

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

December 14, 2018

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A 2-YEAR CONTRACT WITH THE ZOOLOGICAL SOCIETY OF SAN DIEGO TO PROVIDE SERVICES TO OPERATE THE ENDANGERED BIRD CAPTIVE PROPAGATION FACILITY ON MAUI, THE MAUI BIRD CONSERVATION CENTER, AND TO PROVIDE EXPERT AVICULTURAL SERVICES TO CONDUCT RELATED FOREST BIRD PROPAGATION PROJECTS AT THE KEAUHOU BIRD CONSERVATION CENTER ON THE ISLAND OF HAWAII AND THROUGHOUT THE STATE.

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE PROJECT.

This Board Submittal approves continuing a contractual relationship for operation of the Captive Propagation Program with the Zoological Society of San Diego for an additional two years, including the construction of needed infrastructure, and authorizes the Chairperson to enter into a contract for these services, subject to the necessary procurement approvals.

BACKGROUND:

In 1996, the Division approached the Board to obtain permission to outsource aspects of the State's Captive Propagation Program. This was viewed as advantageous as it enabled the hiring of experts to operate the program thus providing a high level of expertise at a reasonable cost. It also allowed DOFAW to focus its limited resources on management and restoration of habitat on the 800,000 acres of state lands that the Division manages, and on other essential recovery actions for endangered species. The US Fish and Wildlife Service, a key Partner in our endangered bird recovery efforts, had recently entered into a contract with The Peregrine Fund, Inc. (TPF) to operate a newly developed captive propagation facility on the island of Hawaii.

This presented the opportunity to consolidate both facilities under one manager -- thus integrating captive propagation and reintroduction programs in Hawaii. The Board approved the privatization of the captive propagation program with TPF in March 1996, issued a 20-year lease on the State's facilities at Olinda, and began a series of contracts to operate the State's program that has continued through Fiscal Year 2018.

In October of 1999, TPF notified the Department and the US Fish and Wildlife Service of their desire to transition their operational role to another entity, and recommended the Zoological Society of San Diego (ZSSD). Key to the recommendation of ZSSD was an ongoing collaboration between these institutions that would facilitate a smooth transition without a change in the operational management staff. The Board took the following actions to address that transition.

PRIOR BOARD ACTIONS

1. August 27, 1999. The Board approved TPF FY00 Contract with provisions for an option to subcontract or assign the contract. The Board also asked the Department to address public concerns for more information and openness in the program.
2. December 10, 1999. The Board approved the assignment of TPF's FY00 contract obligations and liabilities to ZSSD. The Board also approved that the Department develop a transition plan for operation of the facilities that meets all federal and state procurement standards. The Department reported on the Partnership's commitment to provide more information to the public via outreach efforts, obtain input on Annual and Five-Year Workplans, provide for responsible data sharing, and the formation of a Veterinary Advisory Group.
3. June 9, 2000. The Division reported on the transition plan that included a letter of inquiry to 30 zoos. Only ZSSD responded that they were willing and able to run the program at that time. The Board authorized the Division to begin a sole source contract process for the ZSSD to operate the Maui facility for FY01 and FY02 and to transfer the lease from TPF to ZSSD.
4. November 17, 2000. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State.
5. August 23, 2002. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 6/19/02 (Exempt Purchase Approval No. 02-55-J).
6. May 14, 2004. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 6/16/04 (Exempt Purchase Approval No. 02-55-J).
7. May 26, 2006. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State.

8. June 23, 2006. The Board approved an amendment to the above contract that would provide additional funds to build a captive Maui Parrotbill flock. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 8/09/06 (Exempt Purchase Approval No. 07-009-J).
9. June 13, 2008. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 6/19/08 (Exempt Purchase Approval No. 09-036-C).
10. May 13, 2010. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 2/25/10 (Exempt Purchase Approval No. 10-057-D).
11. February 3, 2012. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 6/18/2012 (Exempt Purchase Approval No. 12-097-D).
12. May 9, 2014. The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 5/20/2014 (Exempt Purchase Approval PE13-0805).
13. February 26, 2016 The Board approved a 2-year contract with ZSSD to provide services to operate the endangered bird captive propagation facilities on Maui and the island of Hawaii and conduct related forest bird propagation projects throughout the State. The purchase of these services was approved as an Exempt Purchase by the Chief Procurement Officer on 3/8/2016 (Exempt Purchase Approval No. 16-047-C)

