

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

April 26, 2019

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i  
Land Board Members:

SUBJECT: REQUEST APPROVAL OF THE MASTERS UNLIMITED LLC  
FOREST STEWARDSHIP MANAGEMENT PLAN AND FOREST  
STEWARDSHIP AGREEMENT WITH MASTERS UNLIMITED LLC,  
TMK (3) 1-8-091:016, PUNA, HAWAI'I COUNTY, HAWAI'I

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO  
CHAPTER 343, HAWAI'I REVISED STATUTES FOR THE PROJECT

**BACKGROUND:**

The State of Hawai'i Forest Stewardship Program (FSP) provides technical and financial assistance to private landowners and land managers committed to the stewardship, conservation, and restoration of important forest resources across the state. These private properties provide a variety of public benefits for the residents of Hawai'i, including but not limited to: fresh water capture and production, decreased soil erosion, wildlife habitat, forest products, recreational and educational opportunities, and local jobs. The assistance provided by FSP enables private landowners to develop and implement long-term multi-resource management plans to conserve, restore and maintain forested areas on their property.

The FSP was established through Chapter 195F-6, Hawai'i Revised Statutes (HRS) and provides the Department of Land and Natural Resources with the authority to provide financial assistance to approved Forest Stewardship projects for private landowners to manage, protect, and restore important natural resources on forested and formerly forested properties. The FSP is implemented pursuant to Chapter 195F, HRS, and Section 109, Hawai'i Administrative Rules (HAR). The program provides cost-share reimbursement for the development of long-term forest management plans and for the implementation of approved Forest Stewardship management plans.

To participate in FSP, interested landowners and managers follow a sequence of application steps in the process of developing a long-term Forest Stewardship management plan. All interested landowners submit their proposed project for review by the Forest Stewardship Advisory Committee

(FSAC). The FSAC reviews the proposed project based on program eligibility requirements and assures the proposed project is in line with the program's goals of conservation, restoration, and/or forest production. Once a proposed project is accepted, the FSAC recommends the development of a FSP management plan and reviews and approves the final management plan. The Forest Stewardship management plan is created by landowners in partnership with natural resource professional/experts and reviewed and approved by both the Division and the FSAC. Final management plans are then recommended for approval by the Department.

The award of cost-share support for Forest Stewardship management plan implementation follows a similar process to the development of a management plan. Upon approval of a project's Forest stewardship management plan, the FSAC reviews the implementation schedule and budget summary to ensure that the practice costs are reasonable and follow the program's approved cost-share rates. The FSAC recommends cost share support for the project implementation based on the 10-year implementation schedule that is submitted to the Board of Land and Natural Resources (Board) for consideration. Review and approval of the Forest Stewardship project and management plan, as well as authorization of cost-share support for the project by the Board is required for the Department to enter into the Forest Stewardship Agreement. The Division has previously worked with the Department of the Attorney General to develop a Forest Stewardship Agreement template (Exhibit A) for eligible projects.

The Masters Unlimited LLC Forest Stewardship project proposes to actively manage and reforest approximately 5 acres of native forest on Tax Map Key number (3) 1-8-091:016, in the Mountain View area of Hawai'i County. The Forest Stewardship project area is designated by the State of Hawai'i as Agriculture District and as Agriculture by the County of Hawai'i. The Masters Unlimited LLC Forest Stewardship project is located near the Ōla'a and Wao Kele O Puna Forest Reserves, Hawai'i Volcanoes National Park, and the Kahauale'a and Pu'u Maka'ala Natural Area Reserve. The 5-acre project contains two different forest types. One section was previously bulldozed and is now highly disturbed and dominated by herbaceous weeds and grasses. The other section is a non-bulldozed semi-intact mixed forest, composed of primarily 'ōhi'a and strawberry guava in the canopy, and mosses and ferns in the understory. The primary goal of Masters Unlimited LLC is to restore native ecosystem function while establishing a native seed orchard that will serve as a sustainable seed source for Hawai'i Island.

The FSAC approved the Masters Unlimited LLC Forest Stewardship management plan at their meeting on January 19, 2018 and the State Forester/Division Administrator approved the Forest Stewardship Management Plan on APR 10 2019 (Exhibit B).

#### DISCUSSION:

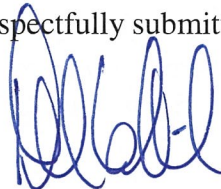
The Division is requesting approval of a Forest Stewardship Agreement with Masters Unlimited LLC for the implementation of the Masters Unlimited LLC Forest Stewardship management plan. Over the course of the 10-year management plan, Masters Unlimited LLC intends to establish a native seed orchard by reforesting and protecting 5 acres of mixed native forest. Trails, interpretive signage, and facilities will also be installed within the project area to promote the educational value of the property and facilitate proposed activities. On the remaining 1.25-

RECOMMENDATIONS:

That the Board:

1. Approve the Masters Unlimited LLC Forest Stewardship management plan;
2. Approve cost-share support in the amount of **\$56,525** for the implementation of the Masters Unlimited LLC Forest Stewardship management plan;
3. Authorize the Chairperson to amend, finalize and execute a Forest Stewardship Agreement with Masters Unlimited LLC to participate in the State Forest Stewardship Program subject to the following:
  - A. Availability of State Forest Stewardship funds; and
  - B. Review and approval as to form of the Forest Stewardship Agreement by the Department of the Attorney General.
4. Declare, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, that this project will likely have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under the classes listed in the Declaration of Exemption (Exhibit C).

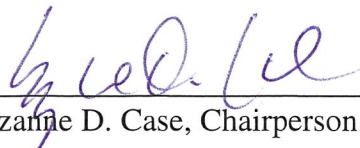
Respectfully submitted,



David G. Smith, Administrator  
Division of Forestry and Wildlife

Attachment: (Exhibit A, B, C)

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

acres that are not included in the FSP management plan, Masters Unlimited LLC plan to establish and manage nurseries, dwellings, and land improvements such as electricity, water, and sewage facilities. Masters Unlimited LLC will also be implementing other activities on the property that will not be funded through the FSP Agreement. In the bulldozed area, apiaries will be installed to promote pollination and increase seed yields. Fruit trees will be intercropped within the native plantings to help establish a multistory canopy.

The first management activity will be installation of a perimeter fence to exclude feral ungulates and off-road vehicles that occasionally traverse the area. Following the completion of the fence, any remaining ungulates within the fenced area will be removed and site preparation will begin. Site preparation will include chemical and manual weed control of invasive herbaceous and woody species. Regionally appropriate native seed stock will be collected in the wild and seedlings will be purchased from on-island nurseries. Plants will be introduced via seed scatter or in 4-inch pots. Ongoing maintenance such as weed control will be undertaken on a regular basis after the initial planting and throughout the 10 years of the contract. Trails will be installed to facilitate access for planting and to aid in public outreach. Monitoring activities will include photo point monitoring and vegetation assessments to assess the success of management efforts.

A total of **\$56,525** in state Forest Stewardship funding is requested to provide cost-share support for the Masters Unlimited LLC Forest Stewardship management plan and the Masters Unlimited LLC Forest Stewardship Agreement over a ten-year period. Masters Unlimited LLC will be contributing an amount of **\$97,947** toward the implementation of their project through the FSP. The costs associated with the proposed practices are consistent with the intensity of management required for this type of project. Masters Unlimited LLC has elected not to enroll in an additional maintenance commitment through the FSP Agreement, but intends to maintain the implemented practices. Cost-share funds are provided as reimbursement payments for implementation of approved management practices through the State fiscal year 2029.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

In accordance with the requirements of Chapter 343, Hawai‘i Revised Statutes, and Section 11-200-8, Hawai‘i Administrative Rules, and the Exemption List for the Department of Land and Natural Resources as approved by the Environmental Council on June 5, 2015, the subject project is exempt from the preparation of an environmental assessment pursuant to the exemption classes listed in Exhibit C.

#### AGENCIES CONSULTED:

- US Department of Agriculture - Natural Resources Conservation Service
- US Department of Interior - Fish and Wildlife Service
- DLNR – Commission on Water Resource Management
- County of Honolulu – Department of Planning

**STATE OF HAWAII  
FOREST STEWARDSHIP AGREEMENT**

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (“STATE”), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and \_\_\_\_\_ (“LANDOWNER”) whose address and federal and state taxpayer identification numbers are as follows:\_\_\_\_\_

\_\_\_\_\_  
*Business address*

\_\_\_\_\_  
*Federal and state taxpayer identification numbers*

**RECITALS**

WHEREAS, Chapter 195F, Hawaii Revised Statutes (HRS), provides for the establishment of a forest stewardship program to encourage and assist private landowners in managing, protecting, and restoring important watersheds, native vegetation, fish and wildlife habitats, isolated populations of rare and endangered plants, and other forest lands that are not recognized as potential natural area reserves; and

WHEREAS, in accordance with HRS Chapter 195F and Title 13, Subtitle 5, Part 1, Chapter 109 of the Hawaii Administrative Rules (HAR), the LANDOWNER has applied, and qualifies, for participation in the forest stewardship program; and

WHEREAS, the LANDOWNER has submitted a forest stewardship management plan, as set forth in Exhibit A hereto, that the STATE agrees is consistent with the policies, goals, and objectives of the forest stewardship program; and

WHEREAS, the STATE desires to assist the LANDOWNER in implementing the forest stewardship management plan with financial and other assistance; and

WHEREAS, money is available to fund this agreement pursuant to: Act 195, SLH 1993, Hawaii Revised Statutes, Section 247-7.

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

**A. SCOPE OF SERVICES**

The LANDOWNER hereby agrees to implement the forest stewardship management plan set forth in Exhibit A and the project described in the “Scope of Services” set forth in Attachment S1 in proper and satisfactory manner as determined by the STATE, both of which are hereby made a part of this AGREEMENT. The STATE hereby agrees to assist the LANDOWNER in implementing the forest stewardship management plan, all in accordance with the terms and conditions set forth in Attachments S1, S2, S3, S4, S5, and S6, attached hereto.

**B. COMPENSATION**

The LANDOWNER shall be compensated for performance of the project under this AGREEMENT according to the “Compensation and Payment Schedule,” set forth in Attachment S2, which is hereby made a part of this Agreement.

**C. TIME OF PERFORMANCE**

The performance required of the LANDOWNER under this AGREEMENT shall be completed in accordance with the “Time of Performance” set forth in Attachment S3, which is hereby made a part of this AGREEMENT.

**D. CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE**

The “State of Hawaii Certificate of Exemption from Civil Service,” set forth in Attachment S4, is hereby made a part of the AGREEMENT.

**E. OTHER TERMS AND CONDITIONS**

The “State of Hawaii Special and General Conditions for Forest Stewardship Program Agreements,” set forth in Attachment S5, and the General Conditions attached hereto, are hereby made a part of this AGREEMENT. For the purposes of this AGREEMENT the term “CONTRACTOR” in the “General Conditions” shall mean the LANDOWNER.

**F. STANDARDS OF CONDUCT DECLARATION**

The "Standards of Conduct Declaration" by LANDOWNER, set forth in Attachment S6, is hereby made a part of this AGREEMENT. For the purposes of this AGREEMENT the term "CONTRACTOR" in the "Standards of Conduct Declaration" shall mean the LANDOWNER.

