement. The length of the extension shall correspond to the time period during which SUBRECIPIENT was found to be noncompliant with the terms of this Agreement. At the end of the Term and upon request of SUBRECIPIENT (or the successor in title to the Leased Real Property), the City shall execute a release of this Agreement. SUBRECIPIENT shall bear all costs for the preparation and recordation of the release.
- 2. Use Restriction Agreement.** For the Term of this Agreement, SUBRECIPIENT agrees to comply with all CDBG program, use, and affordability requirements with respect to the Project, as set forth in the Subrecipient Agreement and in 24 CFR Part 570, as the same may from time to time hereafter be amended. The Subrecipient Agreement and 24 CFR Part 570, "Community Development Block Grants," are incorporated herein by reference as if fully set forth herein. In the event of a conflict between the Subrecipient Agreement and 24 CFR Part 570 (or both) and this Agreement, the terms of the Subrecipient Agreement and 24 CFR Part 570 shall control. Without limiting the generality of the foregoing, the Project must be developed and/or operated in accordance with all applicable laws; dwelling units and other improvements developed or improved with CDBG Funds must primarily benefit low- and moderate-income persons; and SUBRECIPIENT agrees to acquire and retain evidence of family size and income so that it is evident that 51 percent of the households receiving benefits from the Project are households whose income does not exceed low and moderate income limits as established by HUD for the Term of this Agreement.
- 3. Maintenance and Submission of Records.** SUBRECIPIENT agrees to obtain and maintain records which evidence the Project's compliance with CDBG program use and affordability requirements. SUBRECIPIENT shall provide these records and/or other certifications, statements or records that the City may require to demonstrate compliance promptly upon the City's request.
- 4. Violations; City's Remedies.** If the City determines that SUBRECIPIENT is not in compliance with the terms of this Agreement, the City shall provide written notice to SUBRECIPIENT. Upon receipt of the City's notice, SUBRECIPIENT shall have thirty (30) days to cure the violation, provided that upon a showing of reasonable necessity, the City may in writing extend such period for an additional sixty (60) days. The failure to cure any violation to the City's satisfaction within such thirty (30) day period, as the same may be extended, shall constitute a default hereunder and may result in the imposition of any remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations. If SUBRECIPIENT fails to comply with the CDBG program, use, and affordability requirements

during the Term of this Agreement, the City may impose such remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations or the Subrecipient Agreement. The parties further agree that upon any default by SUBRECIPIENT, the City may apply to any court, state or federal, for specific performance under this Agreement, and/or for an injunction against violation of this Agreement, since the injury to the City arising from a violation under any terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

- 5. Covenants to Run with the Land.** SUBRECIPIENT hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. SUBRECIPIENT hereby declares its express intention that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Leased Real Property throughout the Term. For the Term, each and every contract, deed or other instrument hereafter executed conveying the Leased Real Property or a portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether or not such contract, deed or other instrument hereafter executed conveying the Leased Real Property or portion thereof provides that such conveyance is subject to this Agreement.

6. Miscellaneous Provisions.

- A. Amendment. The provisions of this Agreement may be amended only by a subsequent written agreement executed by all of the parties and recorded with the appropriate recording agency in the State of Hawaii.
- B. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
- C. Assignment. Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior written consent of each other party.
- D. Authorization. Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. SUBRECIPIENT and the persons signing for SUBRECIPIENT below further represent and warrant that there are no restrictions, agreements, or limitations on SUBRECIPIENT's right or ability to enter into and perform the terms of this Agreement.
- E. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party

named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.

- F. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, the City reserves the right, at any time, to amend this Agreement, with the consent of SUBRECIPIENT, in order to assure compliance with all HUD, City and County of Honolulu, State of Hawaii and other federal statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to SUBRECIPIENT.
- G. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.
- H. Construction. Each party named in this Agreement acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.
- I. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and properly acknowledged, if necessary, taken together, shall constitute a single Agreement.
- J. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- K. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.
- L. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this

Agreement. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

- M. Gender: Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.
- N. Independent Contractor/Non-Agency. The parties acknowledge that SUBRECIPIENT is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.
- O. Integration. This Agreement contains all of the agreements between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representation on which a party has relied as a basis to enter into the Agreement stated in this Agreement which is not included as a provision in it.
- P. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.
- Q. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.
- R. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.
- S. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.
- T. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any

other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

- U. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party, stated below. No other method of notice shall be effective.

CITY AND COUNTY OF HONOLULU
Department of Community Services
Community Based Development Division
715 South King Street, Room 311
Honolulu, Hawaii 96813

With a copy to:

CITY AND COUNTY OF HONOLULU
Department of Budget and Fiscal Services
Federal Grants Unit, Post-Monitoring
530 South King Street, Suite 208
Honolulu, Hawaii 96813

Waianae District Comprehensive Health and Hospital Board, Incorporated
86-260 Farrington Highway
Waianae, Hawaii 96792

ATTENTION: Richard Bettini

- V. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.
- W. Required Actions by the Parties. Each party named in this Agreement agrees to execute the Agreements and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to so consummate the transaction contemplated by this Agreement.
- X. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions

stated in this Agreement unless that effect is made impossible by the absence of the omitted provision.

- Y. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).
- Z. Survival. Each representation and warranty stated in this Agreement made by a party shall survive the termination of this Agreement, unless otherwise specifically stated.
- AA. Time is of the Essence. Time is of the essence with respect to the obligations of SUBRECIPIENT under this Agreement.

[Remainder of Page Left Blank Intentionally]

The City, and SUBRECIPIENT have executed this Agreement on
_____.

APPROVED AS TO CONTENT:

CITY AND COUNTY OF HONOLULU

Director, Department of Community
Services

By _____
Name:
Its:

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED AS TO PROGRAM
REQUIREMENTS:

Federal Grants Coordinator

Waianae District Comprehensive Health
and Hospital Board, Incorporated
a Hawaii nonprofit corporation

By: _____

Its _____

Date: _____

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

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of the City and County of Honolulu, Department of Budget & Fiscal Services, and that the foregoing instrument is executed in the name and behalf of said City and County of Honolulu, by and through its Department of Budget & Fiscal Services, by _____ as its _____, and said _____ acknowledged said instrument to be the free act and deed of said City and County of Honolulu, by and through its Department of Budget & Fiscal Services by authority of the City Council of the City and County of Honolulu.

Doc. Date: _____

of Pages: _____

Doc. Description:
CDBG Use Restriction Agreement
Malama Recovery Building Renovation
and Access

Print or Type Name: _____
Notary Public, State of Hawaii
First Judicial Circuit
My commission expires

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

On _____ in the First Circuit, State of Hawaii, before me personally appeared _____ to me personally known, who, being by me duly sworn or affirmed did say that he/she executed the foregoing instrument identified or described as CDBG Use Restriction Agreement – _____, as his/her free act and deed, and if applicable in the capacity/ies shown, having been duly authorized to execute such instrument in such capacity/ies.

The foregoing instrument is undated and contained _____ pages at the time of this acknowledgment/certification.

Name: _____

Notary Public, State of Hawaii

My commission expires:

Exhibit A
Description of Land

Exhibit B
Map of Project



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 22,218

December 12, 1994

WAIANAE COAST COMPREHENSIVE HEALTH CENTER SITE

Lualualei, Waianae, Oahu, Hawaii

Being a portion of the Hawaiian Home Land of Lualualei conveyed to the State of Hawaii by the Department of Hawaiian Home Lands by Exchange Deed dated March 25, 1986 and recorded in Liber 20572, Page 52 (Land Office Deed S-27687).