CONTRACT PROVISIONS

The proposed contract will provide \$1,026,286 of federal funds (\$500,000 in FY19 and \$500,000 in FY20) to the Zoological Society of San Diego to provide services to operate the State-leased captive propagation facilities on Maui and to provide expert avicultural services to conduct related forest bird propagation projects at the Keauhou Bird Conservation Center, Volcano and throughout the State (Attachment A). This contract will be effective for the period July 1, 2018 to June 30, 2020. The \$1,000,000 is composed primarily of Federal funding provided to the state through a grant from the U.S. Fish and Wildlife Service. The Zoological Society of San Diego will provide an estimated \$306,494 of private funds or in-kind services to meet the State matching requirement for these Federal funds. Entering into the contract and continuing the contract for Year 2 (FY20) will be contingent on continued receipt of Federal grants and availability of Federal funds for this project.

The major activities planned for the program will be to continue to develop and implement successful captive propagation and reintroduction programs for Alala, Maui Parrotbill, Palila, Akikiki and Akekee, as agreed to through the Hawaii Endangered Bird Conservation Program.

The Zoological Society of San Diego will provide personnel, goods and services to operate and maintain the Maui facilities as an integrated program with the Hawai'i facilities; provide care and breeding of captive endangered birds; assist in collection and release of forest birds; administer the program; and provide annual progress and financial reports by November 30, 2019 and November 30, 2020. The scope of work implements the next two years of the jointly developed captive propagation work plan.

Upon approval by the Board, the Division will process a procurement exemption request for the purchase of these services from The Zoological Society of San Diego, negotiate the terms and conditions of the contract based on the parameters discussed above, submit the contract for review and approval as to form by the Attorney General, and process the document for signature by the Chairperson.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the requirements of Chapter 343, HRS, Hawaii Administrative Rule Section 11-200-8(6), the Exemption List for the Division of Forestry and Wildlife, Department of Land and Natural Resources as reviewed and concurred upon by the Environmental Council on June 12, 2008, and the Exemption List for the Department of Land and Natural Resources as reviewed and concurred upon by the Environmental Council on December 4, 1991 (Docket No. 91-EX-2), the subject project is exempt from the preparation of an environmental assessment pursuant to the following exemption classes:

From the DOFAW Exemption List:

Exemption Class 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

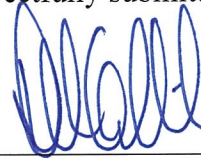
Refer to attached Exemption Notification labeled Exhibit A.

RECOMMENDATIONS:

That the Board:

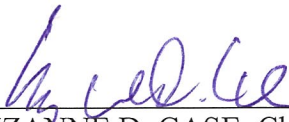
- 1) Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- 2) Delegates authority to the Chairperson to negotiate and execute a Contract for Services for two years in the amount not to exceed \$1,000,000 with the Zoological Society of San Diego subject to:
 - a) The receipt of Federal grants and availability of Federal funds for the contract,
 - b) The approval by the Chief Procurement Officer of this as an exempt purchase,
 - c) Approval as to form by the Attorney General's Office.

Respectfully submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources



STATE OF HAWAII
CONTRACT FOR GOODS AND SERVICES
 (IN THE FOLLOWING CATEGORIES: EXEMPT; SMALL PURCHASE;
 SOLE SOURCE; OR EMERGENCY)

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____ Board of Land and Natural Resources _____,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its _____ Chairperson _____,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____ 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813 _____
 _____ and Zoological Society of San Diego _____
 ("CONTRACTOR"), a _____ Non-profit Corporation _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of _____ California _____, whose business address and federal and state taxpayer identification numbers are as follows: _____ P.O. Box 120551, San Diego, California 92112-0551 _____
 FEIN #: 95-164-8219, Hawaii General Excise #: n/a _____

RECITALS

A. The STATE is in need of the goods and services, or both, described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods and services, or both, as the case may be.

B. This Contract is for (check one box):

(1) A procurement expenditure of public funds for goods or services, or both, that is otherwise exempt from public bidding as set forth in section 103D-102, Hawaii Revised Statutes ("HRS"), and chapter 3-120, Hawaii Administrative Rules ("HAR"); or

(2) A small purchase procurement of goods or services, or both, as set forth in section 103D-305, HRS, and subchapter 8, chapter 3-122, HAR; or

(3) A sole source procurement of goods or services, or both, as set forth in section 103D-306, HRS, and subchapter 9, chapter 3-122, HAR; or

(4) An emergency procurement of goods or services, or both, as set forth in section 103D-307, HRS, and subchapter 10, chapter 3-122, HAR.