Exhibit A

IN WITNESS WHEREOF, the parties execute this AGREEMENT by their signatures to be effective as of the date first above written.

STATE

By \_\_\_\_\_  
Chairperson of the Board of Land and Natural Resources

\_\_\_\_\_  
Print Name

Date \_\_\_\_\_

LANDOWNER

By \_\_\_\_\_

\_\_\_\_\_  
Print Name

Date \_\_\_\_\_

Approved by the Board of  
Land and Natural Resources on

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



LANDOWNER'S ACKNOWLEDGMENT

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say the he/she is the \_\_\_\_\_, the LANDOWNER named in the foregoing instrument, and the he/she is authorized to sign said instrument on behalf of the LANDOWNER, and acknowledges that he/she executed said instrument as the free act and deed of the LANDOWNER.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

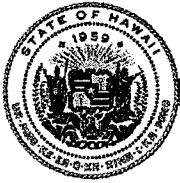
Date of the Notarized Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Identification or Description of the Document being Notarized: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_ Circuit

\_\_\_\_\_  
Notary's Signature and Notary's Official Stamp or Seal Date



**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 \_\_\_\_\_, 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 \_\_\_\_\_  
(Signature)  
 Print Name \_\_\_\_\_  
 Print Title \_\_\_\_\_  
 Name of Contractor \_\_\_\_\_  
 Date \_\_\_\_\_



STATE OF HAWAII  
SCOPE OF SERVICES

SECTION 1 - SCOPE OF WORK

- 1.1 MANAGEMENT AREA - The project area to be managed is the \_\_\_\_\_ Forest Stewardship project area; TMK NUMBER(S) \_\_\_\_\_ as designated on maps found in \_\_\_\_\_ to this AGREEMENT.
- 1.2 THE PRIMARY OBJECTIVES - The STATE and LANDOWNER shall direct their efforts under this AGREEMENT to do the following: fund the management of and manage the natural resources of the \_\_\_\_\_ Forest Stewardship project area (“Forest Stewardship project area”) in accordance with the MANAGEMENT PLAN, attached as \_\_\_\_\_ to this AGREEMENT, and all approved amendments thereto, with the intention of \_\_\_\_\_ in the \_\_\_\_\_ community.
- 1.3 SCOPE OF WORK - The LANDOWNER shall perform the following technical and professional services:
- (a) Management plan. The LANDOWNER shall carry out the management activities outlined in the approved MANAGEMENT PLAN, attached as \_\_\_\_\_ to this AGREEMENT.
  - (b) Consultation. The LANDOWNER shall be available for consultation regarding progress, upon request by the STATE.
- 1.4 AUTHORITY TO CARRY OUT MANAGEMENT PLAN - The LANDOWNER hereby represents that it has authority to carry out the MANAGEMENT PLAN and that it is the landowner of “Forest Stewardship project area” as defined in Section 195F-2, Hawaii Revised Statutes, as amended.
- 1.5 NO INCONSISTENT ACTIVITIES - The LANDOWNER shall not take any action on the “Forest Stewardship project area”, which will undermine or conflict with the approved MANAGEMENT PLAN.

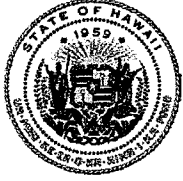
II. SECTION 2 - CONTROL AND PROGRESS OF THE WORK



STATE OF HAWAII  
SCOPE OF SERVICES

2.1 REPORTS - The LANDOWNER shall submit to the STATE, reports showing work accomplished at the following times:

- (a) Progress Reports. A progress report shall be due on December 31 of each year under this AGREEMENT for which funding has been approved. This report shall include a description of the approved MANAGEMENT PLAN accomplishments and activities, areas needing technical advice, an accounting of expenditures with documentation, and proposed modifications to the current year's management activities. This report shall be submitted to the STATE within 30 days following the due date. If the LANDOWNER would like more than 2 reimbursements per year, a progress report shall accompany each reimbursement request and the "Forest Stewardship project area" shall be made available for a site visit by Department of Land and Natural Resources personnel.
- (b) Annual Report. An annual report shall be due on or before June 30 of each year under this AGREEMENT for which funding has been approved. In the event the contract is executed less than 6 months prior to June 30, then no annual report is due on June 30 of that year. This report shall include a description of MANAGEMENT PLAN accomplishments and activities, areas needing technical advice, and proposed modifications to the next year's approved management objectives, projects and budget. This report shall also include a detailed accounting of expenditures for the preceding 12-month period to provide the basis for the annual reconciliation of the STATE's and the LANDOWNER's respective shares of funding as determined pursuant to Attachment S2, Section 1.1. This report shall be submitted to the STATE within 60 days of due date. This report may also request, subject to approval by the STATE, changes to the management plan, for either or both the practice implementation schedule and/or the budget/payment schedule in order to best consolidate and rectify the past year's outcomes or lack thereof.



STATE OF HAWAII  
**SCOPE OF SERVICES**

2.2 DELEGATION OF AUTHORITY - As used herein and throughout this AGREEMENT, unless the context clearly indicates otherwise, the STATE shall include the State of Hawaii Department of Land and Natural Resources and its authorized employees, agents and representatives.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

SECTION 1 – PAYMENT

1.1 SCOPE OF PAYMENT -

- (a) STATE's Payment. In full satisfaction of the STATE's funding share of the approved MANAGEMENT PLAN, which is contingent upon satisfactory completion by the LANDOWNER of the management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, the STATE agrees to pay the LANDOWNER a total sum not to exceed \_\_\_\_  
\_\_\_\_ 00/100 Dollars (\$ \_\_\_\_\_) according to the schedule outlined below that includes fiscal year 20XX through 20XX for completion of the management activities described in the approved MANAGEMENT PLAN. Payments shall be made by the STATE to the LANDOWNER as partial annual reimbursements for actual expenditures made by the LANDOWNER in completing the management activities described in the approved MANAGEMENT PLAN only after the corresponding progress or annual report has been reviewed by the STATE and all reported management activity accomplishments have been verified following an inspection of the "Forest Stewardship project area" by the STATE. Actual expenditures may include but are not limited to in-kind services such as heavy equipment operation and sources of labor. All funds to be paid by the STATE to the LANDOWNER shall be encumbered on an annual basis for the forthcoming fiscal year provided that the STATE has approved the continuation of management activities outlined in \_\_\_\_\_ of this AGREEMENT for the forthcoming fiscal year.

If in any fiscal year the allocated annual funds are not exhausted due to the LANDOWNER not completing all management activities described in the MANAGEMENT PLAN for that year, the LANDOWNER may request that these funds be incorporated in the following year's encumbrances to complete the management activities which were not completed. If there are sufficient funds available to accommodate LANDOWNER's request and the STATE approves the



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

request, this change will be incorporated by written amendment to the AGREEMENT.

If in any fiscal year the STATE does not appropriate, and/or the STATE does not approve the expenditure of, funds sufficient to meet the STATE's funding share of the approved MANAGEMENT PLAN, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated and approved, subject to Attachment S5, Section 4.1, regarding partial State funding.

- (b) LANDOWNER's Share. In full satisfaction of the LANDOWNER's funding share of the approved MANAGEMENT PLAN, the LANDOWNER agrees to fully complete the management activities described in the approved MANAGEMENT PLAN, and to initially assume all corresponding actual annual expenditures in expectation of the STATE's partial reimbursement for satisfactory completion of these management activities. Expenditures for implementation of the approved MANAGEMENT PLAN which are less than the amounts allocated in the approved budget may be made by the LANDOWNER in its discretion so long as the quality of materials and work as called for in the approved MANAGEMENT PLAN are not adversely affected.



STATE OF HAWAII  
**COMPENSATION AND PAYMENT SCHEDULE**

**PATRICK & SHEILA CONANT FOREST STEWARDSHIP  
PROJECT BUDGET/PAYMENT SCHEDULE:**

<b>YEAR</b>	<b>Total Budget</b>	<b>Land Owner share</b>	<b>State Share</b>
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
<b>Total</b>			

1.2 PAYMENT SCHEDULE –

- (a) Progress Payment. Within 30 days following receipt of the progress report as provided in Attachment S1, Section 2.1(a) for each year for which the STATE has agreed to pay the LANDOWNER as outlined in the schedule above and for which funding has been appropriated, the STATE shall pay to the LANDOWNER a portion of the STATE’s funding share of the approved MANAGEMENT PLAN as a partial reimbursement of actual expenditures made to complete approved management activities. This payment shall be subject to the LANDOWNER’s satisfactory completion of the corresponding approved management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, and calculated on the basis of actual expenditures made by the LANDOWNER. This payment shall also be subject to the STATE’s approval of such progress report.
  
- (b) Annual/Final Payment. Within 30 days of receipt of the annual report as provided in Attachment S1, Section 2.1(b), the STATE shall pay to the LANDOWNER the balance of the STATE’s approved annual funding share. This payment shall be subject to the LANDOWNER’s satisfactory completion of the corresponding





STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

annual management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, and calculated on the basis of actual expenditures made by the LANDOWNER.

- (1) Annual or Final Acceptance and Payment - Annual or final acceptance means a written notice from the STATE to the LANDOWNER advising the LANDOWNER of the satisfactory fulfillment of the AGREEMENT's annual or final requirements.

- 1.3 UNAUTHORIZED WORK - The LANDOWNER shall not receive matching STATE funds for management activities not designated in the approved MANAGEMENT PLAN. All work completed by the LANDOWNER prior to receipt of a fully-executed copy of this AGREEMENT, and prior to STATE approval of funding for any subsequent years and prior to STATE approval of any subsequent amendments to the approved MANAGEMENT PLAN, shall be at the LANDOWNER's own volition and risk, including work performed during the period of any deliberations by the STATE in anticipation of approval; provided, however, that if funding and/or amendments applicable to such work are subsequently approved, the LANDOWNER may be paid for such work even if performed prior to such approval.

SECTION 2 - FISCAL RECORDS MAINTENANCE, RETENTION, AND ACCESS

- 2.1 The LANDOWNER shall maintain, in accordance with generally acceptable accounting practices, fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices materially related to the LANDOWNER's performance of services paid for by State funds under this AGREEMENT.
  - (a) The STATE, the Comptroller of the State of Hawaii, and any of their authorized representatives, the committees (and their staff) of the Legislature of the State of Hawaii, and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other records of the LANDOWNER



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

that is materially related to the performance by the LANDOWNER of services funded by the STATE under this AGREEMENT, in accordance with generally accepted audit procedures, for the purposes of monitoring and evaluating the LANDOWNER's performance of services and the LANDOWNER's management program and fiscal practices to assure the proper and effective expenditure of funds under this AGREEMENT; provided, however, that no party conducting any such audit or examination shall copy, distribute, or retain any of such information or records, with the understanding that it is not the intention that the LANDOWNER's financial and other records and information be made public.

- (b) The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The LANDOWNER shall retain all records related to the LANDOWNER's performance of services funded under this AGREEMENT for at least 3 years after the date of submission of the LANDOWNER's annual reports for any designated period and payment for such expenditures by the STATE in accordance with its matching share, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been started before the expiration of the 3-year period, the LANDOWNER shall retain the records until completion of the action and resolution of all issues that arise from it or until the end of the regular 3-year retention period, whichever occurs later.