Beginning at the southwest corner of this parcel of land and on the north side of Farrington Highway, Project No. 93A-02-70, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAHEEHHEE NEW" being 5761.30 feet South and 3690.74 feet West, thence running by azimuths measured clockwise from True South:-

- | | |
|-----------------|--|
| 1. 207° 33' 30" | 256.04 feet along the Hawaiian Home Land of Lualualei; |
| 2. 117° 33' 30" | 170.16 feet along the Hawaiian Home Land of Lualualei; |
| 3. 132° 59' 25" | 571.32 feet along the Hawaiian Home Land of Lualualei; |
| 4. 246° 07' | 320.54 feet along Grant 5006 to Willard E. Brown; |
| 5. 296° 18' | 960.50 feet along the Hawaiian Home Land of Lualualei; |
| 6. 356° 21' | 625.00 feet along the Hawaiian Home Land of Lualualei; |
| 7. 99° 39' 30" | 150.41 feet along the north side of Maililili Road; |
| 8. 104° 48' 30" | 185.34 feet along the north side of Maililili Road; |

EXHIBIT "A"

PRELIM. APPR'D.
Department of the
Attorney General

December 12, 1994

9. Thence along the north side of Maililili Road on a curve to the left with a radius of 87.00 feet, the chord azimuth and distance being:
72° 08' 45" 93.91 feet;
10. 39° 29' 1.27 feet along the north side of Maililili Road;
11. Thence along the north side of Maililili Road on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
83° 50' 22" 27.96 feet;
12. Thence along the northeast side of Farrington Highway, Project No. 93A-02-70 on a curve to the left with a radius of 1362.21 feet, the chord azimuth and distance being:
125° 41' 52" 118.73 feet;
13. Thence along the northeast side of Farrington Highway, Project No. 93A-02-70 on a curve to the left with a radius of 1803.14 feet, the chord azimuth and distance being:
120° 23' 177.21 feet;
14. 117° 34' 55.12 feet along the northeast side of Farrington Highway, Project No. 93A-02-70 to the point of beginning and containing an AREA OF 14.352 ACRES.

Reserving, however, to the State of Hawaii its successors and assigns an Easement for Electrical Transmission Lines as shown on plan attached hereto and made a part hereof.

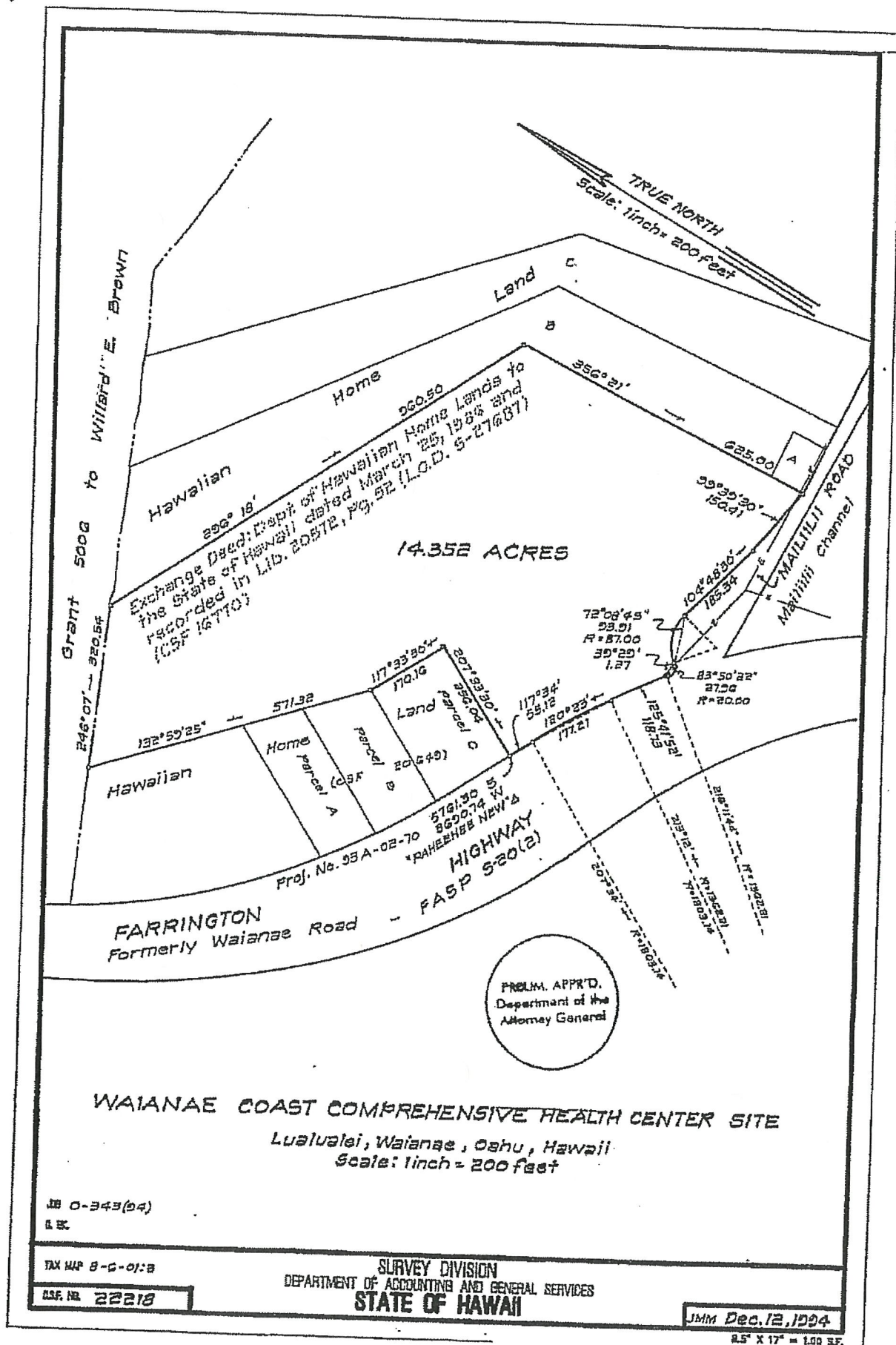
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