C. Money is available to fund this Contract pursuant to:

(1) _____
(Identify state sources)

or (2) U.S. Fish and Wildlife Service, ESA Section 6 Program (16 U.S.C 1531-1543) (S-535)
(Identify federal sources)

or both, in the following amounts: State \$ _____
 Federal \$ 1,000,000 _____

D. Pursuant to _____ HRS 171-6 _____, the STATE
(Legal authority to enter into this Contract)

is authorized to enter into this Contract.

E. The agency's Chief Procurement Officer is _____ Suzanne D. Case _____
 who has approved this procurement or is not required to approve this procurement.

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in Attachment-S1, which is made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed One million DOLLARS (\$ 1,000,000), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of Not Applicable DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by any party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

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

STATE

(Signature)

Suzanne D. Case

(Print Name)

Chairperson, Board of Land and Natural Resources

(Print Title)

(Date)

CORPORATE SEAL

(If available)

CONTRACTOR

Zoological Society of San Diego

(Name of Contractor)

(Signature)

Douglas G. Myers

(Print Name)

President/CEO

(Print Title)

14 November 2018

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII
**CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

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

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Zoological Society of San Diego, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR is* is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

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

* **Reminder to Agency:** If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By *Douglas G. Myers*
(Signature)
Print Name Douglas G. Myers
Print Title President/CEO
Name of Contractor Zoological Society of San Diego
Date 14 November 2018

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 14, 2018 before me, Judith Myers, Notary Public
(insert name and title of the officer)

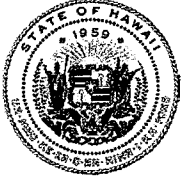
personally appeared Douglas G. Myers, President/CEO, San Diego Zoo Global,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed
to the within instrument and acknowledged to me that he executed the same in his authorized
capacity and that by his signature on the instrument the person or the entity upon behalf of which the
person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Judith Myers (Seal)





STATE OF HAWAII
SCOPE OF SERVICES

1. **PROJECT:** Provide services to operate the Maui Bird Conservation Center (MBCC) captive propagation facility at Olinda, Maui and conduct related Hawaiian forest bird conservation and restoration projects throughout the State.

2. **OBJECTIVES:** Provide expert avicultural services to care for and breed captive endangered bird species following recommendations and guidelines of Partnership Annual and Five-year Workplans. Species currently include: Alala, Maui Parrotbill, Palila, Puaiohi, Akikiki, and Akekee. Upon continuing mutual agreement, participate in conservation actions designed to recover other Hawaiian bird species currently held in captivity or, by mutual agreement, species newly brought into captivity at MBCC or in the field; develop avicultural techniques for the propagation and restoration of endangered Hawaiian forest birds; participate in collection and release efforts that have been agreed upon by the partners; and provide review to the partners on captive propagation and recovery actions pertaining to this program.

3. **SCOPE OF SERVICES:** To achieve the above objectives, the CONTRACTOR shall provide the following services:

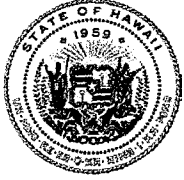
- a) In partnership with the Hawai'i Division of Forestry and Wildlife and the U.S. Fish and Wildlife Service, plan and implement activities to propagate endangered and other select species of Hawaiian birds at MBCC as part of the State of Hawaii's Captive Propagation Program.
- b) Provide adequate personnel, goods, and services to operate and maintain the Maui Bird Conservation Center at Olinda, Maui.
- c) Provide daily care for the birds maintained at the MBCC facilities and determine husbandry requirements for each species including routine avicultural procedures, breeding season management, social and behavioral requirements, artificial incubation parameters, and hand-rearing protocols.
- d) Monitor the health and well being of the birds being held at the MBCC and provide routine and emergency veterinary care.
- e) When needed, develop avicultural techniques to breed common surrogate species; evaluate and apply these techniques to breeding the rarer and endangered Hawaiian forest birds.
- f) Collect data on daily events, reproductive biology and performance, artificial incubation, chick hand-rearing and development, dietary requirements and nutritional habits, and bird behavior.
- g) Maintain accurate and up-to-date records of the collection's history and the accomplishments of each program.
- h) Participate in field recovery aspects of the captive propagation program including the release of birds reared in captivity; the collection of eggs; and as program needs require and as mutually agreed upon by all partners, the collection of nestlings and adults.
- i) Respond to partner agency requests for review on captive propagation and management issues that pertain to implementation of the State of Hawaii's Captive Propagation Program.
- j) Participate on working groups and recovery teams as requested and as time permits.
- k) Keep financial records in a manner that meets the reporting requirements for the federal aid funds provided by the State.