STATE OF HAWAII  
**TIME OF PERFORMANCE**

SECTION 1 - EXECUTION OF AGREEMENT

- 1.1 EXECUTION OF AGREEMENT - This AGREEMENT shall be promptly executed by the STATE and the LANDOWNER upon approval by each party.
- 1.2 CERTIFICATION AND APPROVAL OF AGREEMENT - This AGREEMENT shall not be considered binding upon the STATE, unless the availability of the funds therefore has been duly certified as prescribed by Section 103-39, Hawaii Revised Statutes, as amended. Further, this AGREEMENT shall not be considered to be fully executed unless the Office of the Attorney General of the State of Hawaii has approved this AGREEMENT as to form.

SECTION 2 - TERM

- 2.1 INITIAL TERM - The initial term will be for a minimum of \_\_\_\_\_ ( ) years following the completion of any and all management practices for which the LANDOWNER has received cost-share assistance. Accordingly, this AGREEMENT shall commence on the date of full execution hereof and shall be in effect until \_\_\_\_\_; subject, however to earlier termination as provided in this AGREEMENT.
- 2.2 STATE FUNDING CONDITION - This AGREEMENT is subject to continued funding of the STATE's share of the approved management budget as outlined in Attachment S2, Section 1.1. Annual funding is provided by the Conveyance Tax pursuant to Act 195, SLH 1993, Section 247-7, Hawaii Revised Statutes, whereby twenty-five percent of the amount collected from this tax shall be paid into the natural area reserve fund from which funds are dispersed to the natural area partnership and forest stewardship programs, and by way of Act 269, SLH 2000 to projects undertaken in accordance with watershed management plans. Payments are then made through the forest stewardship program to reimburse landowners for implementing approved stewardship management practices. Any balance remaining in this fund at the end of any fiscal year shall be carried forward



STATE OF HAWAII  
**TIME OF PERFORMANCE**

into the fund for the next fiscal year. If in any fiscal year the STATE does not appropriate, and/or the STATE does not approve the expenditure of, funds sufficient to meet its share of the approved management budget, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated and approved, subject to Attachment S5, Section 4.1, regarding partial State funding.



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)

(Date)

(Print Name)

(Print Title)

\* 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)

(Date)

(Print Name)

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



STATE OF HAWAII  
**SPECIAL CONDITIONS**

SECTION 1 – INSPECTIONS

1.1 The STATE shall have the right to make inspections of the “Forest Stewardship project area” after prior notice to the LANDOWNER. In addition, the STATE shall be obligated to inspect the work on the “Forest Stewardship project area” not less frequently than once per year under this AGREEMENT, and more frequently in the case of a LANDOWNER default as provided in Section 4.1(d) below or when the LANDOWNER makes more than 2 reimbursement requests per year as provided in Attachment S1, Section 2.1. The STATE shall notify the LANDOWNER within a reasonable time thereafter of any perceived defaults in the LANDOWNER's implementation of the approved MANAGEMENT PLAN. The LANDOWNER hereby represents that it has authority to allow access to the “Forest Stewardship project area” by the STATE in connection with this AGREEMENT, conditional upon receipt of a liability waiver, acceptable to the LANDOWNER for all state personnel visiting the “Forest Stewardship project area”.

SECTION 2 - AMENDMENTS

2.1 The LANDOWNER may propose for approval by the STATE, and the STATE may approve, minor alterations to the approved MANAGEMENT PLAN, which will not have a material adverse impact on the achievement of the overall management objectives of the approved MANAGEMENT PLAN. This includes minor changes to the practice implementation schedule and/or changes in the budget/payments schedule so long as the total management activities do not subtract from or exceed the total scope of the approved MANAGEMENT PLAN and the budget/payments schedule does not exceed the total annual budget allocations up to and including the budget request for that year, and so long as the STATE has sufficient funding available to accommodate such a request.

2.1 The LANDOWNER may propose for approval by the STATE, and the STATE may approve, significant changes to the approved MANAGEMENT PLAN or budget to adapt to current conditions. Significant amendments to the approved MANAGEMENT PLAN shall include an amended budget, which will increase the overall STATE's funding share



STATE OF HAWAII  
SPECIAL CONDITIONS

above the total amount set forth in the approved budget/payment schedule. The STATE shall make the proposed amendments available for public review prior to final approval.

- 2.3 The proposed amendments may include, without limitation, re-establishment of management priorities, increase or reduction of the specified work, increases to the budget/payments schedule, or time for performance of specified tasks, all as determined considering the natural conditions of the “Forest Stewardship project area,” existing management priorities, threats, potential for decline of the natural resource during any period under consideration, availability of specialized labor or technical expertise, permitting requirements and time needed to obtain permits, and other material factors.
- 2.4 Any proposed expenditures which will increase the overall STATE's funding share above the amount set forth in the approved budget of the approved MANAGEMENT PLAN, which are proposed either as a result of additional costs required to implement the approved MANAGEMENT PLAN or as a result of amendments to the approved MANAGEMENT PLAN, must be mutually agreed upon in advance by and between the STATE and the LANDOWNER. If so agreed upon the approval of these expenditures shall be incorporated in written amendment to this AGREEMENT.
- 2.5 Economic Hardship. Notwithstanding other provisions of this AGREEMENT, in the event that the LANDOWNER determines in good faith that it is financially unable without undue economic hardship to fulfill its funding share as provided in Attachment S2, Section 1.1(b), or to carry out fully the management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, within the budget and time period established thereby, the LANDOWNER may apply to the STATE to renegotiate the terms thereof.
- (a) Negotiation of Amendment. In such event, the STATE and the LANDOWNER shall meet and negotiate in good faith an acceptable amendment to the approved MANAGEMENT PLAN that seeks to accomplish the significant objectives of the approved MANAGEMENT PLAN reasonably within the LANDOWNER's



STATE OF HAWAII  
**SPECIAL CONDITIONS**

financial means. The amendment may include, without limitation, re-establishment of management priorities and reduction and/or deferral of the specified work, involving significant costs, and/or extension of time for performance of specified tasks, all as determined considering the natural conditions of the “Forest Stewardship project area,” existing management priorities, threats, potential for decline of the natural resource during any period under consideration, other potential sources of funding, and other material factors.

- (b) Disputes. If the STATE and the LANDOWNER are unable to agree reasonably and in good faith on a suitable amendment to the approved MANAGEMENT PLAN, the parties shall refer any such disputes to arbitration as provided in the General Conditions, Section 11.
  
- (c) No Termination for Economic Hardship. This provision shall not be construed to allow the LANDOWNER or the STATE to terminate this AGREEMENT for economic hardship; it is rather intended to provide a mechanism for reasonable revisions to the approved MANAGEMENT PLAN for economic hardship.

**SECTION 3 - PAYBACK OF STATE FUNDS**

3.1 In the event that the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER’s right, title, or interest in the “Forest Stewardship project area,” or any portion thereof, during the initial term of this AGREEMENT as defined in Attachment S3, Section 2.1, the LANDOWNER shall within 90 days of the sale, conveyance or transfer of title or interest in the “Forest Stewardship project area,” pay back to the STATE a portion of the amount paid by the STATE to the LANDOWNER pursuant to this AGREEMENT. The amount to be paid back to the STATE shall be that fraction of the total matching funds received by the LANDOWNER under this AGREEMENT that is equal to the fraction of the “Forest Stewardship project area” that is sold, conveyed or otherwise transferred by the LANDOWNER.





STATE OF HAWAII  
SPECIAL CONDITIONS

3.2 In the event that the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER's right, title, or interest in the "Forest Stewardship project area," or any portion thereof, during the initial term of this AGREEMENT as defined in Attachment S3, Section 2.1, the LANDOWNER will not be required to reimburse the STATE as set forth in Attachment S5, Section 3.1 for the cost-share assistance received if the person(s) who acquire the property contractually agree to assume full responsibility for this AGREEMENT for the initial term of the AGREEMENT, including but not limited to management and financial responsibilities and penalties contained herein. See Agenda Item \_\_\_\_\_, as amend, approved at the Board of Land and Natural Resources ..... meeting. Nothing in this provision shall relieve the LANDOWNER of its obligations under this AGREEMENT.

SECTION 4 - TERMINATION; DEFAULT; PENALTY PAYBACK

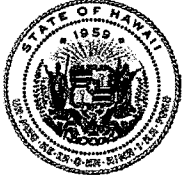
4.1 TERMINATION OF THE AGREEMENT - It is mutually agreed that this AGREEMENT may be terminated for any one of the following reasons on the following terms:

- (a) No State Funding. This AGREEMENT shall be terminated if the STATE does not approve funding for the forthcoming fiscal year of the approved MANAGEMENT PLAN. In such event, this AGREEMENT shall automatically terminate without penalty at the end of the funding period then in effect.
- (b) Partial State Funding. This AGREEMENT may be terminated by the LANDOWNER if the STATE approves only a portion of its share of funding for the forthcoming fiscal year as outlined in the budget provided in the approved MANAGEMENT PLAN.
  - (1) In such event, the LANDOWNER shall elect, by written notice to the STATE, either:
    - (A) to terminate this AGREEMENT without penalty at the end of the funding period then in effect; or



STATE OF HAWAII  
SPECIAL CONDITIONS

- (B) to revise the approved MANAGEMENT PLAN and budget in the LANDOWNER's reasonable discretion to accomplish significant management goals which can reasonably be funded with the amount of STATE funding actually approved.
- (c) Transfer to Government Agency. This AGREEMENT may be terminated without penalty if the “Forest Stewardship project area” is transferred or sold to a government agency committed to forest stewardship and that possesses the technical and professional skills to manage the “Forest Stewardship project area” natural resources.
- (d) LANDOWNER Default. This AGREEMENT may be terminated by the STATE upon substantial evidence that progress being made by the LANDOWNER in carrying out the approved MANAGEMENT PLAN is inadequate, incorrect, or insufficient to substantially complete on a timely basis the work called for in the approved MANAGEMENT PLAN subject to the lack of performance notification provisions set forth below.
- (1) Penalties Apply. In the event of termination for default in accordance with these provisions, the penalty payback provisions set forth below shall apply.
- (2) Lack of Performance Notification. In such event, the STATE may terminate for default, provided the STATE adheres to the following procedures for notice and opportunity to cure prior to termination:
- (A) The STATE shall first notify the LANDOWNER in writing of any perceived inadequacy, incorrectness or insufficient progress. The STATE and the LANDOWNER shall meet within two weeks



STATE OF HAWAII  
SPECIAL CONDITIONS

thereafter, and every three months thereafter until one year following the date of the notice, and discuss in good faith the perceived failure and the reasons therefore and any subsequent progress or lack thereof. If the reason for the failure is a good faith inability of the LANDOWNER to carry out the terms of the MANAGEMENT PLAN for reasons beyond the LANDOWNER's reasonable control, including without limitation economic hardship as described in Attachment S5, Section 2.5 above, the STATE and the LANDOWNER shall specifically consider the need to amend the approved MANAGEMENT PLAN, including extending the time to carry out the work called for in the approved MANAGEMENT PLAN and/or revising the budget established in the approved MANAGEMENT PLAN, subject to the provisions of Attachment S1, Section 1.5 and Attachment S5, Section 2 of this AGREEMENT regarding amendments to this AGREEMENT and the approved MANAGEMENT PLAN. Following the date of the notice, the STATE shall be obligated to inspect the "Forest Stewardship project area" once each quarter after notifying the LANDOWNER, to determine the updated status of the perceived default.