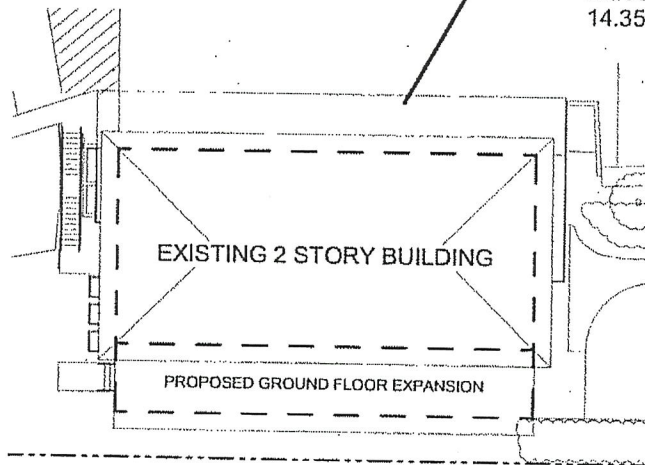
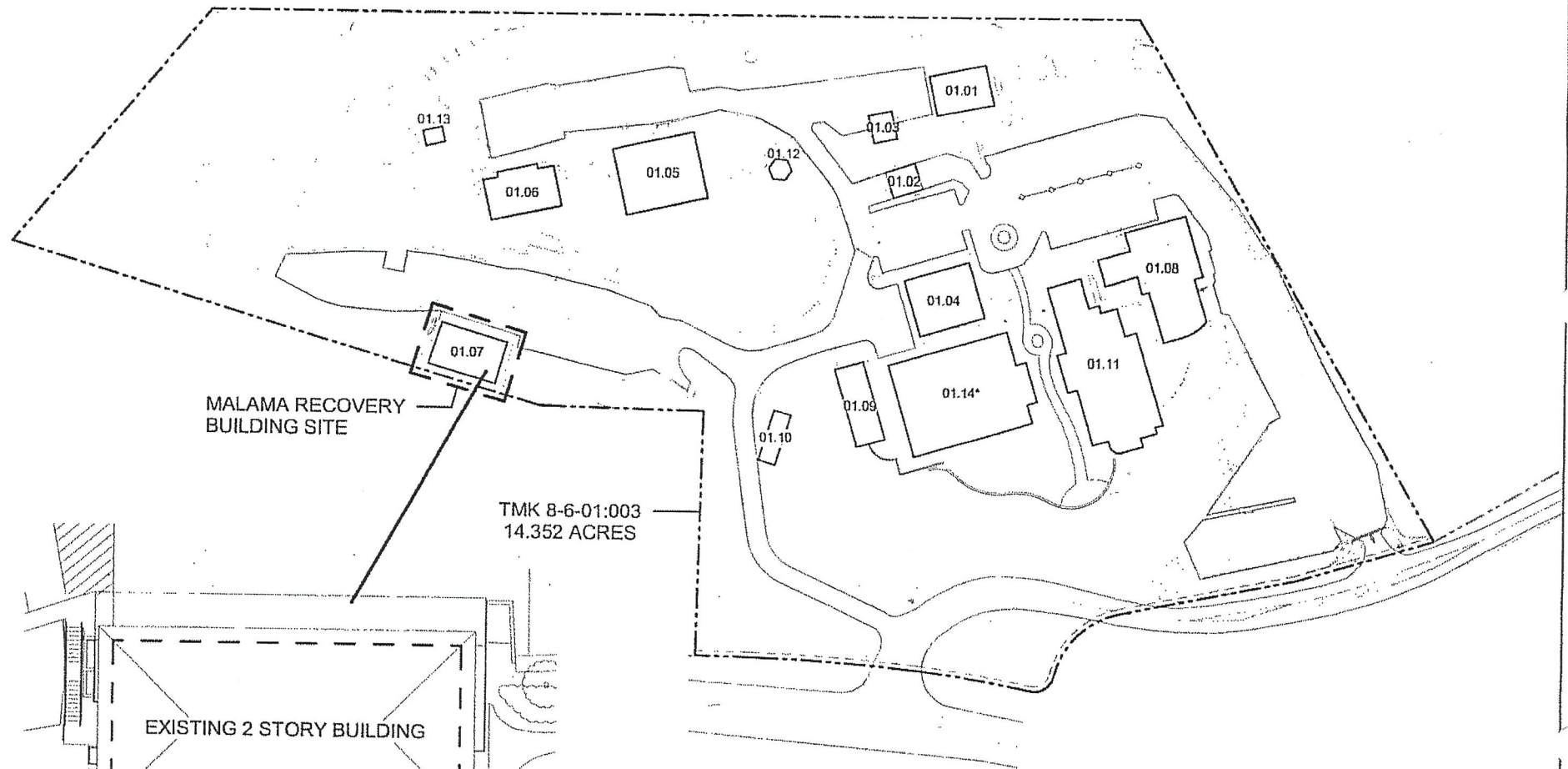
By: Joseph M. Matsuno
Joseph M. Matsuno
Land Surveyor

gm

Compiled from CSFs 16770,
20649 and other Govt. Survey
Records.

PRELIM. APPR'D.
Department of the
Attorney General





ENLARGED SITE OF AFFECTED AREA

BUILDING FOOTPRINT: 3,412 SF
 TOTAL TMK SITE AREA: 625,173 SF (14.352 ACRES)
 BUILDING LOT COVERAGE: 0.55%

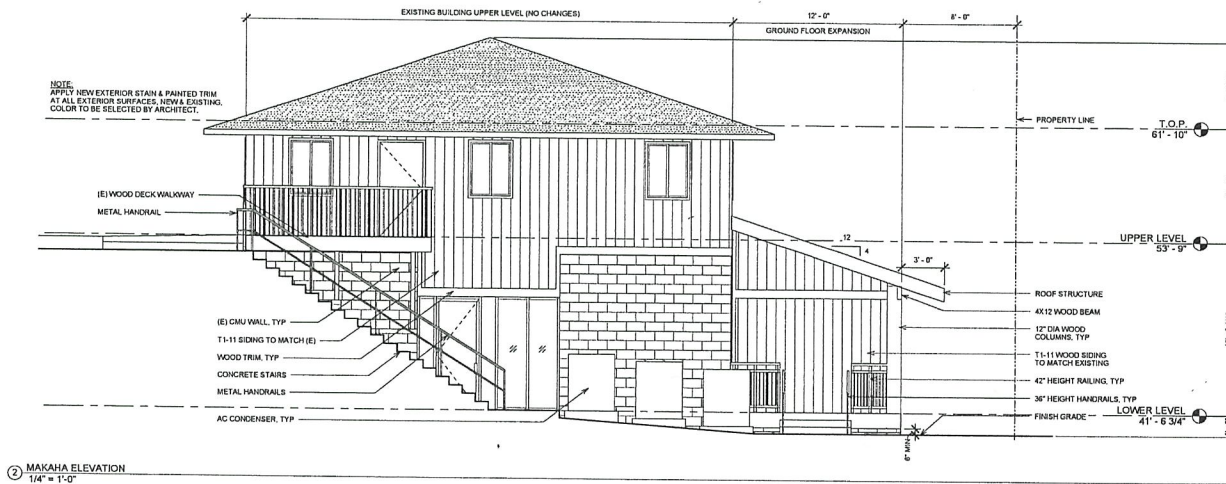
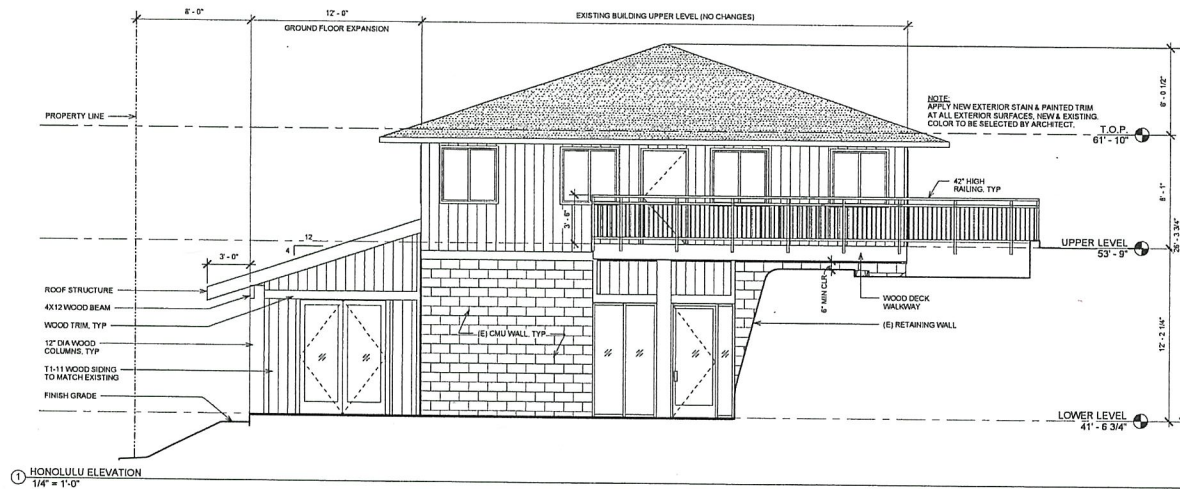
EXHIBIT "B"

WCCHC MAIN CAMPUS SITE PLAN

WAIANAE COAST COMPREHENSIVE HEALTH CENTER

BUILDING NUMBER KEY	
01.01	ADMINISTRATION BUILDING
01.02	MIDDLE PORTABLE
01.03	ADMIN ANNEX
01.04	DENTAL/ LAB
01.05	DINING PAVILION
01.06	NATIVE HAWAIIAN HEALERS BUILDING
01.07	MALAMA RECOVERY
01.08	FAMILY MEDICAL BUILDING
01.09	UTILITY BUILDING
01.10	EMERGENCY GENERATOR
01.11	ADULT MEDICINE & PHARMACY
01.12	GAZEBO HALE
01.13	HALE HO'OLA O WAIANAE
01.14	EMERGENCY MEDICAL BUILDING

Date: March 05, 2017



WAIANAE COAST COMPREHENSIVE HEALTH CENTER



WAIANAE COAST COMPREHENSIVE HEALTH CENTER
88-289 Farrington Highway, Waianae, Hawaii 96792
Phone: (808) 897-5200 Web: www.mchc.com

MALAMA RECOVERY BUILDING PROJECT LOWER LEVEL BUILDOUT

IRP Number: 2016/IB194738

TMCS 8-4-01.003

86-289 Farrington Highway, Waianae, Hawaii 96792



Signature: *John G. Grisco*
License Expires April 15, 2018

This work was prepared by me or under my supervision and construction of this project will be under my observation.

