

State of Hawai‘i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawai‘i 96813

June 9, 2023

Board of Land and Natural Resources  
State of Hawai‘i  
Honolulu, Hawai‘i

REQUEST FOR APPROVAL TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF AQUATIC RESOURCES, AND THE ARIZONA BOARD OF REGENTS, ON BEHALF OF ARIZONA STATE UNIVERSITY AND ITS CENTER FOR GLOBAL DISCOVERY AND CONSERVATION SCIENCE, REGARDING THE MANAGEMENT OF THE RIDGE TO REEF RESTORATION CENTER, LOCATED AT THE HAWAII OCEAN SCIENCE AND TECHNOLOGY PARK, HAWAII ISLAND,

AND

TO AUTHORIZE THE CHAIRPERSON TO AMEND, FINALIZE, AND EXECUTE THIS MEMORANDUM OF AGREEMENT SUBJECT TO APPROVAL AS TO FORM BY THE DEPARTMENT OF THE ATTORNEY GENERAL,

AND

TO DELEGATE AUTHORITY TO THE CHAIRPERSON TO ENTER INTO, AMEND, FINALIZE, AND EXECUTE FUTURE NON-BINDING MEMORANDUMS OF AGREEMENT AND MEMORANDUMS OF UNDERSTANDING BETWEEN THE HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES’ DIVISION OF AQUATIC RESOURCES AND OTHER FEDERAL, STATE, AND MUNICIPAL AGENCIES WITHOUT FORMAL BOARD APPROVAL.

BACKGROUND AND DISCUSSION

The Department of Land and Natural Resources’ [DLNR] mission is to “[e]nhance, protect, conserve and manage Hawaii’s unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, *in partnership with others from the public and private sectors.*” [emphasis added]. DLNR’s Division of Aquatic Resources [DAR] is tasked with managing, conserving, and restoring the State’s unique aquatic resources for present and future generations. To facilitate this goal, DAR enters into Memorandums of Agreement [MOA] and Memorandums of Understanding [MOU]

with various federal, state, and municipal agencies so that it can cooperate, share resources, and more efficiently accomplish its stated goals.

This Board submittal requests approval of an MOA between DAR and the Arizona Board of Regents, on behalf of Arizona State University [ASU] and its Center for Global Discovery and Conservation Science, regarding the management of the Ridge To Reef Restoration Center, located at the Hawaii Ocean Science and Technology [HOST] Park, Hawaii Island.

This Board submittal further requests that the Board authorize the delegation of authority to the Chairperson to enter into, amend, finalize, and execute future non-binding Memorandums of Agreement and Memorandums of Understanding between DAR and federal, state, and municipal agencies, as well as execute MOA's implemented for the purpose of reimbursement payments, without full Board approval for the purpose of reducing the number agenda items at Board meetings and increasing Department-wide efficiency.

#### RIDGE TO REEF RESTORATION CENTER, HAWAII ISLAND

The Division of Aquatic Resources is tasked with managing, conserving, and restoring the State's unique aquatic resources for present and future generations. Coral reef ecosystems are one of the most iconic features of Hawai'i and are critically important to its people, offering a wide range of ecosystem services, social benefits, and economic support. Unfortunately, the essential services provided by coral reefs, as well as their overall health, are threatened by myriad factors including unsustainable fishing practices, land-based sources of pollution, physical damage, and marine debris.

Although coral restoration (e.g., coral gardening, replanting, active transplantation) is well established in many tropical localities worldwide, it is a relatively new field in Hawai'i. Current efforts are led by a small number of dedicated practitioners, including DAR's own Coral Restoration Nursery at the Ānuenuē Fisheries Research Center [AFRC] on O'ahu as well as the Coral Resilience Lab at the Hawai'i Institute of Marine Biology. Additionally, the multitude of threats facing corals in Hawai'i has driven increased interest in coral restoration work from government agencies, research institutions, NGO's, businesses, and community groups.