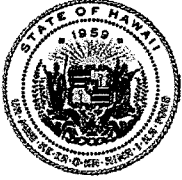
- (B) Following the expiration of the one year period following notice of default given by the STATE to the LANDOWNER and failure of the LANDOWNER to remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within one year, the STATE may elect to notify the LANDOWNER of its intention to terminate this AGREEMENT for default. Such notice shall be in writing, shall state that the STATE will terminate the AGREEMENT for default on a date not less than 3 months thereafter if the LANDOWNER



STATE OF HAWAII  
SPECIAL CONDITIONS

does not remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3 months, and shall specify that penalties as provided under this AGREEMENT shall apply.

- (C) If the LANDOWNER fails to remedy the default within 3 months thereafter, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3 months, the STATE may terminate this AGREEMENT effective immediately for default by written notice thereof to the LANDOWNER.
  - (D) The STATE shall be deemed to have complied with these provisions if it attempts in good faith to meet with the LANDOWNER and to inspect the “Forest Stewardship project area” as provided above, whether or not the LANDOWNER cooperates in such procedures.
- (3) All disputes regarding default and termination under this AGREEMENT, which cannot be resolved by the parties, shall be referred to arbitration as provided in the General Conditions, Section 11.
  - (4) If the LANDOWNER has not fully performed its work under this AGREEMENT on expiration or termination of this AGREEMENT, the STATE may withhold the final payment to the LANDOWNER pending full completion of the LANDOWNER's work. This withheld payment shall be paid by the STATE to the LANDOWNER on final acceptance and tax clearance as provided in Attachment S2, Section 1.2 (b) and the General Conditions, Section 17.



STATE OF HAWAII  
SPECIAL CONDITIONS

4.2 PENALTY PAYBACK -

(a) Payback and Penalties. In the event that the LANDOWNER defaults on this AGREEMENT as provided in Attachment S5, Section 4.1(d) above and the STATE has followed the Lack of Performance Notification procedures as outlined in Attachment S5, Section 4.1(d)(2) above, the LANDOWNER shall promptly pay to the STATE the following payback and penalty monies:

(1) Refund of State Funds - 3 Years. All funds paid from the initial date of this AGREEMENT by the STATE to the LANDOWNER in the previous 3 years (or such portion thereof as STATE shall have funded if this AGREEMENT shall have been in effect for less than 3 years) shall be returned to the STATE. In the event that this AGREEMENT shall have been in effect for more than 3 years, the LANDOWNER shall be liable to pay back State funds for the immediately preceding 3 years. In addition, the LANDOWNER shall pay to the STATE a penalty of two percent of the total of funds that are returned to the STATE.

(b) No Other Party Liable. Only the LANDOWNER receiving State funding under the FOREST STEWARDSHIP PROGRAM shall be liable to the STATE under this AGREEMENT for the payback and penalty.

(c) Disputes. The LANDOWNER shall have the right to submit any disputes to the arbitration procedure as outlined in the General Conditions, Section 11 if it feels that the imposition of payback, and/or additional penalties is unwarranted.

4.3 VIOLATIONS OF AGREEMENT - It is expressly understood and agreed that violations which are not caused by the LANDOWNER shall not constitute or give rise to a default by the LANDOWNER under this AGREEMENT and no penalty provisions shall apply to the LANDOWNER.



STATE OF HAWAII  
SPECIAL CONDITIONS

4.4 EFFECT OF EMINENT DOMAIN -

- (a) Full Condemnation. If any action in eminent domain for the condemnation of the fee title of the entire “Forest Stewardship project area” described herein is filed, or if the “Forest Stewardship project area” is acquired in lieu of eminent domain for a public improvement by a public agency or person or whenever there is any such action or acquisition by the federal government or the state government or any person, instrumentality or agency acting under authority or power of the federal government or the state government, this AGREEMENT shall be deemed null and void without penalty as to the land actually being condemned or so acquired as of the date the action is filed, and upon the termination of such a proceeding, this AGREEMENT shall be null and void without penalty for all land actually taken or acquired.
- (b) Partial Condemnation. When such an action to condemn or acquire less than all the entire “Forest Stewardship project area” is filed, this AGREEMENT shall be deemed null and void without penalty as to the portion so condemned or acquired.
- (c) Adjustment of approved MANAGEMENT PLAN. The land actually taken by the means set forth above in this Section shall be removed from this AGREEMENT and the approved MANAGEMENT PLAN and budget adjusted accordingly on a reasonable basis by the STATE and the LANDOWNER.

SECTION 5 - INCORPORATION OF CHAPTER 195F, HAWAII REVISED STATUTES

- 5.1 Incorporation. The provisions of chapter 195F, Hawaii Revised Statutes, as amended, are incorporated by reference into this AGREEMENT. In the event that there is any conflict between the provisions of this AGREEMENT and the provisions of chapter 195F, Hawaii Revised Statutes, the latter shall be controlling.



STATE OF HAWAII  
SPECIAL CONDITIONS

5.2 Renumbering. In the event that chapter 195F, or any of the sections under chapter 195F, Hawaii Revised Statutes, are renumbered, any references to the chapter or sections in this AGREEMENT shall be deemed renumbered accordingly.

EXHIBIT A

\_\_\_\_\_ Forest Stewardship Management Plan.

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements .....	3
4. Nondiscrimination .....	3
5. Conflicts of Interest .....	3
6. Subcontracts and Assignments .....	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages .....	4
10. STATE'S Right of Offset.....	4
11. Disputes .....	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses .....	8
17. Payment Procedures; Final Payment; Tax Clearance.....	9
18. Federal Funds .....	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment .....	11
22. Variation in Quantity for Definite Quantity Contracts .....	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material .....	12
25. Publicity.....	12
26. Ownership Rights and Copyright .....	12
27. Liens and Warranties .....	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data .....	13
30. Audit of Cost or Pricing Data .....	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law .....	14
35. Compliance with Laws .....	14
36. Conflict between General Conditions and Procurement Rules .....	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver .....	14
40. Pollution Control .....	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14



## 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. CPO 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 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - 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.

## EXHIBIT B

Jenna Masters  
11-27-2017  
[jtomasa@hawaii.edu](mailto:jtomasa@hawaii.edu)  
(808) 375-2827

### MASTERS UNLIMITED LLC MANAGEMENT PLAN

#### I. Cover Sheet

##### **Applicant information**

Applicant name: Masters Unlimited LLC

Mailing address: 572 Iana St. Kailua, HI 96734

Email: [jtomasa@hawaii.edu](mailto:jtomasa@hawaii.edu)

Phone and fax number: (808) 375-2827

##### **Property information** (same as project proposal)

Landowner name: Jenna and Skylar Masters

Lease/License holder name: Masters Unlimited LLC

Tax Map Key number(s): TMK (3) 1-8-091-016-0000

State and County land use district or (zone) designation: AG. 5

Property acreage: 6.25

Farm Service Agency Tract Number (if you already have one): N/A

Acres of stewardship management area: 5

Approximate elevation: 1,880 ft.

Slope: 3-10%

Rainfall: 203 in/yr.

Perennial or intermittent stream courses: None

##### **Consultant information**

Consultant's name, title: Jenna Masters, Natural Resource Consultant

Company, address: Masters Unlimited LLC., 572 Iana St. Kailua, HI 96734

Email: [jtomasa@hawaii.edu](mailto:jtomasa@hawaii.edu)

Fax and phone number: 808-375-2827

Date the plan was completed (or revised): 06-30-2018



## II. Forest Stewardship Plan Signature Page

Professional Resource Consultant Certification: I have prepared (revised) this Forest Stewardship Plan. Resource Professionals have been consulted and/or provided input as appropriate during the preparation of this plan.

Prepared by: Jenna Masters  
Professional Resource Consultant's Name

Professional Resource Consultant's Signature: \_\_\_\_\_

Date: 06-30-2018

Applicant Certification: I have reviewed this Forest Stewardship Plan and hereby certify that I concur with the recommendations contained within. I agree that resource management activities implemented on the lands described shall be done so in a manner consistent with the practices recommended herein.

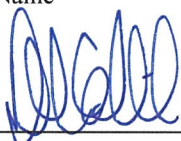
Prepared for: Masters Unlimited LLC  
Applicant's Name

Applicant's Signature: \_\_\_\_\_

Date: 06-30-2018

State Forester's Approval: This plan meets the criteria established for Forest Stewardship Plans by Hawaii's Forest Stewardship Advisory Committee. The practices recommended in the plan are eligible for funding according to state of Hawaii Forest Stewardship Program guidelines and administrative rules.

Approved by: \_\_\_\_\_  
State Forester's Name

State Forester's Signature:  \_\_\_\_\_

Date: 7/10/19

Forest Stewardship Advisory Committee Approval: This plan was reviewed and approved by the Forest Stewardship Advisory Committee on January 19, 2018  
Date of approval

### **III. Introduction**

#### **Vision and Long- Term Goals of the Project**

The vision of this project is to restore native ecosystem functions to a 5 acre forested lot while creating a sustainable seed source for the island of Hawaii. The State of Hawaii has a shortage of native seed for conservation efforts. Finding a genetically appropriate seed source is a problem recognized by resource managers on all islands. Direct seeding is a method that can be used in a variety of management practices including landscape restoration, fire mitigation and erosion control. This project will focus on the creation of a sustainable native seed source for the island and the conservation and reforestation of an agriculturally zoned lot.

Species that are prolific seeders, orthodox and fast growing will be emphasized in this venture. Seeds will be collected and processed for short term storage; between 1-5 years. Species will be selected based on local needs, climate/seed zone and stock availability. Seed cleaning and processing facilities will be located onsite, but storage of native seeds will be outsourced to the Hawaii Island Seed Bank located on the west side of the island.

The native seed orchard will improve forest health and ecosystem function in the existing area. The dominant forest type is a mixed *Metrosideros polymorpha* forest with non-native vegetative components, feral ungulates, small mammal and invertebrates. Management objectives include the construction of a fence and the removal of invasive species from the project area. Zones affected by mitigation methods will be augmented with native plant species whose seeds will be harvested for storage or sale.

To increase seeding potential, apiaries will be installed and managed onsite. The presence of bees may increase pollination and improve seed yield during harvest season. Hives will be managed for products like honey and wax to diversify funding to create sustainable revenue. Crops and fruit trees will also be incorporated into the landscape. The products from these agricultural crops will also be sold to increase and diversify funding.

Care for the seed orchard and implementation of management objectives will be driven mainly by specialized volunteers with minor assistance from community volunteers. Posting advertisements on sites like Conservation Connections and at the University or school campuses that require outreach hours will be a way of recruiting volunteers. Opportunities will be provided so groups can work and learn about natural resources, seed storage and conservation efforts in the state. Trails, interpretive signage and facilities will be installed in the interior of the 5-acre project site. This will boost the aesthetic and educational value of the property. If successful, the seed orchard could be replicated by other landowners to increase seed availability in the state.