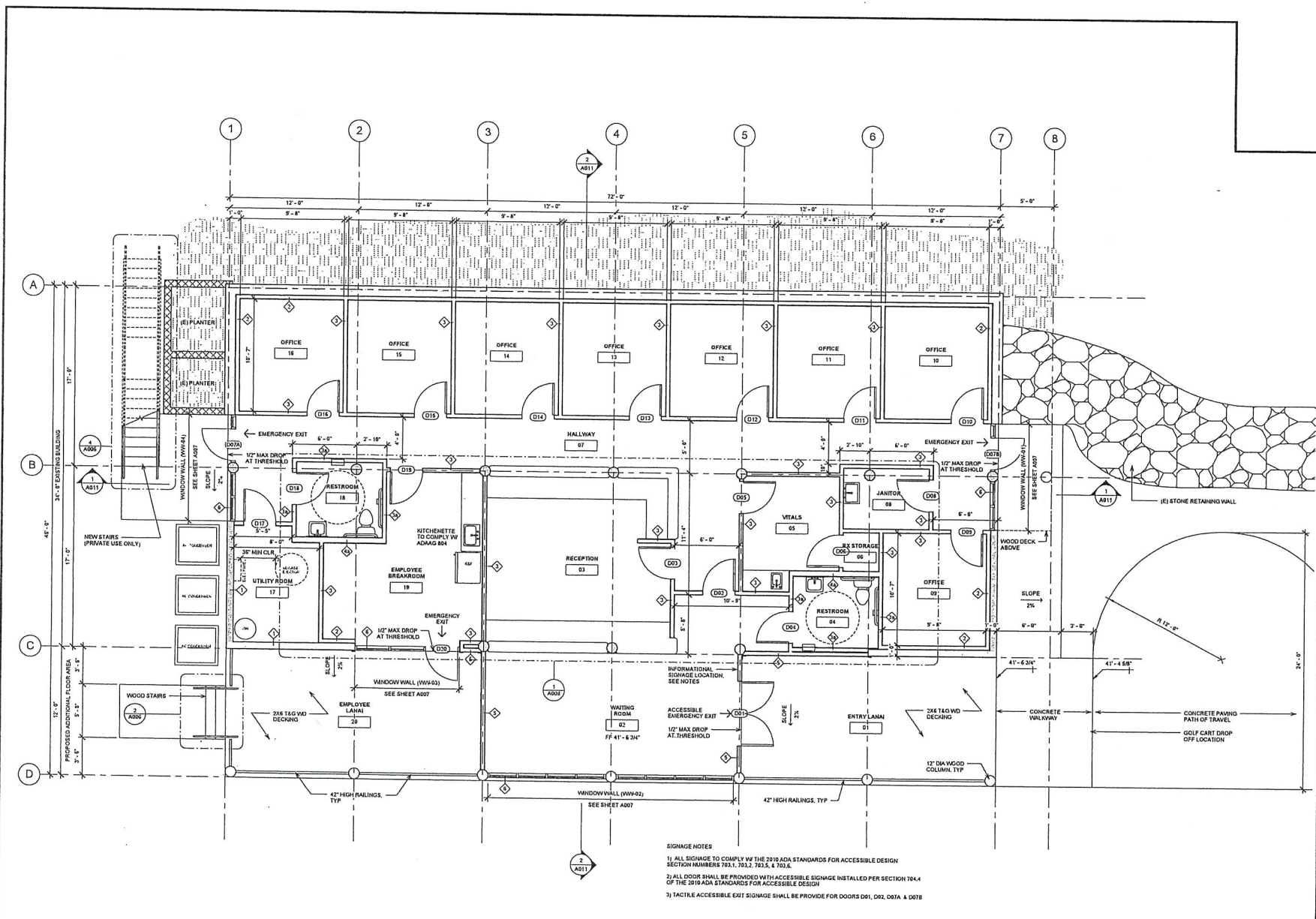
NO.	REVISION	DATE

DATE MAY 15, 2017

SHEET TITLE
EXTERIOR ELEVATIONS

SHEET NUMBER

A010



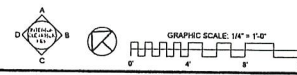
1 LOWER LEVEL FLOOR PLAN
1/4" = 1'-0"

SIGNAGE NOTES

1) ALL SIGNAGE TO COMPLY WITH THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN SECTION NUMBERS 703.1, 703.2, 703.5, & 703.6

2) ALL DOOR SHALL BE PROVIDED WITH ACCESSIBLE SIGNAGE INSTALLED PER SECTION 704.4 OF THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN

3) TACTILE ACCESSIBLE EXIT SIGNAGE SHALL BE PROVIDED FOR DOORS D01, D02, D07A & D07B



WAIANAEO COAST COMPREHENSIVE HEALTH CENTER
86-240 Farrington Highway, Waianae, Hawaii 96792
Phone: (808) 837-2300 FAX: (808) 837-2301

**MALAMA RECOVERY BUILDING PROJECT
LOWER LEVEL BUILDOUT**

IBP Number: 2016/IBP04706

TWMS 16.4.01.003
86-240 Farrington Highway, Waianae, Hawaii 96792

JOHN C. GREGG
LICENSED PROFESSIONAL ARCHITECT
No. 16116
HAWAII, U.S.A.

Signature: *[Signature]*
License Expires April 30, 2018

This work was prepared by me or under my supervision and I am a duly licensed professional in the State of Hawaii.

NO.	REVISION	DATE

DATE: APRIL 21, 2017
SHEET TITLE: PROPOSED LOWER LEVEL FLOOR PLAN

SHEET NUMBER: **A003**

EXHIBIT 4

Regulatory Agreement:

Malama Recovery Building Renovation and Access
(Fifteen (15) Year Term)

[illegible]

)

AFTER RECORDATION, RETURN BY MAIL (XX) PICK-UP ()

Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813

Attention: Community-Based Development Division

TITLE OF DOCUMENT:

REGULATORY AGREEMENT: Malama Recovery Building Renovation and Access

PARTIES TO DOCUMENT:

CITY AND COUNTY OF HONOLULU

Waianae District Comprehensive Health and Hospital Board, Incorporated

PROPERTY DESCRIPTION:

Affects TCT No. _____

See Exhibit A

TAX MAP KEY NO.: (1) 8-6-001:003

EXHIBIT "4"

REGULATORY AGREEMENT

Malama Recovery Building Renovation and Access (15 YEAR TERM)

THIS REGULATORY AGREEMENT (this "**Agreement**") is by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 (the "**City**"), and Waianae District Comprehensive Health and Hospital Board, Incorporated, (the "Subrecipient") **99-0148164 EIN**, a Hawaii nonprofit corporation, the principal place of business of which is 86-260 Farrington Highway, Waianae, Hawaii 96792 ("**SUBRECIPIENT**").