STATE OF HAWAII
SCOPE OF SERVICES

l) Provide an annual progress and financial report for the period July 1st 2018 to June 30th 2019 on or before November 30, 2019 and for the period July 1st 2019 to June 30th 2020 on or before November 30, 2020. The annual progress report will include details as requested by the Hawaii Division of Forestry and Wildlife prior to report submission.

m) In partnership with the Division of Forestry and Wildlife and the U.S. Fish and Wildlife Service, jointly review and update, as needed, the program's current five-year workplan, incorporating input from advisory groups and the public.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

1. **SCOPE OF PAYMENT:** In full consideration of the services to be performed under this contract, the STATE agrees to pay the CONTRACTOR a total sum not to exceed ONE MILLION DOLLARS (\$1,000,000) according to the schedule outlined below that includes fiscal years 2019 and 2020. All funds shall be paid by the STATE to the CONTRACTOR, subject to appropriations, on an annual basis for the forthcoming fiscal year according to the schedule outlined below:

Fiscal Year 2019: \$ 500,000
Fiscal Year 2020: \$ 500,000

If in either fiscal year 2019 or 2020, the STATE does not appropriate, and/or the BOARD does not approve the expenditure of funds sufficient to meet the STATE's funding obligation under this AGREEMENT, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated.

2. **FISCAL YEAR PAYMENTS:** Subject to the availability of federal funds and the annual appropriation of funds, the State shall provide the following payments:

Fiscal Year 2017: \$ 500,000
Fiscal Year 2018: \$ 500,000
Total Payment: \$ 1,000,000

3. **PARTIAL PAYMENTS:** As work progresses and upon application by the CONTRACTOR, the State will make partial payments as requested based upon documented allowable reimbursable expenses.

4. **REIMBURSEMENT BASIS:** The total sum paid to the CONTRACTOR shall be based on a partial reimbursement basis of 76.5% of allowable costs up to \$500,000 in year 1 and \$500,000 in year 2. In order to receive full payment, the CONTRACTOR must document allowable charges totaling \$653,247 in year 1 and \$653,247 in year 2. The STATE will reimburse the CONTRACTOR for 76.5% of those costs up to a maximum of \$500,000 in year 1 and \$500,000 in year 2, subject to the provision for FINAL PAYMENT in item 5.

5. **FINAL PAYMENT:** \$2,000 of the total per fiscal year shall be withheld by the STATE until the CONTRACTOR successfully complies with all the terms and conditions of this agreement.

6. **INITIATING WORK:** All work completed by the CONTRACTOR prior to receipt of a fully-executed copy of this AGREEMENT, and prior to STATE and BOARD approval of funding for any subsequent years, shall be at the CONTRACTOR's own volition and risk, including work performed during the period of any deliberations by the BOARD or DEPARTMENT in anticipation of approval; provided, however, that if funding and/or amendments applicable to such work are subsequently approved, the CONTRACTOR may be paid for such work even if performed prior to such approval.



STATE OF HAWAII

TIME OF PERFORMANCE

The time of performance for this contract with the Zoological Society of San Diego is July 1, 2018 to June 30, 2020. Upon written request and for good cause, an extension to the completion date of this agreement may be proposed by either Party prior to the current expiration date of the agreement and shall become effective upon written approval by the other party.



STATE OF HAWAII
SPECIAL CONDITIONS

The following special provisions shall apply to this agreement:

1. **PUBLICITY:** It is expressly understood and agreed to by the STATE that General Condition No. 25 dealing with Publicity shall not be applicable to acknowledgment of the STATE's participation and funding of the project in any of the CONTRACTOR's reports, brochures, advertisements or other information released to the media or public nor shall it prohibit the CONTRACTOR from providing information on the STATE's activities associated with the Program. The CONTRACTOR shall refer all inquiries about STATE policy or administration of the Program to the CHAIRPERSON.