The parcel located on Ihope Rd., is approximately 6.25 acres with 5 acres devoted to the goals listed above. The remaining 1.25 acres will be managed for on-site nurseries, farm structures, dwellings, and land improvements including electricity, water and sewage facilities. Masters Unlimited LLC is the land manager of this property and has a 10-year lease for the premises. They will be the primary funders of this project but intend to build partnerships that will increase and diversify funding to support future native seed orchard endeavors.

#### **Description of Property**

Mountain View is located on the eastern side of Hawaii island, between Hilo and Volcano National Park. Running off the gentle slopes of Waiakea, the parcel is dominated by forested lands that are adjacent to the Waiakea Forest Reserve, the Olaa and Wao Kele O Puna Forest Reserves, Volcano National Park as well as the Puu Makaaka and Kahaualea Natural Area

Reverse. All areas listed above are located near the project site and are state designated conservation areas. Many subdivisions in Mountain View are used for pasture and crop production. The project site is located on a paved road that has access to utility poles, but no piped water. There are currently no utilities or waste receptacles at this site. A 150-foot drive way has been installed creating access to the property. There is no access control for humans or animals and the area can be described as vacant forested land. Mountain View's moisture availability is classified as wet to very wet, with a mean precipitation of 203 inches per year. The mean annual temperature is 63 degrees Fahrenheit. Property boundaries are clearly defined with concrete and 1.5 inches stakes. The previous owner cleared 2 out of the 6.25 acres in 2015 by a bulldozer. Please see attached maps for more detail.

### **Maps**

See attached Maps

### **IV. Land Use History and Description of Preset Condition**

The town of Mountain View was historically used for sugar cane production. Long term residents state that the area was dominated with *M. polymorpha* which has been invaded by *Psidium cattleianum*. The property is located off of Ihope Rd. which provided access for the maintenance of flumes that diverted water for sugar cane production. One resident alleged that many of the parcels may have remnant above ground red wood flumes in existence.

The above-mentioned description is accurate although no flumes have been discovered. The previous property owner bulldozed a perimeter around most of the property resembling the letter "P". This area is now dominated by herbaceous non-native species with limited native recruitment (see species list provided below). The inside of the "P" consists of a mixed *M. polymorpha* forest with canopies ranging from 30-50ft. The presence of *P. cattleianum* has degraded habitat for native ground cover, shrubs and mid-level canopy species.

### **Existing Vegetation/ Forest Types**

Botanical surveys were conducted on a perimeter walk of the property by Masters Unlimited LLC. The property has two distinct forest types. A highly disturbed section that has been recolonized with herbaceous weeds, grasses and the seedlings of woody species and a semi intact mixed forest. The bulldozed section represents 2 out of the 5 acres and has 0% shade cover. If left untreated non-native plants will consume this area growing quickly overhead. Some native recruitment has been observed in the bulldozed section but weed control is essential to promote native species establishment and site accessibility.

The semi intact mixed forest consists of an average 40ft canopy dominated with *M. polymorpha* and *P. cattleianum*. This area is dense with tightly spaced trees and represents the remaining 3 acres of the proposed area. Tree diameters range from 2 inches to 2 feet; where *M. polymorpha* is dominant *P. cattleianum* trees are smaller in diameter and conversely where *M. polymorpha* is not present *P. cattleianum* trees are larger. 50-100% shade cover can be seen throughout this area. Understory is dominated by mosses and ferns but little mid-level canopy exists.

Species are listed in order of abundance below:

Native: *Metrosideros polymorpha* (ohia), *Gahnia beechi*, *Dicranopteris* spp. (uluhe), *Sphenomeris chinensis* (lace fern, palaa), *Sadleria* spp. (amau) *Cibotium* spp. (haupuu), *Pipturus albidus* (mamaki), *Acacia koa* (koa).

Non-native: *Psidium cattleianum* (strawberry guava), *Clidemia hirta*, *Rubus discolor* (black berry), *Tibouchina* spp., *Pterolepis glomerata*, *Juncus* spp., *Cypress* spp., *Andropogon virginicus*, *Tremma orientalis* (gun powder tree), *Melochia umbellata*, *Setaria palmifolia* (palm grass), *Pluchea carolinensis*, *Cuphea carthagenensis*, *Erechtites valerianifolius*, *Ludwigia octovalvis*, *Schizachyrium condensatum*, *Rubus rosifolius* (thimble berry), *Pityrogramma austroamericana* (gold leaf fern), *Polygala paniculata*, *Kyllinga brevifolia*, *Ardesia crenata*, *Melestoma septemnerium*.

### **Existing Forest Health and Function**

*Invasive Species*-The presence of invasive species will negatively impact management objectives and goals. The presences of noxious weeds, feral ungulates and other pests are continually degrading and decreasing the native overstory. Natural recruitment and the regeneration of native species is low. Without immediate attention, the bulldozed areas will be overrun with non-native ground cover. This area has the potential to be restored and create habitat for native birds, insects and pollinators. More observation is needed to determine the extent and the amount of damage inflicted by alien species in the area.

*Threats*- Small mammals and invertebrate pose a great danger to seedling and seed crops. Predation on seeds by omnivorous animals like rats, can negatively impact seed yield and must be monitored. Several options are available for rodent control. An integrated approach will be used combining a variety of technologies like snap traps, Good nature A24 repeater traps and poison baits. Trapping grids will be established to lessen impacts on desired native species during fruiting season. Slugs are known to feed on fleshy fruit as well as young saplings. The addition of Sluggo; an iron phosphate-based bait and ground traps will be deployed in areas densely populated with slugs and native plants.

Feral ungulates and human activities are a concern. Fences will be the best defense against free range cattle and feral pigs. Recreational hunters and four-wheel enthusiast also frequent the area. Vandalism of fences is a tangible concern and monthly to bi-monthly monitoring of fences will reinforce access control.

Rapid Ohia Death (ROD) originated in the Puna District of Hawaii island but has been detected throughout the island. The presence of this fungal disease has been confirmed in *M. polymorpha* trees as close as the Steinbeck Highway which runs parallel to Ihope Rd. Wounding of living *M. polymorpha* and the transport of inoculum into non-infected areas has shown to be the dominant pathways for spreading the fungus. Extra care will be taken when conducting weed control and installing fences near and around mixed forest. Please see the site preparation and weed control section for more detailed management actions. If the fungal disease is confirmed, trees will be removed and treated using best management practices. Work in the infected area will cease until experts can be consulted and a course of action can be chosen.

To mitigate the risk of bringing in contaminated material, tools and equipment will only be used onsite. Rented equipment will be sanitized removing debris and soil and disinfected with 70% alcohol or a 10% bleach solution before arrival on site. Contaminated wood will be cut down and burned or covered with a tarp to increase temperature killing the fungus. No *M.*

*polymorpha* or potential contaminated products will be brought to management area. If tree wounding occurs affected area will be covered with paint sealer to prevent further exposure.

### **Soils and Their Condition**

The Soil Atlas of Hawaii is an online resource sponsored by the University of Hawaii. It provides information on the types and the characteristics of soils based on samples collected across the state. The substrate on the property consists of wet, shallow volcanic ash soils. This type of soil has a low nutrient holding capacity and readily binds with available phosphorus making natural fertility low. Soils are considered moderately to strongly acidic with a pH between 4.6-5.5. Shallow bedrock and a permeable topsoil create a high water holding capacity. The U.S. Dept. of Agriculture, Natural Resources Conservation Service defines the soil as 624—Kopua-Ihope complex. Soil tests should be conducted to determine the accuracy of mapping. Focusing on growing plants adapted to their native regions should alleviate this problem making soil augmentation unnecessary.

### **General Slope and Aspect**

The general slope of the property is between 3-10%. With your back facing Ihope Rd. the aspect of the property is slightly southeast. This gentle slope lessens the chance of erosion while still allowing sunlight from the east to reach the property. When conducting weed efforts, erosion can play a significant role in revegetation, this becomes significantly less of a problem with slope under 10%.

### **Water Resources**

There are no water utilities on site. Rainfall is usually prominent in this area but times of drought do exist. Water catchments will be built in the project area around the property to aid in management efforts. Water amount will total at least 500 gallons. There are no notable intermittent streams located on the property, however there is occasional pooling of water in low points. More water infrastructure is intended to be built on the property as future development occurs, but it will be located outside of the designated forest stewardship management area.

### **Timber Resources**

Timber resources could include merchantable *M. polymorpha* and *P. cattleianum* but this is not an intended activity. Removed hard wood species will be used in trail construction, property improvements or mulching.

### **Significant Historic and Cultural Resources**

It is highly unlikely that there are cultural resources on the property. If any historical or archeological sites are discovered, they will be sectioned off and reported to the State Historic Preservation.

### **Existing Wildlife**

Based on current observation there is no presence of threatened or endangered species dwelling or nesting on the property. However, if a species is suspected to inhabit the property, appropriate monitoring actions can be established based on species. For example, binocular bird surveys can be done to determine which species are present. Swoop netting can be done to

determine insect species or tracking tunnels can be used to determine the presence of absences of rats in project area.

Suspected Native Species- Various bird species, *odonata spp* (dragon flies), Members of the Coenagrionidae family (damselflies).

Suspected Non-native Species- *Ratus spp.* (rats), *Eleutherodactylus coqui* (coqui frogs), *Sus scrofa* (pigs), *Bos Taurus*(cattle), *Mus spp.* (mice), various bird species, members of the Heterobranchia family (slugs).

### **Threatened and Endangered Species**

Recently observed flying over the property was *Buteo solitarius*, the Hawaiian Hawk. *B. solitarius* is not suspected to have nesting sites or frequently inhabit the project area. Populations of *Lasiurus conereus semotus*, the Hoary bat, may be present in adjacent forested areas.

### **Existing Recreational and Aesthetic Value**

The property has no current aesthetic or recreational value.

### **Infrastructure and Access Conditions**

Currently, there is no infrastructure on this property. In lieu of rent, Masters Unlimited LLC is responsible for contracting land and home owner improvements. Forecasted improvements include farm dwellings, storage containers, water catchments, nursery and seed cleaning facilities. Most of these improvements will not be in the project management area but will be crucial to the success of the endeavor. Temporary water catchments (500 gallons or less) and housing/ seed processing facility (storage container) will be the first priority to increase presence on the property. These facilities will be built within the first 2 years. As funding allows structures will be improved or added. Access to property will be granted upon Masters Unlimited LLC or property owner approval. Please see attached lease for more details.

## **V. Management Objectives and Practices**

### **Fencing**

Stopping the ingress of feral ungulates and humans will be vital to the success of this project. Seedlings and ground cover will be sensitive to grazing and anthropogenic activities like the use of all-terrain vehicles. 16ft graded cattle panels will be used for fence construction. The fencing will stand just below 5ft when completed and aim to keep out feral pigs, cattle, sheep and goats. They will be secured to 6ft. T- posts with high tensile smooth wire. These materials are commonly used in conservation fencing across the state and have a minimum life span of 10 years under extreme conditions. The rigidity of the panels allows for easier installation and maintenance. The thicker steel gauge used for the panels makes vandalization more difficult rendering this the best type of fence for the area.