The City and SUBRECIPIENT entered into that certain Subrecipient Agreement dated [REDACTED], 20 [REDACTED] and identified as Contract No. **CT-DCS-**[REDACTED] (the "**Subrecipient Agreement**"), pursuant to which the City authorized the use of Community Development Block Grant (CDBG) funds to SUBRECIPIENT in the amount of NINE HUNDRED NINETY-ONE THOUSAND SIX HUNDRED TWENTY AND NO/100 DOLLARS (\$991,620.00) (the "**CDBG Funds**") for use by SUBRECIPIENT to acquire and/or rehabilitate a portion of the real property leased to SUBRECIPIENT pursuant to General Lease No. S-5981 dated August 3, 2010, between the State of Hawaii, by its Board of Land and Natural Resources, as lessor, and SUBRECIPIENT, as lessee, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-116650, and located at 86-260 Farrington Highway, Waianae, Hawaii 96792 (the "**Leased Real Property**"). The Leased Real Property is located on the land identified as Tax Map Key No. (1) 8-6-001:003, as more particularly described in Exhibit A attached hereto and made a part hereof.

CDBG funds will be used to support capital improvement and expansion of the Center's current Behavioral Health Services. This improvement will meet the needs of the community and the Health Center's growing patient population and will assure that services continue to be available and accessible to residents of the community. Specifically, the expansion will add a bottom floor to the Malama Recovery Building to increase the number of Behavioral Health counseling rooms needed to serve the current and growing population needing mental health treatment. The project includes but is not limited to: construction of additional counseling rooms, meeting rooms, reception area, restrooms, two lanais, a break room, storage, electrical closet, site preparation, drainage grading, landscaping, parking lot paving, parking lot lighting, and building handicap access (the "**Project**"). The location of the Project is more particularly identified on the map attached as Exhibit B hereto and made a part hereof.

The City and SUBRECIPIENT also entered into a CDBG Use Restriction Agreement: Malama Recovery Building Renovation and Access dated [REDACTED] and recorded as [REDACTED] in [REDACTED] (the "**Federal URA**"). The purpose of the Federal URA was to secure SUBRECIPIENT's performance of its obligations under the Subrecipient Agreement, which addresses CDBG program

requirements.

The purpose of this Agreement, as a matter of City policy and not CDBG program requirements, is to impose upon SUBRECIPIENT certain obligations to the City to ensure long-term Project operations, using a timeframe that is proportional to the amount of CDBG Funds awarded to the Project.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. **Term; Release.** This Agreement shall be effective upon the expiration or termination of the term set forth in the Federal URA and shall terminate **15 years** thereafter (such period, the "**Term**"). The Term shall be extended for any period of time that the City determines that SUBRECIPIENT has not complied with the terms of this Agreement. The length of the extension shall correspond to the time period during which SUBRECIPIENT was found to be noncompliant with the terms of this Agreement. Upon request of SUBRECIPIENT or its successor in title, made on or after the end of the Term, the City shall execute a recordable instrument approved by the City for the purpose of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the requestor.
2. **Use Agreement.** The Project must be developed in accordance with all applicable laws. For the Term of this Agreement, SUBRECIPIENT agrees to use, operate and manage the Project as follows:
 - a. The Project must be operated in accordance with all applicable laws; dwelling units and other improvements developed or improved with CDBG funds must primarily benefit low- and moderate-income persons; and SUBRECIPIENT agrees to acquire and retain evidence of family size and income so that it is evident that at least 51 percent of the households receiving benefits from the Project are households whose income does not exceed low- and moderate-income limits as established by the U. S. Department of Housing and Development (HUD) for the Term of this Agreement.
 - b. SUBRECIPIENT shall operate the Project in a manner that ensures that services are made available without discrimination based on race, color, national origin, age, sex, religion, familial status, or disability, or on any basis prohibited by federal or State law.

- c. SUBRECIPIENT shall comply with the City's "Sexual Harassment Policy for Employer Having a Contract with the City", based on Chapter 1, Article 18, Revised Ordinances of Honolulu 1990, as amended.
3. **Maintenance and Submission of Records.** SUBRECIPIENT agrees to obtain and maintain records which evidence the Project's compliance with this Agreement. SUBRECIPIENT shall provide these records and/or other certifications, statements or records that the City may require to demonstrate compliance within thirty (30) calendar days of the City's request.
4. **Violations; City's Remedies.** If the City determines that SUBRECIPIENT is not in compliance with the terms of this Agreement, the City shall provide written notice to SUBRECIPIENT. Upon receipt of the City's notice, SUBRECIPIENT shall have thirty (30) days to cure the violation, provided that upon a showing of reasonable necessity, the City may in writing extend such period for an additional sixty (60) days. The failure to cure any violation to the City's satisfaction within such thirty (30) day period, as the same may be extended, shall constitute a default hereunder and may result in the imposition of any remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations. The parties further agree that upon any default by SUBRECIPIENT, the City may apply to any court, state or federal, for specific performance under this Agreement, and/or for an injunction against violation of this Agreement, since the injury to the City arising from a violation under any terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
5. **Covenants to Run with the Land.** SUBRECIPIENT hereby subjects or agrees to subject the Project to the covenants, reservations and restrictions set forth in this Agreement, which shall operate as a covenant running with the interest in the Leased Real Property described herein, and shall be binding upon their respective successors and assigns throughout the Term. Throughout the Term, unless this Agreement has been expressly subordinated thereto, each and every contract, deed or other instrument hereafter executed conveying the Leased Real Property or a portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Leased Real Property or a portion thereof provides that such conveyance is subject to this Agreement.
6. **Miscellaneous Provisions.**

- a. Amendment. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and recorded with the appropriate recording agency in the State of Hawaii.
- b. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
- c. Assignment. Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior written consent of each other party.
- d. Authorization. Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. SUBRECIPIENT and the persons signing for SUBRECIPIENT below further represent and warrant that there are no restrictions, agreements, or limitations on SUBRECIPIENT's right or ability to enter into and perform the terms of this Agreement.
- e. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.
- f. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, the City reserves the right, at any time, to amend this Agreement, with the consent of SUBRECIPIENT, in order to assure compliance with all U.S. Department of Housing and Urban Development (HUD), City and County of Honolulu, State of Hawaii and other applicable statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to SUBRECIPIENT.
- g. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.

- h. Construction. Each party named in this Agreement acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.
- i. Counterparts. The parties hereto 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 that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
- j. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- k. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.
- l. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten (10) days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required

notice is not given by the delayed party, no time extension shall be granted.

- m. Gender: Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.
- n. Independent Contractor/Non-Agency. The parties acknowledge that SUBRECIPIENT is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.
- o. Integration. This Agreement contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representation on which a party has relied as a basis to enter into the agreement stated in this Agreement which is not included as a provision in it.
- p. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.
- q. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.
- r. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.
- s. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.
- t. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party

in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

- u. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party, stated below. No other method of notice shall be effective.

- 1. CITY AND COUNTY OF HONOLULU
Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813
Attention: Director

With a copy to:

CITY AND COUNTY OF HONOLULU
Department of Budget and Fiscal Services
530 South King Street, Suite 208
Honolulu, Hawaii 96813
Attention: Federal Grants Unit,
Post-Development Monitoring

- 2. Waianae District Comprehensive Health and Hospital Board, Incorporated
86-260 Farrington Highway
Waianae, Hawaii 96792
Attention: Richard Bettini
- v. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.
 - w. Required Actions by the Parties. Each party named in this Agreement agrees to execute the Agreement and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to so consummate the transaction contemplated by this Agreement.
 - x. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability

of the remaining provisions stated in this Agreement unless that effect is made impossible by the absence of the omitted provision.