2. **RETENTION AND EXAMINATION OF RECORDS:** It is expressly understood and agreed to by the CONTRACTOR that the STATE or any of its duly authorized representatives shall have access to any pertinent books, documents, papers and records of the CONTRACTOR, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

3. **NONDISCRIMINATION:** It is expressly understood and agreed to by the CONTRACTOR that it is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972; and offers all person the opportunity to participate in public programs regardless of race, color, national origin, age, sex or disability. The Contractor agrees that no individual will be turned away from, or otherwise denied access to, or benefit from any program it sponsors that is directly associated with a program of the contractor on the basis of race, color, national origin, age, sex or disability. A violation of this assurance may become reason to nullify this contract.

Financial records identified above shall be retained for a period of three years after submittal of the final financial report except that if any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or findings have been resolved.

The CONTRACTOR is responsible for compliance with any applicable federal grant requirements as specified in Office of Management and Budget Circulars for non-profit organizations.

RESOLUTION OF THE BOARD OF TRUSTEES

ZOOLOGICAL SOCIETY OF SAN DIEGO

RESOLVED, pursuant to Section 1 of Article XII of the Bylaws of the Corporation, that any one of the following persons are hereby authorized to execute any instrument in the name of and on behalf of the Zoological Society of San Diego, DBA San Diego Zoo Global, up to the value of five hundred thousand dollars [\$500,000] (1) to sell securities on behalf of the Corporation; (2) to sell real estate on behalf of the Corporation; (3) to open or to authorize transactions from banking, escrow, brokerage and securities accounts on behalf of the Corporation for the purpose of facilitating the receipt of donated property and funds or the sale of securities: President/CEO Douglas Myers, Chief Operating Officer Shawn Dixon or Chief Financial Officer Paula Brock.

FURTHER RESOLVED that any two of the following persons are hereby authorized to execute any instrument in the name of and on behalf of the Zoological Society of San Diego, DBA San Diego Zoo Global, over a value of five hundred thousand [\$500,000] and up to one million dollars [\$1,000,000] (1) to sell securities on behalf of the Corporation; (2) to sell real estate on behalf of the Corporation; (3) to open or to authorize transactions from banking, brokerage and securities accounts on behalf of the Corporation for the purpose of facilitating the receipt of donated property and funds or the sale of securities: either President/CEO Douglas Myers or Chief Operating Officer Shawn Dixon, and either Chief Financial Officer Paula Brock or Corporate Director of Finance David Page.

AND FURTHER RESOLVED that any of the following persons are hereby authorized to enter into grant agreements, partnerships, service and purchase agreements as are within the limits established by the approved annual budget: President/CEO Douglas Myers, Chief Operating Officer Shawn Dixon or Chief Financial Officer Paula Brock.

I, Linda Lowenstine, Secretary of the Zoological Society of San Diego, hereby certify that the foregoing is a true copy of a resolution duly adopted by the Board of Trustees of said Corporation at a meeting duly held on the 27th day of February 2018, at which a quorum was present and voting, and that the same has not been repealed or amended and remains in full force and effect and does not conflict with the Bylaws of said Corporation.

2/27/18

Dated

Linda J. Lowenstine

Linda Lowenstine, Secretary

- CORPORATE SEAL -

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
 - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures; Final Payment; Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
 - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
 - c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
 - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
 - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

- d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



STATE PROCUREMENT OFFICE
NOTICE OF REQUEST FOR EXEMPTION
FROM HRS CHAPTER 103D

State Procurement Office
Received: 03/13/2018

TO: Chief Procurement Officer
FROM: Land and Natural Resources/Forestry and Wildlife
Name of Requesting Department

Pursuant to HRS § 103D-102(b)(4) and HAR chapter 3-120, the Department requests a procurement exemption for the following:

1. Describe the goods and/or services:
Provide expert services for the State of Hawaii in collaboration with the Hawaii Endangered Bird Conservation Program. Services to be provided include operation of the Maui Bird Conservation Center located in Olinda on the island of Maui and the Keauhou Bird Conservation Center located in Volcano on the Big Island, all aspects of the avicultural care and breeding of endangered and surrogate birds, operations and maintenance of captive facilities, veterinary care of captive birds, assistance with field collections and releases of birds, working with cooperating agencies to integrate the captive propagation program with other aspects of endangered bird management and recovery, public outreach, and a contribution of no less than \$334,000 in cash or in-kind services over the two-year contract period to provide the match for the federal funding contributing to this project.