The fence will encompass the entire property (6.25 acres). The proposed acreage for the Forest Stewardship Project area is 5 acres. The remaining 1.25 acres will be used to access the work site and to create farm dwellings, utilities, equipment storage, nursery and seed processing facilities. These facilities will be indispensable for accomplishing the long-term vision for the property. Fencing will add an additional layer of security to protect these assets.

### **Tree and Shrub Site Preparation**

Site preparation will differ between the bulldozed and the mixed forest areas. The bulldozed section consists of herbaceous weeds with some intermittent woody seedlings. This bulldozed area will be priority for the first two years. Upon completion of the fence, site prep for the bulldozed area will begin in year 2 at a rate of 1 acre per year. Herbaceous weeds and grasses will be cut and sprayed with a 2% Round Up or Ranger Pro mixture diluted with water. Solution will be dispersed via hand pump or back pack sprayer. Grasses and herbaceous weeds can be sprayed standing but will require more herbicide and can negatively impact apiaries in the future. Species that have rhizomes or underground storage roots like black berry will be cut at the base and treated with a 5% Polaris mixture diluted with water. Woody seedling species will be cut at the base and be treated with a 25% Garlon 4 ultra-solution diluted with a crop oil or biodiesel. It will take a specialized volunteer 64 hours to prep one acre.

Site preparation in the mixed forest will be more difficult and require skilled labor. Woody trees species will be removed or killed at a rate of 0.5 acres per year starting in year 4. As weed control progresses and a new 0.5 acres is cleared, the previous cleared acreage will be re-swept for noxious species. Two techniques will be used to treat woody weed species in the mixed forest. Trees that can be felled without wounding *M. polymorpha* will be cut down and removed from the stand. Stumps of these trees will be treated with a 25% Garlon 4 ultra-solution, diluted with a crop oil or biodiesel. Debris will be used as mulching or for trail construction. If *M. polymorpha* trees are likely to be wounded by this technique a manual girdle to prohibit plant exchange in the cambium layer will be applied with a hand or chain saw. The girdle will be treated with a 25% Garlon 4 ultra-solution diluted with a crop oil or biodiesel. If re growth occurs with the recommended Garlon solution and additional 1 % Milestone spike will be added or dilution rate will decrease to 40%. This technique allows for a slower, more natural death reducing the chance of spreading ROD through the mixed forest. It will take a specialized volunteer up to 64 hours to prep a 0.5-acre site.

If ROD does appear onsite making the removal and killing of *P. cattleianum* impossible, biocontrol releases will be conducted based on availability of inoculated plants from various sources. Tectococcus ovatus is a scale insect that lives and feeds solely on *P. cattleianum*. It is intended to slow the spread of the plant by reducing fruit production and seed set within fruit. Insects can only establish on new growth of *P. cattleianum* so sites must be cut to promote flushing of new growth before planting of inoculated plants.

### **Tree and Shrub Establishment**

Tree and shrub establishment will begin in the second year. Genetically appropriate seed stock will be collected in the wild from surrounding areas. Ideally as many plants as possible will be collected from this area to improve genetic diversity, as little as 10 and as much as 100 depending on available species. Wild collection, pending permits will start in the Olaa and Waiakea Forest Reserves in year 1. If permits are not available seeds will be sought or purchased from private land owners. Collected stock will be directly seeded in the management area or propagated at local or in-situ field nurseries. Existing native plant nurseries will be utilized to grow seed collected near project site. Seedling price cost will be between \$2-9, depending on the species and difficulty of growth. Several nurseries have expressed interest in growing seedlings for the project area. Seeds will also be scattered onsite and monitored to see which species performs the best. Germination plots will be installed in seed scatter areas and seeds will be

sowed upon collection from the wild. The combination of both techniques will increase native plant numbers, increasing seed availability for storage.

Moisture availability in Mountain View combined with management objectives like fence construction and invasive species control will allow planting to occur year-round. However, most planting will happen in the wetter months from November to March to mitigate for potentially drier seasons. Water catchments will be installed in work sites to provide additional water resources as needed. Plants will be introduced in prepped sites via seed scatter, 4-inch pots or smaller. All species listed below will be planted in the bulldozed and mixed forest areas. Fast growing or light tolerant species like aalii, mamaki, akala, ilima and kokoolau will likely exploit the lack of shade cover in bulldozed area but may also be successful in the mixed forest. Vegetation and photo point monitoring will be installed to determine success of native species sowed and planted. As more source plants become available the species list may be expanded to accommodate species with an increased fitness or potential for success.

Ferns and native plants from the property will be transplanted into the bulldozed section and cleared mixed forest areas. Transplants from the surrounding area should be adapted to the site and have success at rebuilding native plant communities while combating weeds. Transplanting will occur during the above-mentioned wet season to decrease water stress on plants increasing survivorship. Planting in the bulldozed section will be done at a rate of 1 acre per year, and mixed forest will be done at a rate of 0.5 acres per year.

To an extent this is an experimental project to test environmental tolerances and seeding potential of plants in different climate zones. The project may push some species to the edge of their environmental acceptances. New seed and seedling stock will constantly be added to minimize the chance of natural selection for species to be more acclimated to wet climates. Many projects focus on dry land species, this project will also try to find species to be used in the wet to wet mesic forests. Seed viability tests will be done in accordance with viability regulation set forth by the state.

Proposed Species- *Pipturus albidus* (mamaki), *Chenopodium oahuensis* (aweoweo), *Dianella sandwicensis* (uki uki), *Acacia koa* (koa), *Acacia koaia* (koaia), *Bidens hawaiiensis* (kokoolau), *Alyxia stellate* (maile), *Rhus sandwichensis*, *Phyllostegia macrophylla*, *Santalum paniculatum* (sandlewood), *Dodonea viscosa* (aalii), *Sida fallax* (ilima), *Coprosma spp.* (pilo), *Pittosporum spp.* (hoawa), *Rubus hawaiiensis* (akala berry), *Cadua spp.*(manono). *Phyllostegia spp.* *Brousassia arguta*

### **Weed Control**

Weed control will be used in conjunction with plantings of native trees, shrubs and ground covers to combat invasive weeds. Areas that are cleared will create corridors for herbaceous weeds and must be maintained while native species are getting established. Weed whackers or brush cutters will be used to mechanically trim down invasive plant populations. Invasive populations can be treated year-round in good weather with either Round Up/ Ranger Pro, Polaris or Garlon 4 Ultra mixtures noted above. Good weather implies no rain-light rain and light to no wind. Grasses and herbaceous weeds can be sprayed standing but will require more herbicide and can negatively impact the health of apiaries that will be installed as the project progresses.

Weed control will start following the sowing and planting of selected species in the bulldozed and mixed forest area. Herbaceous weeding will continue throughout the duration of the



project. Ground cover, trees and shrubs will establish eventually decreasing the amount of time needed to physically and chemically suppress weed. Brush management is needed in both the bulldozed and mixed forest areas. Brush management will focus on clearing of re-growing or emerging woody species that occur in planted sites. Brush management will continue for two years per site prepped and planted. The two-year time span is based on the seed viability of the dominant nonnative overstory of *P. cattleianum*.

### **Mulching**

Importing organic or inorganic material for mulching is not recommended because of the risk of spreading ROD. Only materials found onsite such as decomposing organic matter and leaf litter will be used around newly planted species. If funding becomes available, a small commercial wood chipper may be purchased. This would provide mulch for out planting sites and can be used to minimize weeds in frequently infested areas.

### **Ground Cover Establishment**

One of the primary objectives is to establish a permanent ground cover that can be used as a source of seed for storage and sale. Ground cover will increase pollinator habitat and suppress non-native species. A mixture of naturally adapted native grasses, sedges, ferns and forbs will be encouraged to increase ground cover diversity. The species listed below will be planted in the bulldozed and mixed forest areas. Some species will be more successful than others in various environmental conditions. To determine success of species trials must be done to evaluate which species will do the best in which location. Vegetation, germination and photo point monitoring will be done to determine success of native species planted or sowed. Seeds will be scattered as they become available.

Proposed species- *Dubautia scabra*, *Watheria indica* (uhaloa), *Osteomeles anthylidifolia* (ulei), *Heteropogon contortus*, *Plumbago zeylanica*, *Bacopa monnieri* (aeae), *Cypress spp.*

Species for ground cover establishment and tree and shrub establishment were selected based on input from resource managers across Hawaii island. Many of these species can be found in areas adjacent to the property or have been hypothesized to grow well in this area. Species will be added or removed from the list based on the success of their growth and seed storage. Experimentation is necessary to determine the best species, that will produce the most viable seed for storage.

### **Trail Construction**

Trails will be constructed to access work sites. These trails will be maintained and improved at a rate of 500 feet per year. Developed trails will aid in public outreach and education and will be accessible to the public during volunteer events. The first year a rough trail will be built around the entire site for accessibility and allow for improved fence maintenance; totaling about 3,500ft. Trail improvements can include but are not limited to gravel, steps, bridges, boarders or edges. Improvement will be done simultaneously with weed control in bulldozed areas by specialized and non-specialized volunteers.

### **Monitoring and Access Control**

*Access* - Fence checks and fence line maintenance will be conducted on a monthly basis. This will ensure that fences will remain in good condition to maintain access control. Repair will be done as needed. It will take 40 specialized volunteer hours per year to check the fence and tend to repairs.

*Monitoring* - Vegetation plots, germination plots and photo point monitoring will be used to observe change over time and success of ground cover and tree/shrub establishment. Native seed orchards are not common and do not have many documented attempts. The knowledge that can be gained from monitoring and recording success and failures can help to assist others in creating similar projects. Vegetation plots can also be used as a measure of successful weed control efforts. Germination plots can assess seed viability and length of time to successful germination.

5 vegetation monitoring points will be placed within the 5 acre project site. These plots will be monitored for vegetation type, abundance of ground cover/ tree and shrub establishment. Germination plots will be set up for each species as they are sowed so results can be used to provide consumers with more species information. Photo point monitoring will provide visual representation of the project site and can be used to view change over time. Several photo points will be fixed and pictures will be taken facing each cardinal direction and one directed at the canopy. Photo points will be monitored yearly and correspond with fixed points for vegetation monitoring. All monitoring data will be included in annual reports to the Division of Forestry and Wildlife.

#### **Non-Cost Share Items**

Apiaries and fruit trees will also be scattered through the bulldozed area. Apiaries will be used to potentially increase pollination which will potentially increase seed yields. Products derived from hives can also be sold to increase revenue for the property. Fruit trees will be intercropped within native ground cover and tree/ shrub establishment in bulldozed area. There will be less than 40 fruit trees per acres depending on the species and fruit yield. The agroforestry additions are meant to add diversity to the property but are considered secondary to the forest restoration and seed orchard. Fruit can be sold to increase funding for the property. Once fully matured, trees will add aesthetic and educational value to the property.

Proposed agroforestry crops- *Theobroma cacao* (chocolate seeds), *Mangifera indica* (mango), *Litchi chinensis* (lychee), *Citrus Spp.*, *Persea Americana* (avocado), *macadamia integrifolia* (macadamia nut), *Artocarpus altilis* (bread fruit), *Fragaria ananassa* (strawberry), *Lippia graveolens* (Mexican oregano). Additional trees may be added based on availability, but will not include trees considered weedy by the Hawaii Weed Risk Assessment.