- y. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).
- z. Survival. Any representation and warranty stated in this Agreement made by a party shall survive the termination of the agreement stated in this Agreement, unless otherwise specifically stated.
- aa. Time is of the Essence. Time is of the essence with respect to SUBRECIPIENT's obligations under this Agreement.

[Remainder of Page Left Blank Intentionally]

Regulatory Agreement: [Malama Recovery Building Renovation and Access](#)
Waianae District Comprehensive Health and Hospital Board, Incorporated
City and County of Honolulu
Tax Map Key No. (1) 8-6-01:03

The City and SUBRECIPIENT have executed this Agreement as of _____, 2016.

APPROVED AS TO FORM AND
LEGALITY

APPROVED AS TO CONTENT

Deputy Corporation Counsel

Department of Community Services

APPROVED AS TO PROGRAM
REQUIREMENTS

CITY AND COUNTY OF HONOLULU

Federal Grants Coordinator

By _____
Name:
Its:

Waianae District Comprehensive Health
and Hospital Board, Incorporated
a Hawaii nonprofit corporation

By _____
Name:
Its:

STATE OF HAWAII)
) ss
CITY AND COUNTY OF HONOLULU)

On _____ in the First Circuit, State of Hawaii,
before me personally appeared _____ to me personally
known, who, being by me duly sworn or affirmed did say that he/she executed the
foregoing instrument identified or described as Regulatory Agreement:
_____, as his/her free act and deed, and if applicable in the capacity
shown, having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is undated and contained _____ pages at the time of this acknowledgment/certification.

Name: _____
Notary Public, State of Hawaii
My commission expires: _____

Exhibit A

Description of Land

Exhibit B
Map of Project



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.P. No. 22,218

December 12, 1994

WAIANAE COAST COMPREHENSIVE HEALTH CENTER SITE

Lualualei, Waianae, Oahu, Hawaii

Being a portion of the Hawaiian Home Land of Lualualei conveyed to the State of Hawaii by the Department of Hawaiian Home Lands by Exchange Deed dated March 25, 1986 and recorded in Liber 20572, Page 52 (Land Office Deed S-27687).

Beginning at the southwest corner of this parcel of land and on the north side of Farrington Highway, Project No. 93A-02-70, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAHEEHEE NEW" being 5761.30 feet South and 3690.74 feet West, thence running by azimuths measured clockwise from True South:-

1. 207° 33' 30" 256.04 feet along the Hawaiian Home Land of Lualualei;
2. 117° 33' 30" 170.16 feet along the Hawaiian Home Land of Lualualei;
3. 132° 59' 25" 571.32 feet along the Hawaiian Home Land of Lualualei;
4. 246° 07' 320.54 feet along Grant 5006 to Willard E. Brown;
5. 296° 18' 960.50 feet along the Hawaiian Home Land of Lualualei;
6. 356° 21' 625.00 feet along the Hawaiian Home Land of Lualualei;
7. 99° 39' 30" 150.41 feet along the north side of Maililili Road;
8. 104° 48' 30" 185.34 feet along the north side of Maililili Road;

PRELIM. APPR'D.
Department of the
Attorney General

EXHIBIT "A"

December 12, 1994

9. Thence along the north side of Mailiili Road on a curve to the left with a radius of 87.00 feet, the chord azimuth and distance being:
72° 08' 45" 93.91 feet;
10. 39° 29' 1.27 feet along the north side of Mailiili Road;
11. Thence along the north side of Mailiili Road on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
83° 50' 22" 27.96 feet;
12. Thence along the northeast side of Farrington Highway, Project No. 93A-02-70 on a curve to the left with a radius of 1362.21 feet, the chord azimuth and distance being:
125° 41' 52" 118.73 feet;
13. Thence along the northeast side of Farrington Highway, Project No. 93A-02-70 on a curve to the left with a radius of 1803.14 feet, the chord azimuth and distance being:
120° 23' 177.21 feet;
14. 117° 34' 55.12 feet along the northeast side of Farrington Highway, Project No. 93A-02-70 to the point of beginning and containing an AREA OF 14.352 ACRES.

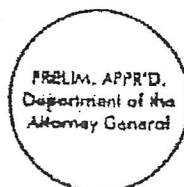
Reserving, however, to the State of Hawaii its successors and assigns an Easement for Electrical Transmission Lines as shown on plan attached hereto and made a part hereof.

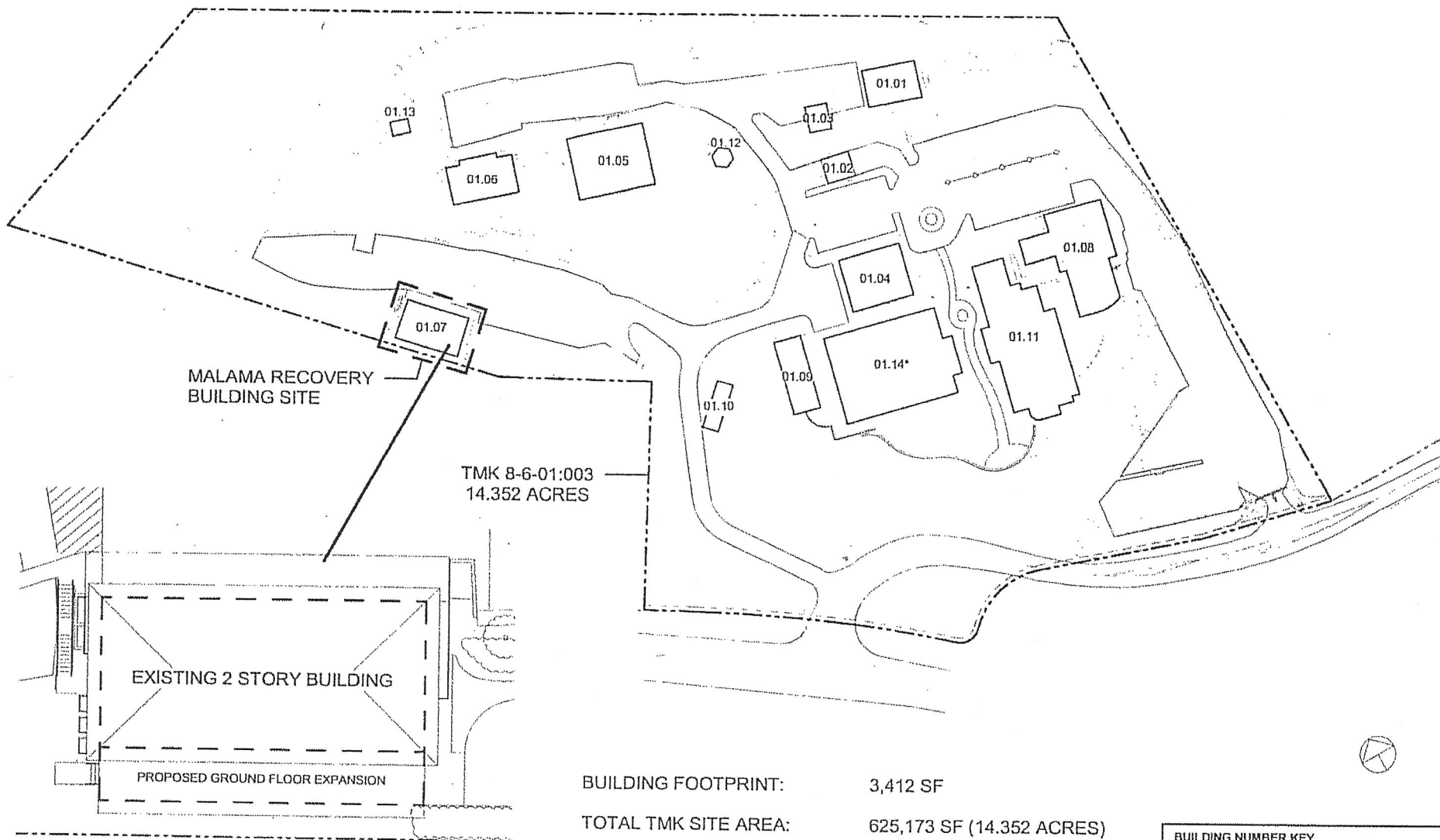
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Joseph M. Matsuno
Joseph M. Matsuno
Land Surveyor

gm

Compiled from CSFs 16770,
20649 and other Govt. Survey
Records.