2. Vendor/Contractor/Service Provider:	Zoological Society of San Diego	3. Amount of Request:	\$ 500,000 (FY19)/\$500,006 (FY20)		
4. Term of Contract From:	1-Jul-18	To:	30-Jun-20	5. Prior SPO-007, Procurement Exemption (PE):	PE16-047c, PE14-0805

6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:
See attached explanation on pages 3-4.

7. Explain in detail, the process that will be or was utilized in selecting the vendor/contractor/service provider:
N/A

8. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required).
 *Point of contact (Place asterisk after name of person to contact for additional information).

Name	Division/Agency	Phone Number	e-mail address
James Cogswell	DLNR-DOFAW	808-587-4157	james.m.cogswell@hawaii.gov

All requirements/approvals and internal controls for this expenditure is the responsibility of the department. I certify that the information provided above is, to the best of my knowledge, true and correct.


2/23/18

 Department Head Signature Date

For Chief Procurement Officer Use Only

Date Notice Posted: 03/14/18

Inquiries about this request shall be directed to the contact named in No. 8. Submit written objection to this notice to issue an exempt contract within seven calendar days or as otherwise allowed from date notice posted to:

state.procurement.office@hawaii.gov

Chief Procurement Officer (CPO) Comments:

Approval is granted for the period 07/01/2018 to 06/30/2020, with the understanding that the department has determined that it is not advantageous to conduct a competitive procurement as the Zoological Society of San Diego is the only organization, with the experience and expertise in breeding and caring for endangered Hawaiian forest birds, to successfully operate the captive propagation program in Hawaii. Approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply (i.e. vendor is required to provide proof of compliance and may use the Hawaii Compliance Express) for all contracts awarded and award is required to be posted on the Hawaii Awards & Notices Data System. Copies of the compliance verification and the award posting are required to be documented in the procurement/contract file.

If there are any questions, please contact Kevin Takaesu at 586-0568, or kevin.s.takaesu@hawaii.gov.

Approved

 Disapproved

 No Action Required



 Chief Procurement Officer Signature Apr 5, 2018
Date

Attachment 1.

Explanation describing how procurement by competitive means is neither practicable nor advantageous to the State:

The San Diego Zoo Institute for Conservation Research (SDZICR – formerly the Zoological Society of San Diego [ZSSD]) currently operates the State of Hawaii's captive propagation program as part of an interagency collaboration with the U.S Fish and Wildlife Service (USFWS) and the State of Hawai'i. The Department of Land and Natural Resources (DLNR) and the USFWS share the cost of this program, with DLNR funds originating from Cooperative Section 6 Endangered Species grant program of the Federal Endangered Species Act and state funds when possible. The San Diego Zoo Institute for Conservation Research operates two separate facilities (one on Maui and one on Hawaii) as a single integrated program. Maintenance of separate facilities administered by one organization is a key component of the program's success because it provides the following advantages: 1) allows a portion of each captive species to be kept on separate islands (to reduce loss in the event of a catastrophe), 2) allows for the rapid exchange of birds between facilities, 3) reduces mortality risk of individuals and thereby the risk of losing a species by providing standardized protocols for complex avicultural procedures (e.g., incubation, neonatal care), 4) facilitates the training of personnel, and 5) allows personnel to move between facilities and field sites (e.g., remote release sites) as necessary. Overall, the two facilities-one administration approach minimizes the program's cost and risk, while at the same time ensuring that the State receives expert services. This service is measured in terms of the successful propagation and release of native Hawaiian birds and ultimately by the recovery of these endangered species. This approach also facilitates collaboration among the USFWS, DLNR, and SDZICR.

Prior to the establishment of this program, no institution or entity had demonstrated the ability to breed endangered Hawaiian passerines in captivity. The current operator continues to be the only such institution. Although this program was previously administered by The Peregrine Fund, no change in management or operations occurred at the time of transfer to SDZICR. The San Diego Institute for Conservation Research staff has years of experience and has a 16-year record of successfully operating this program. Procurement by competitive means would not be advantageous to the State nor practicable. No other vendor has the expertise or experience of breeding and caring for endangered Hawaiian forest birds. Thus a change in vendors would increase the risk of failure, the potential loss of critically endangered species, and program setbacks; all of which could result in a loss of public support and funding for the program. Currently, the USFWS has a cooperative agreement with SDZICR through which they provide money to SDZICR. These funds are in addition to those provided to the State (i.e., Section 6 funds; see above), which are passed through to SDZICR.