#### **VI. Practice Implementation Schedule**

Please refer to the map to see designated weed control areas. "BD" refers to the bulldozed area, each of these sections are 1 acre in size. "MF" refers to the mixed forest area, each of these sections are 0.5 acres in size. Weed control is expected to take 64 specialized volunteer hours per acre. Site preparation is expected to take 64 specialized volunteer hours per 0.5 acre in the mixed forest and 64 specialized volunteer hours per 1 acre in bulldozed area. Specialized volunteer hours are based on two individuals working four 8-hour days.

**Year 1**

Mgmt Units	Practice Component	# of Units	Units	Cost/Unit	Total Cost	Applicant Share	FSP Share	Comments
	Fence	3,200	Feet	\$9.00	\$28,800.00	\$14,400.00	\$14,400.00	
	Trail Construction	3,500	Feet	\$1.50	\$5,250.00	\$2,625.00	\$2,625.00	Rough trail maintained to access all work sites.
	Monitoring	5	Acre	\$172.80	\$864.00	\$489.00	\$375.00	Initial set up of monitoring plots. See monitoring and access control section for more details
	<b>Totals</b>				<b>\$34,914.00</b>	<b>\$17,514.00</b>	<b>\$17,400.00</b>	

**Year 2**

Mgmt Units	Practice Component	# of Units	Units	Cost/Unit	Total Cost	Applicant Share	FSP Share	Comments
BD1	Tree and Site Prep	1	Acre	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00	Intensive site prep for planting in BD1.
BD1	Tree and Shrub Establishment	500	Seedling	\$6.00	\$3,000.00	\$1,500.00	\$1,500.00	Planting of 500 seedling per acre.
BD1	Weed Control	1	Acre	\$1,500.00	\$1,500.00	\$1,200.00	\$300.00	Herbaceous weed control 3-6 months after planting.
BD1	Ground Cover Establishment	1	Acre	\$3,000.00	\$3,000.00	\$1,600.00	\$1,400.00	Establish Ground Cover.
	Monitoring	5	Acre	\$302.40	\$1,512.00	\$1,137.00	\$375.00	Fence line check and maintenance. Photo points and vegetation monitoring.
	Trail Construction	500	Feet	\$4.00	\$2,000.00	\$1,000.00	\$1,000.00	Improving access trail
	<b>Totals</b>				<b>\$13,012.00</b>	<b>\$7,437.00</b>	<b>\$5,575.00</b>	

**Year 3**

Mgmt Unit	Practice Component	# of Units	Units	Cost/Unit	Total Cost	Applicant Share	FSP Share	Comments
BD2	Tree and Site Prep	1	Acre	\$2,000.00	\$2,000.00	\$1000.00	\$1,000.00	Intensive site prep for planting in BD2.
BD2	Tree and Shrub Establishment	500	Seedling	\$6.00	\$3,000.00	\$1,500.00	\$1,500.00	Planting in BD2.
BD2	Ground Cover Establishment	1	Acre	\$3,000.00	\$3,000.00	\$1,600.00	\$1,400.00	Establish Ground Cover in BD2.
BD1, BD2	Weed Control	2	Acres	\$1,500.00	\$3,000.00	\$2,400.00	\$600.00	Maintenance weed control in BD1 and BD2.

	Monitoring	5	Acre	\$302.40	\$1,512.00	\$1,137.00	\$375.00	Fence line check and maintenance. Photo points and vegetation monitoring.
BD1	Trail Construction	500	Feet	\$4.00	\$2,000.00	\$1,000.00	\$1,000.00	Improving trail for access.
	<b>Totals</b>				<b>\$14,512.00</b>	<b>\$8,637.00</b>	<b>\$5,875.00</b>	

**Year 4**

Mgmt Units	Practice Component	# of Units	Units	Cost/Unit	Total Cost	Applicant Share	FSP Share	Comments
MF1	Tree and Site Prep	0.5	Acre	\$4,000.00	\$2,000.00	\$1,500.00	\$500.00	Increase in cost per unit due to increased labor. 64 specialized volunteer hours/0.5 acres.
MF1	Tree and Shrub Establishment	200	Seedling	\$6.00	\$1,200.00	\$600.00	\$600.00	Planting in the mixed forest. MF1
MF1	Ground Cover Establishment	0.5	Acre	\$3,000.00	\$1,500.00	\$800.00	\$700.00	Ground cover establishment in MF1.
BD1, BD2, MF1	Weed Control	2.5	Acres	\$1,500.00	\$3,750.00	\$3,000.00	\$750.00	Continued maintenance in BD1, BD2, MF1
	Monitoring	5	Acre	\$302.40	\$1,512.00	\$1,137.00	\$375.00	Fence line check and maintenance. Photo points and vegetation monitoring.
BD1	Trail Construction	500	Feet	\$4.00	\$2,000.00	\$1,000.00	\$1,000.00	Improving trail for access.
	<b>Totals</b>				<b>\$11,962.00</b>	<b>\$8,037.00</b>	<b>\$3,925.00</b>	

**Year 5**

Mgmt Units	Practice Component	# of Units	Units	Cost/Unit	Total Cost	Applicant Share	FSP Share	Comments
MF2	Tree and Site Prep	0.5	Acre	\$4,000.00	\$2,000.00	\$1,500.00	\$500.00	Site prep in MF2
MF2	Tree and Shrub Establishment	200	Seedling	\$6.00	\$1,200.00	\$600.00	\$600.00	Planting in the mixed forest. MF2
MF2	Ground Cover Establishment	0.5	Acre	\$3,000.00	\$1,500.00	\$800.00	\$700.00	Ground cover establishment MF2
BD1, BD2, MF1, MF2	Weed Control	3	Acres	\$1,500.00	\$4,500.00	\$3,600.00	\$900.00	Continued maintenance in BD1, BD2, MF1, MF2.
	Monitoring	5	Acre	\$302.40	\$1,512.00	\$1,137.00	\$375.00	Fence line check and maintenance. Photo points and vegetation monitoring.
BD1	Trail Construction	500	Feet	\$4.00	\$2,000.00	\$1,000.00	\$1,000.00	Improving trail for access.







**VII. Budget Summary**

<b>Year</b>	<b>Budget Total</b>	<b>Applicant Share</b>	<b>FSP Share</b>
<b>Year 1</b>	\$34,914.00	\$17,514.00	\$17,400.00
<b>Year 2</b>	\$13,012.00	\$7,437.00	\$5,575.00
<b>Year 3</b>	\$14,512.00	\$8,637.00	\$5,875.00
<b>Year 4</b>	\$11,962.00	\$8,037.00	\$3,925.00
<b>Year 5</b>	\$12,712.00	\$8,637.00	\$4,075.00
<b>Year 6</b>	\$13,462.00	\$9,237.00	\$4,225.00
<b>Year 7</b>	\$14,212.00	\$9,837.00	\$4,375.00
<b>Year 8</b>	\$14,962.00	\$10,437.00	\$4,525.00
<b>Year 9</b>	\$15,712.00	\$11,037.00	\$4,675.00
<b>Year 10</b>	\$9,012.00	\$7,137.00	\$1,875.00
<b>Totals</b>	<b>\$154,472.00</b>	<b>\$97,947.00</b>	<b>\$56,525.00</b>