BUILDING FOOTPRINT: 3,412 SF
 TOTAL TMK SITE AREA: 625,173 SF (14.352 ACRES)
 BUILDING LOT COVERAGE: 0.55%

BUILDING NUMBER KEY	
01.01	ADMINISTRATION BUILDING
01.02	MIDDLE PORTABLE
01.03	ADMIN ANNEX
01.04	DENTAL/ LAB
01.05	DINING PAVILION
01.06	NATIVE HAWAIIAN HEALERS BUILDING
01.07	MALAMA RECOVERY
01.08	FAMILY MEDICAL BUILDING
01.09	UTILITY BUILDING
01.10	EMERGENCY GENERATOR
01.11	ADULT MEDICINE & PHARMACY
01.12	GAZEBO HALE
01.13	HALE HO'OLA O WAIANAE
01.14	EMERGENCY MEDICAL BUILDING

EXHIBIT "B"

WCCHC MAIN CAMPUS SITE PLAN
 WAIANAE COAST COMPREHENSIVE HEALTH CENTER

Date: March 05, 2017

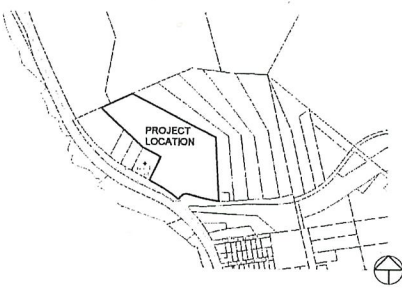
GENERAL NOTES

- 1) All work must comply with applicable local, state, federal codes standards and regulations.
- 2) All dimensions are taken to the face of finish unless otherwise noted.
- 3) Contractor to verify on site, all dimensions & existing conditions prior to starting work.
- 4) Notify the architect immediately, in writing, of any discrepancies or deviations between these drawings and existing field conditions.
- 5) The contractor is responsible to obtain and pay for all inspections and licenses for the work and obtain all government agency certificates and file a notice of completion.
- 6) The contractor shall guarantee the installation, materials and workmanship of all work for (1) year from the date of substantial completion.
- 7) Workmanship shall be of good quality in accordance to industry standards. New materials shall be used throughout unless otherwise noted.
- 8) Caution shall be exercised so that no existing areas be damaged. The contractor shall be responsible for any/all corrective work required to restore damage to the site, existing structure, and/or existing surfaces. Damaged surfaces shall be corrected to match original conditions.
- 9) The contractor shall be responsible for maintaining the job site in a neat and safe condition. The contractor is to provide and maintain suitable barriers as required to prevent public entry, and to protect the work and adjacent properties from construction operations, and remove when no longer required.
- 10) Areas for contract zone limits, materials storage, scheduling of work, trash disposal, workers' parking, etc. shall be coordinated with the owner's representative. Coordinate all work, scheduling, staging, and administrative requirements with the owner's representative.
- 11) Temporary pedestrian routes due to construction barricades to be accessible and comply with ADAAG section 201.3.3 & 206.1

VICINITY MAP



LOCATION MAP



ENERGY CODE

CITY AND COUNTY OF HONOLULU
REVISED ORDINANCE CHAPTER 32,
HONOLULU COUNTY CODE 1990, AS AMENDED

To the best of my knowledge, this project's design substantially conforms to the Building Energy Conservation Code for:

☒ Building Component Systems
☐ Electrical Component Systems
☐ Mechanical Component Systems

Signature: John C. Griego Date: 02/27/2017
Name: John C. Griego
Title: Architect
License No.: AR-16410

WAIANAE COAST COMPREHENSIVE HEALTH CENTER MALAMA RECOVERY BUILDING PROJECT LOWER LEVEL BUILDOUT

86-260 FARRINGTON HIGHWAY,
WAIANAE, HAWAII 96792
TMK: 8-6-01:003

PROJECT TEAM

Architect:
John C. Griego, AIA
86-260 Farrington Highway,
Waianae, HI 96792
Phone: (808) 697-3704

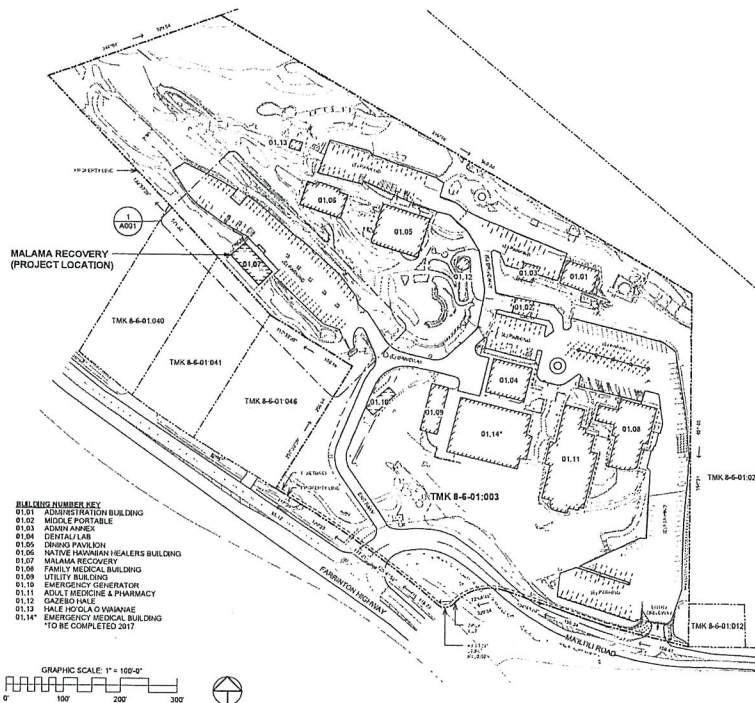
Civil Engineer:
Coffman Engineers
851 Fort St, Ste 300
Honolulu, HI 96813
(808)687-8884

Structural Engineer:
KAI Hawaii
50 S. Beretania St, #C-119C
Honolulu, HI 96813
(808)533-2210

Mechanical Engineer:
Mechanical Enterprises, Inc
501 Sumner St, Ste 503
Honolulu, HI 96817
(808)591-9038

Electrical Engineer:
Electech Hawaii
1100 Ward Ave, Ste 750
Honolulu, HI 96814
(808)522-1866

SITE PLAN



PROJECT DESCRIPTION

The Malama Recovery Building was built in 2011 for the Waianae Coast Comprehensive Health Center. The 2 story building consists of 2,448 sf of office space on the upper level and an unfinished lower level supporting the floor above. The proposed scope of work is to build out the existing lower level of the Malama Recovery Building to provide new office spaces with an employee breakroom, restrooms, reception and waiting areas. The buildings upper level is to remain unchanged.