In West Hawai'i, DAR's Kona district office has conducted small-scale coral restoration work, primarily focused on responses to physical damage events (e.g., ship groundings, anchor damage, dislodgement from boat moorings). These responses have typically amounted to simple stabilization of broken coral fragments via wedging or the use of an epoxy adhesive. Unfortunately, there has historically been little capacity to assess the long-term success of these efforts and adjust the techniques used accordingly.

Coral damage from vessel groundings and unlawful anchorages have also highlighted the need for a land-based nursery facility in West Hawai'i to accommodate and rehabilitate damaged corals. Vessel groundings and large-scale anchor damage events often produce thousands of

coral fragments, and many of these fragments risk additional harm due to smothering from sand and tumbling from ocean swells. Rapid stabilization efforts allow for a portion of these to be replanted, though some may ultimately be lost due to capacity and dive safety constraints. A nursery facility would provide another option where coral fragments are simply collected and brought on land to rehabilitate. This widens the window of opportunity to successfully replant while also providing corals with a safe location to promote recovery.

Currently, there are two nursery facilities on Hawai'i Island: the Mokupāpapa Discovery Center run by the National Oceanic and Atmospheric Administration [NOAA] and the Pacific Aquaculture and Coastal Resource Center at the University of Hawai'i, Hilo. Both have limited capacity for additional corals, and both are located in Hilo, presenting logistical challenges for coral damage events in West Hawai'i. A coral nursery facility located in West Hawai'i is greatly needed.

The land-based coral nursery component of this project is a joint venture between DAR and Arizona State University [ASU]. This facility will be based at the Hawai'i Ocean Science and Technology [HOST] Park in West Hawai'i. HOST is administered by the Natural Energy Laboratory of Hawai'i Authority [NELHA] and supports a number of other aquaculture projects. HOST is ideally situated for a coral nursery as it is centrally located and relatively close to the main harbor in West Hawai'i (Honokohau Harbor). Additionally, HOST has the necessary infrastructure to support aquaculture operations, most notably a large-scale seawater intake system that will act as both the primary water source as well as thermal regulation system for the nursery. The coral nursery itself is designed to be modular, initially starting with 24 flow-through raceways fed by an advanced water filtration and life support system. ASU has secured funding for the facility location as well as many of the initial facility components including design and permitting, modular life support units, coral raceways, and plumbing. DAR funding of \$500,000, paid in monthly installments for 24 months, will primarily support operations including water, power, repairs, maintenance, and consumables as well as a Facility Manager salary.

This facility will serve as a storage and rehabilitation center for those corals that have been damaged but were not immediately replanted onto the reef. Often, many of these coral fragments are subject to increased stress due to sand smothering or excessive motion (i.e., tumbling). The nursery will provide a safe location for recovery prior to replanting. The nursery also provides an opportunity to test rapid propagation techniques which, if successful, may be implemented at the in-situ stabilization sites. This work will incorporate best practices and lessons learned at DAR's coral nursery at AFRC which has documented success with the cultivation, fragmentation, and outplanting of coral colonies grown in lab settings.

DELEGATION OF AUTHORITY FOR CHAIRPERSON TO ENTER INTO NON-BINDING MOAs AND MOUs BETWEEN DAR AND OTHER AGENCIES WITHOUT FULL BOARD APPROVAL

Pursuant to HRS § 26-15, the Board “*may delegate to the chairperson [of the Board] such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the [B]oard.*” [emphasis added]. Furthermore, the “chairperson shall perform those duties, and exercise those powers and authority...as may be delegated by the [B]oard.” *Id.* “The department *shall manage and administer* the public lands of the State and minerals thereon and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life, wildlife resources, state parks, including historic sites, *and all activities thereon and therein* including, but not limited to, boating, ocean recreation, and coastal areas programs.” HRS S 26-15(b).

As mentioned previously, DLNR’s mission is to “[e]nhance, protect, conserve and manage Hawaii’s unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, *in partnership with others from the public and private sectors.*” [emphasis added]. MOAs and MOUs are important tools to facilitate these partnerships, and DAR has executed MOA and MOUs with various federal, state, and municipal agencies in the past.