To be successful the program requires a high level of expertise, which can only be obtained through years of experience. Switching to a new vendor would introduce an element of risk. This could result in the injury or death of federally protected captive endangered birds. It could also result in period of poor reproduction. These risk are especially acute for the 'Alalā, or Hawaiian Crow, which is critically endangered and currently only exists in these facilities in captivity. Because no 'Alala exist in the wild, prior 2016, the species is entirely dependent on

the captive breeding program to prevent their extinction. Furthermore, over the last six years, `Alalā reproduction has increased dramatically, due in part to the experience of SDZICR staff. A reintroduction program has been implemented beginning in 2016 with the initial release of captive `Alalā and again on Sept. (6 birds) and October (5 birds), a total of 11 `Alalā were released from a site selected strategically by SWOT analysis; this site is within the Pu`u Maka`ala NAR. To date, all eleven have transitioned well into the wild, and all are surviving. Post-release monitoring is currently being conducted by SDZG. The San Diego Institute for Conservation Research staff is integral to the development of this reintroduction effort and switching vendors would negatively affect the timing of the release and the overall success of the effort.

The current operator has a nationally recognized and award-winning program that is currently housing and breeding nearly all of the world's remaining `Alala, as well as five other endangered Hawaiian forest birds. The operator is currently maintaining: 131 `Alala, 29 Palila, 39 Akikiki, 10 Kiwikiu, 4 Akekee, and 1 Puaiohi. All of the birds are listed as endangered by the USFWS and the State of Hawai`i. A mishap in the care of these endangered birds during a transition in operations would be unfortunate and potentially have legal ramifications. Thus, it is to the State's advantage to maintain SDZICR as the operator of its captive breeding program.



SAN DIEGO ZOO
GLOBAL.

June 30, 2018

P.O. Box 39
Volcano, HI 96785

Lainie Berry
Division of Forestry and Wildlife
1151 Punchbowl Street
Honolulu, HI 96813

Dear Dr. Berry,

We respectfully submit the enclosed budget for the Division of Forestry and Wildlife's collaboration with the Zoological Society of San Diego d/b/a San Diego Zoo Global's (SDZG) Hawaii Endangered Bird Conservation Program for Fiscal Years 2019 and 2020 for your review. This budget will provide services to operate the Maui Bird Conservation Center captive propagation facility at Olinda, Maui and conduct related Hawaiian forest bird conservation and restoration projects throughout the State.

Since the previous budget was submitted for Fiscal Years 2017 and 2018, the following notable changes have occurred with the operation of the HEBCP:

- 1) The captive 'Alalā population has increased to about 120 birds, and annual releases of this species into the wild have been initiated.
- 2) Captive populations of 'Akikiki and 'Akeke'e have been initiated to prevent their imminent extinction in the wild, through the collection of wild eggs.

Key activities relating to bird recovery programs proposed for Fiscal Years 2019 and 2020 include, but are not limited to:

'Alalā:

- Maximize conservation breeding, with a focus on parental incubation and rearing, for the continued releases of birds into the wild.
- Continue regular releases of 'Alalā into the wild to establish a wild population.

'Akikiki and 'Akeke'e:

- Develop conservation breeding and animal care methodology and techniques, with a focus on parental incubation and rearing, for the purposes of future releases of birds into the wild.

Kiwikiu:

- Prepare for the release of Kiwikiu into the wild and the subsequent closing of the conservation breeding program in Fall 2019.

Palila:

- Prepare for the release of Palila into the wild and the subsequent closing of the conservation breeding program in Spring 2019.

Other major activities:

- Continue to maintain aging facilities and infrastructure to a high standard.