DRAWING INDEX

NO.	SHEET TITLE
001	PROJECT INFORMATION, GENERAL NOTES, SITE PLAN & DRAWING INDEX
002	PROJECT DATA
003	TYPICAL ACCESSIBLE DESIGN DETAILS
A001	PARTIAL DETAILED SITE PLAN
A002	EXISTING & DEMOLITION PLANS
A003	PROPOSED LOWER LEVEL FLOOR PLAN
A004	PROPOSED UPPER LEVEL FLOOR PLAN
A005	REFLECTED CEILING PLANS
A006	DETAILED FLOOR PLAN, EXTERIOR STAIRS PLANS & SECTIONS
A007	DOOR, WINDOW, & ROOM FINISH SCHEDULES
A008	INTERIOR ELEVATIONS
A009	EXTERIOR ELEVATIONS
A010	EXTERIOR ELEVATIONS
A011	BUILDING SECTIONS
A012	DETAILED WALL SECTIONS
A013	TYPICAL DETAILS
A014	UPPER LEVEL COVERED ENTRY (ADD ALTERNATE)
S101	GENERAL NOTES
S102	TYPICAL DETAILS
S201	FOUNDATION SECTIONS
S202	FOUNDATION SECTIONS
S301	FOUNDATION PLAN
S302	LOWER LEVEL FRAMING PLAN
S303	ROOF FRAMING PLAN
S304	BUILDING SECTION
S401	ROOF FRAMING SECTIONS
M001	MECHANICAL GENERAL NOTES
M002	DEMOLITION PLAN
M003	PLUMBING PLAN
M004	MECHANICAL PLAN
M005	SCHEDULES
M006	PLUMBING PLAN
M007	DETAILS
E001	ELEC SYMBOL, ELEC SPECS, PANEL SCHED, LUM SCHED, ENERGY CALC
E002	LOWER LEVEL LIGHTING PLAN
E003	PROPOSED LOWER LEVEL POWER AND SIGNAL FLOOR PLAN
E004	SINGLE LINE DIAGRAM, NIGHT LIGHT CONTROL DIAGRAM, FIRE ALARM DIAGRAM & NOTES
E005	PARTIAL ELECTRICAL PLAN

WAIANAE COAST
COMPREHENSIVE
HEALTH CENTER



WAIANAE COAST COMPREHENSIVE HEALTH CENTER
86-260 Farrington Highway, Waianae, Hawaii 96792
Phone: (808) 697-3704 Web: www.wcchc.com

MALAMA RECOVERY BUILDING PROJECT
LOWER LEVEL BUILDOUT
IBP Number: 2016/IBP4708



Signature: John C. Griego
License Expires April 30, 2018
This seal may be used only by the holder or under his supervision and control. It shall not be used by any other person.

NO.	REVISION	DATE

DATE: APRIL 21, 2017

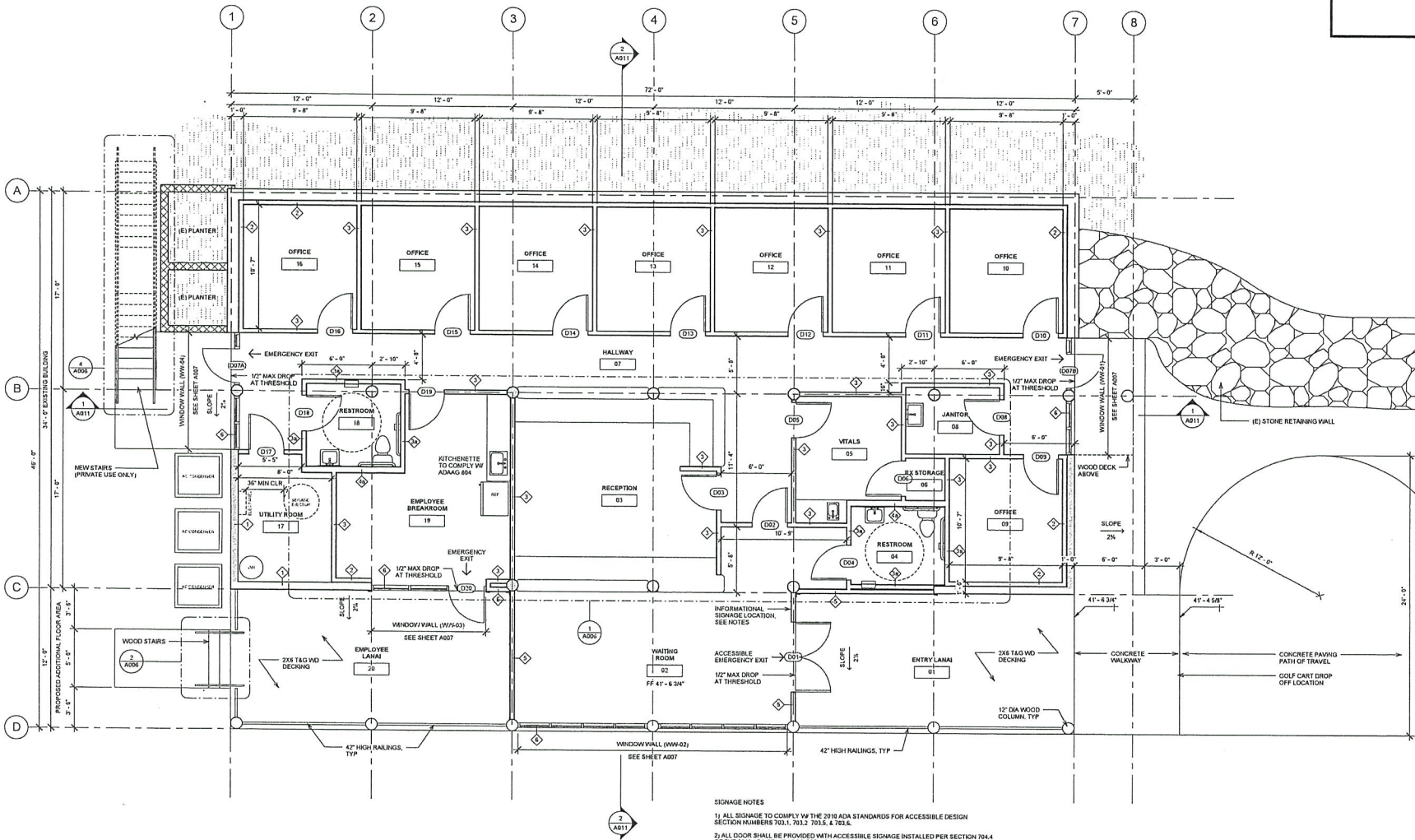
SHEET TITLE:
PROJECT INFORMATION,
GENERAL NOTES, SITE PLAN &
DRAWING INDEX

SHEET NUMBER:

001

TMK: 8-6-01:003
86-260 Farrington Highway, Waianae, Hawaii 96792

[illegible]



- SIGNAGE NOTES**
- 1) ALL SIGNAGE TO COMPLY WITH THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN SECTION NUMBERS 703.1, 703.2, 703.5, & 703.6.
 - 2) ALL DOOR SHALL BE PROVIDED WITH ACCESSIBLE SIGNAGE INSTALLED PER SECTION 704.4 OF THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN.
 - 3) TACTILE ACCESSIBLE EXIT SIGNAGE SHALL BE PROVIDED FOR DOORS D01, D02, D07A & D07B.

① LOWER LEVEL FLOOR PLAN
1/4" = 1'-0"



**WAIANAE COAST
COMPREHENSIVE
HEALTH CENTER**



WAIANAE COAST COMPREHENSIVE HEALTH CENTER
86-260 Farrington Highway, Waiānae, Hawaii 96792
Phone: (808) 891-5599 Web: www.wcohc.com

**MALAMA RECOVERY BUILDING PROJECT
LOWER LEVEL BUILDOUT**
18" Number: 2016/18P04P06

TMS: E-6-01.003
86-260 Farrington Highway, Waiānae, Hawaii 96792



Signature: *John C. Griego*

Expiry Date: April 30, 2019
This work was prepared by me or under my supervision and completion of this project will be under my supervision.

NO.	REVISION	DATE

DATE: APRIL 21, 2017

SHEET TITLE:
PROPOSED LOWER LEVEL
FLOOR PLAN

SHEET NUMBER:

A003