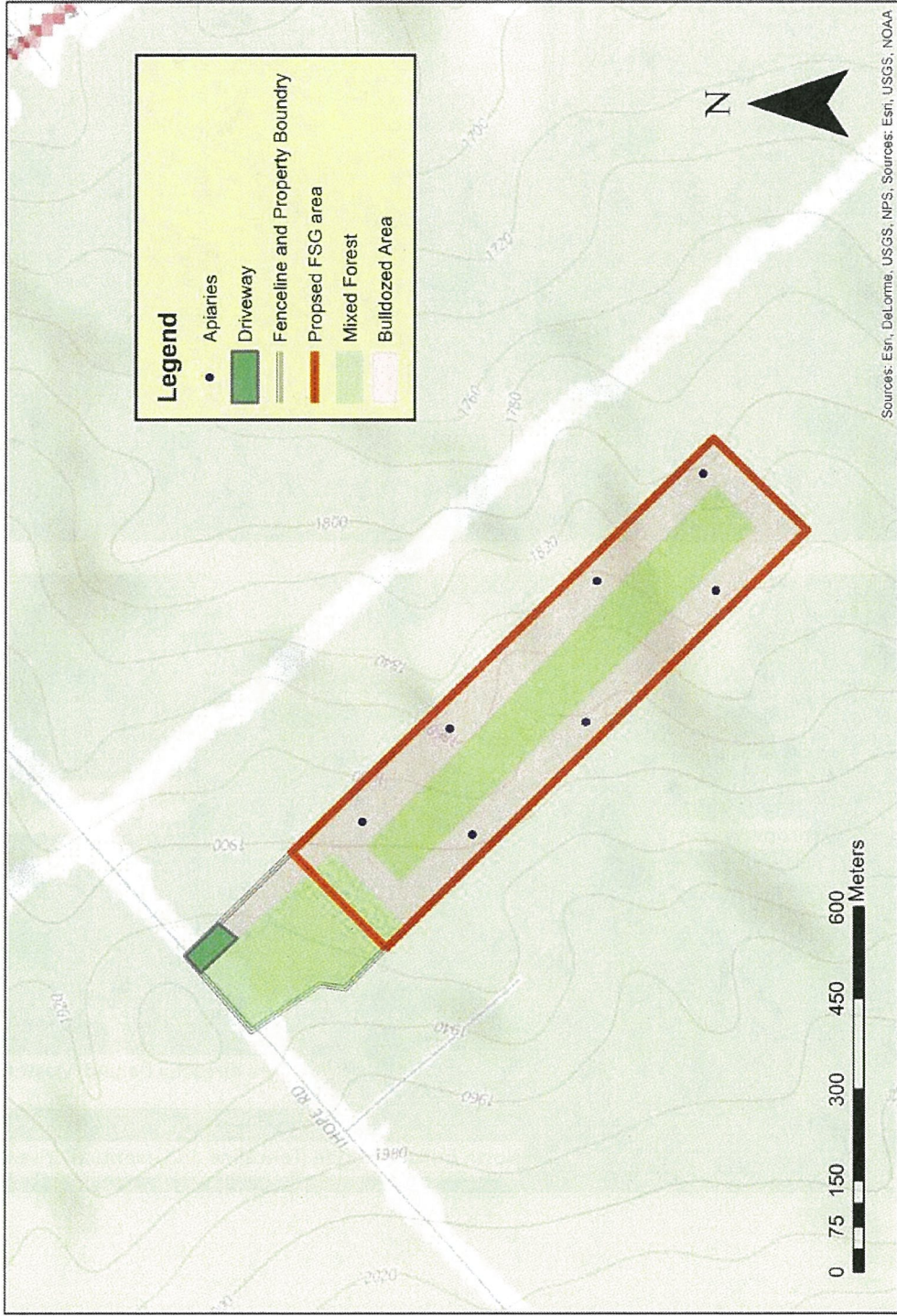
VIII. Required Maps

Masters Unlimited LLC  
Lot 5 Ihope RD, Mountainview HI



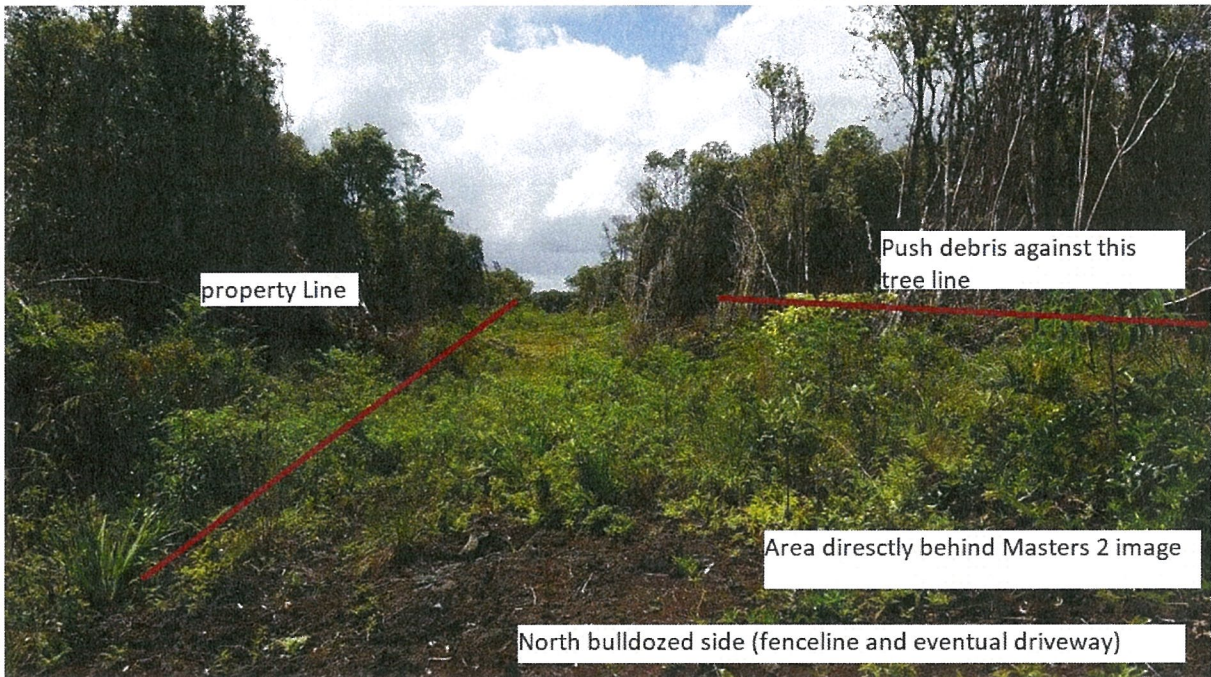


Masters Unlimited LLC  
Lot 5 Ihope RD, Mountainview HI

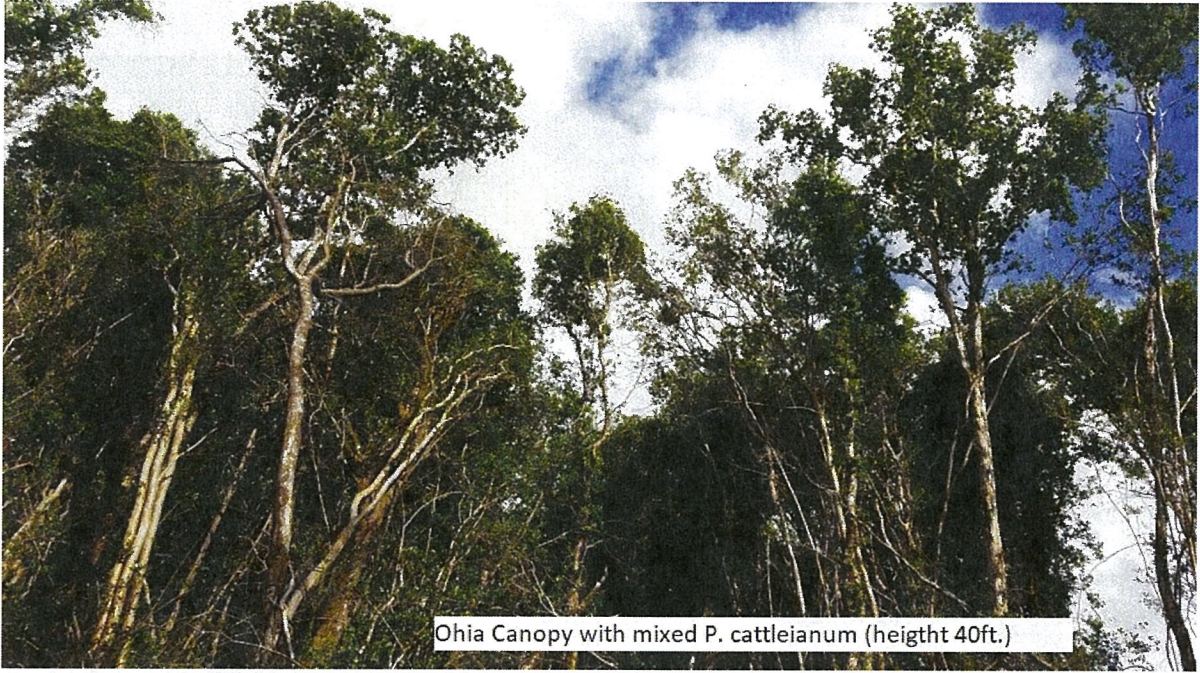




**IX. Photographs of the Project Site**







Ohia Canopy with mixed *P. cattleianum* (height 40ft.)



South side bulldozed (eventual fenceline)





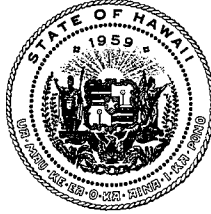
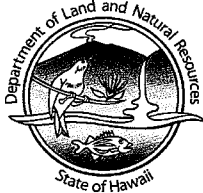
## **X. Monitoring Activities**

To monitor the success of this project we will use a technique called rapid vegetation monitoring and photo points. Rapid vegetation monitoring is used to monitor change in vegetation over time. 5 points will be designated within the 5 acres management area and marked with T posts. Standing at the fixed point all vegetation that can be seen will be recorded and listed in the order of abundance. This technique will allow for rapid assessment of vegetation and provide a more accurate landscape perspective accounting for larger trees or shrub species that may be missed in smaller plots. This data will provide us with a change in species dominance over time and will show whether native ground cover and tree or shrub establishment was successful.

Photo points can act as a visual aid to assess this change over time. Photo points will share the same T post markers as the rapid vegetation monitoring. Photo points and vegetation plots will be monitored once a year. At each fixed point a picture will be taken in each cardinal direction. Another photo will be taken of the canopy to determine the absence or presence of canopy.

Germination plots will be replicated 3 times for each species pending available seed stock. As seeds become available based on the species and availability a set number of seeds will be scattered onsite. Plots will be marked with either PVC poles or flagging. Plots will be checked regularly and data will be taken on germination times, rates and amounts. All data will be shared with DOFAW staff in yearly reporting. This information can be shared with other Forest Stewardship grant participants to aid in similar projects.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
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

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 26, 2019

**DECLARATION OF EXEMPTION**

Regarding the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200-8, HAR

Project Title:	Masters Unlimited LLC Forest Stewardship Management Plan and Forest Stewardship Agreement with Masters Unlimited LLC
Project Number:	N/A
Project Location:	Tax Map Key Numbers (3) 1-8-091:016; Puna, Hawaii County, Hawaii
Chapter 343 Trigger(s):	Use of State Funds
Project Description:	<p>The Masters Unlimited LLC Forest Stewardship project proposes to actively manage and reforest approximately 5 acres of native forest on Tax Map Key number (3) 1-8-091:016, in the Mountain View area of Hawai'i County. The Forest Stewardship project area is designated by the State of Hawai'i as Agriculture District and as Agriculture by the County of Hawai'i. The Masters Unlimited LLC Forest Stewardship project is located near the Ōla'a and Wao Kele O Puna Forest Reserves, Hawai'i Volcanoes National Park, and the Kahauale'a and Pu'u Maka'ala Natural Area Reserve. The 5-acre project contains two different forest types. One section was previously bulldozed and is now highly disturbed and dominated by herbaceous weeds and grasses. The other section is a non-bulldozed semi-intact mixed forest, composed of primarily 'ōhi'a and strawberry guava in the canopy, and mosses and ferns in the understory. The primary goal of Masters Unlimited LLC is to restore native ecosystem function while establishing a native seed orchard that will serve as a sustainable seed source for Hawai'i Island.</p> <p>Over the course of the 10-year management plan, Masters Unlimited LLC intends to establish a native seed orchard by reforesting and protecting 5 acres of mixed forest. Trails, interpretive signage, and facilities will also be installed within the project area to promote the educational value of the property and facilitate proposed activities. On the remaining 1.25-acres that are not included in the FSP management plan, Masters Unlimited LLC plan to establish and manage nurseries, dwellings, and land improvements such as electricity, water, and</p>

	sewage facilities. Masters LLC will also be implementing other agricultural activities that are not part of the FSP.
Consulted Parties:	U.S. Department of Agriculture, Natural Resources Conservation Service; U.S. Department of Interior, Fish and Wildlife Service; Department of Land and Natural Resources Commission on Water Resource Management; County of Hawaii, Department of Planning
Authorization:	Approved by the Environmental Council on June 5, 2015
Exemption Class & Description:	<p>Activities and actions associated with this project fall under the following Exemption Classes and Descriptions which are included in the Exemption List for the Department of Land and Natural Resources.</p> <p><a href="http://oeqc2.doh.hawaii.gov/Agency_Exemption_Lists/State-Department-of-Land-and-Natural-Resources-Exemption-List-2015-06-05.pdf">http://oeqc2.doh.hawaii.gov/Agency_Exemption_Lists/State-Department-of-Land-and-Natural-Resources-Exemption-List-2015-06-05.pdf</a></p> <p>Exemption Class No. 4, Item 6, Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions.</p> <p>Exemption Class No. 4, Item 8, Removal of invasive vegetation utilizing cutting, mowing, application of federal and state approved herbicides in conformance with label instructions, distribution of biocontrol agents approved by the State of Hawaii, and other approved methods.</p> <p>Exemption Class No. 4, Item 12, Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, native wildlife habitat, native ecosystem restoration, and rare plant preservation; provided, however, that this exemption shall not apply to vegetation that is likely to be invasive or for tree plantings for which harvesting is planned or is reasonably foreseeable.</p> <p>Exemption Class No. 4, Item 13, Gathering plant seed, cuttings, or other vegetative matter for propagation.</p> <p>Exemption Class No. 4, Item 16, Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; distribution of biocontrol agents approved by the state of Hawaii; and other approved methods.</p> <p>Exemption Class No. 4, Item 22, Natural resource management actions that the Department declares are designed specifically to</p>

	monitor, conserve, or enhance the status of native species or native species' habitats, such as removal of introduced vegetation, reintroduction of native species into their historic range, or construction of fencing. This exemption would not apply to biocontrol of invasive species or commercial logging.
Determination:	The Board of Land and Natural Resources declares that this project will likely have minimal or no significant impact on the environment and is therefore exempt from the preparation of an environmental assessment under the above exemption classes.

\_\_\_\_\_  
 Suzanne D. Case, Chairperson  
 Board of Land and Natural Resources

\_\_\_\_\_  
 Date