- Ensure adequate aviary is space of one chamber per bird is available for the health and safety of captive individuals.
- Maximize the number of pairs that are full-time socialized throughout the year, and develop and implement a behavior-based enrichment program, as part of providing a high standard of animal care.
- Maximize genetic health as part of conservation breeding and reintroduction activities, using both pedigree and molecular techniques.
- The Veterinary Services Department and Disease Investigations Division will continue to provide significant in-kind contributions for veterinary care, clinical pathology services, necropsies, and retrospective and prospective investigations.
- At no cost to DOFAW, Alala #33 Kinohi will be maintained at the San Diego Zoo Safari Park vet hospital for the purpose of reproductive research / semen collection.
- At no cost to DOFAW, reproductive tissues will continue to be harvested whenever possible from all dead forest birds sent for necropsy and banked in the Frozen Zoo.
- At no cost to DOFAW, the Conservation Genetics Division will continue to initiate and culture fibroblast cell lines from birds sent for necropsy, for long-term maintenance in the Frozen Zoo, which has been identified as a major goal for USFWS.
- At no cost to DOFAW, the Conservation Genetics Division will determine the sex of as many birds as possible.
- Collect biological samples from as many birds as possible in the conservation breeding and reintroduction program.
- At no cost to DOFAW, the Public Relations Department will continue to provide support for media and press releases.
- Continue to obtain funding and in-kind support from San Diego Zoo Global, various Foundations, and private donors. In September 2018, SDZG committed \$50,000 towards infrastructure repairs mandated by IACUC, in addition to regular annual support for the Hawaii Endangered Bird Conservation Program.

Thank you, as always, for DOFAW's long-standing collaboration in the Hawaii Endangered Bird Conservation Program and its important role in the recovery of the Hawaiian avifauna.

Sincerely,

Bryce Masuda

Bryce Masuda
Conservation Program Manager, Hawaii Endangered Bird Conservation Program



Budget Summary, Fiscal Years 2019 and 2020

Hawaii Endangered Bird Conservation Program, San Diego Zoo Global

Annual Budget for FY19 and FY20 submitted to the State of Hawaii Division of Forestry and Wildlife

FY19: July 1, 2018 - June 30, 2019 = \$500,000

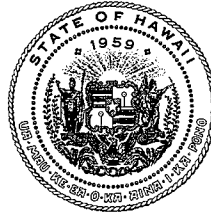
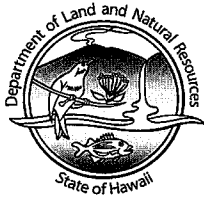
FY20: July 1, 2019 - June 30, 2020 = \$500,000

Total contract amount, two years = \$1,000,000

Operating Budget (per annum)

Expense category		Brief explanation	FY 2019	FY 2020
a.	Personnel	Wages/direct labor	\$240,000	\$240,000
b.	Benefits	~50% in addition to wages/direct labor	\$120,000	\$120,000
c.	Travel	Includes travel, volunteer intern stipend, and fuel	\$35,000	\$35,000
d.	Equipment	Includes tools and small equipment, and repair and maintenance of equipment, possible purchase of a vehicle	\$30,000	\$30,000
e.	Supplies	Includes operating supplies, forage, and office supplies	\$40,000	\$40,000
f.	Contractual		\$0	\$0
g.	Construction	Includes repair and maintenance of buildings and enclosures.	\$10,000	\$10,000
h.	Other	Includes rental expense, insurance, utilities expense, postage & mailing	\$25,000	\$25,000
TOTAL			\$500,000	\$500,000

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, PE
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

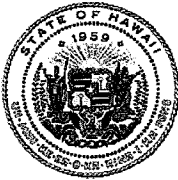
EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS.

Project Title:	Request for approval to enter into a 2-year contract with the Zoological Society of San Diego to operate the endangered bird captive propagation facility on Maui, the Maui Bird Conservation Center, and to provide expert avicultural services to conduct related forest bird propagation projects at the Keauhou Bird Conservation Center on the island of Hawaii and throughout the State.
Project Number:	NA
Project Description:	Approving a continuing contractual relationship with the Zoological Society of San Diego to operate the state's Captive Propagation Program for an additional two years. This action was approved at the Board of Land and Natural Resources meeting on December 14, 2018.
Chapter 343 Trigger(s)	Use of state facilities and possibly state funds
Exemption Class & Description:	<p>Exemption Class No. 1 of the Department of Land and Natural Resources, Division of Forestry and Wildlife. "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."</p> <p>The Zoological Society of San Diego has operated the state-owned Maui Bird Conservation Center at Olinda, Maui and the Keauhou Bird Conservation Center at Volcano, Hawaii since 1999.</p>
Recommendation:	It is anticipated that this project will have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Date



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)
Suzanne D. Case
(Print Name)
Chairperson, Board of Land and Natural Resources
(Print Title)

(Date)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)
(Print Name)
(Print Title, if designee of the Director of DHRD)

(Date)