Although there are exceptions, MOAs and MOUs are generally considered to be non-binding on the signing parties.<sup>1</sup> Depending on the terms of the Agreement, certain MOAs and MOUs need to be reauthorized on an annual basis which, based on current Board protocol, necessitates full Board approval. Likewise, current Board protocol requires that reimbursement payments made to the Department must be formalized in an MOA. Board members are often engaged in lengthy agenda items, and devoting significant time to reviewing and discussing non-binding MOAs and MOUs that have already been agreed to by the DAR Administrator and other third-party agencies, as well as reimbursement-related MOAs, can be an inefficient use the Board’s time.

DAR hopes that by delegating authority to the Chairperson to enter into, amend, finalize, and execute future non-binding MOAs and MOUs with other federal, state, and municipal agencies, as well as finalize and execute MOAs for the reimbursement of payments, pending the Office of the Attorney General’s review and approval, DAR will become faster and more responsive to our partners’ needs, and the Board will be relieved of unnecessary agenda items.

#### CHAPTER 343 – ENVIRONMENTAL IMPACT STATEMENTS

The proposed MOA before the Board will make use of State lands (HOST Park) and use State funds, thereby triggering HRS § 343’s (HEPA) Environmental Assessment / Environmental Impact Statement (EA/EIS) requirement. However, the actions proposed in the execution of this

---

<sup>1</sup> MOUs are generally non-binding as their purpose is to express a common understanding between parties and a common course of action. MOAs, on the other hand, while not as formal as a contract, can create contractual obligations on the parties depending on the intent of the parties. This submittal, however, is only requesting delegation of authority to the Chairperson to enter into *non-binding* MOAs and MOUs in which the parties do not intend to be contractually bound.

MOA have been declared categorically exempt from full EA/EIS review by the Environmental Council:

General Exemption Type 1: *Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.*

Part 1, Number 4: Operation, repair and maintenance, of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.

Part 1, Number 6: Operation, repair and maintenance of existing fisheries facilities, involving capture, containment, sustaining, experimentation, and husbandry of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.

Part 1, Number 13: Repair and maintenance of existing utilities and drainage systems.

Part 1, Number 17: Repair and maintenance of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.

Part 1, Number 18: Repair and maintenance of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats.

General Exemption Type 4: *Minor alterations in the conditions of land, water, or vegetation.*

Part 1, Number 1: Improvements of previously existing graded parking and storage yard areas, including paving, infilling, grading and compacting.

Part 1, Number 15: Captive propagation of birds, mammals, invertebrates, or aquatic organisms; cultivation of plants. Housing, care, feeding, veterinarian examination, breeding (pairing, hatching, brooding, fledgling, rearing), cross fostering, double clutching nests, and experimental studies of native species (including those which are rare, threatened or endangered), game birds and game mammals.

Part 1, Number 16: The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

General Exemption Type 5: *Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.*


Part 1, Number 13: Research that the Department declares is designed specifically to monitor, conserve, or enhance native species or native species' habitat.

RECOMMENDATIONS:

“That the Board:

- 1) Authorize and approve the request to enter into a Memorandum of Agreement between the State of Hawaii Department of Land and Natural Resources, Division of Aquatic Resources, and the Arizona Board of Regents, on behalf of Arizona State University and its Center for Global Discovery and Conservation Science, for the management of the Ridge to Reef Restoration Center, located at the Hawaii Ocean Science and Technology Park, Hawaii Island; and
- 2) Authorize the Chairperson to amend, finalize, and execute this Memorandum of Agreement subject to approval as to form by the Department of the Attorney General; and
- 3) Delegate authority to the Chairperson to enter into, amend, finalize, and execute future non-binding Memorandums of Agreement and Memorandums of Understanding between the Hawaii Department of Land and Natural Resources' Division of Aquatic Resources and other federal, state, and municipal agencies, including the execution of MOAs for the reimbursement of payments, without formal Board approval.”

Respectfully submitted,



---

BRIAN J. NEILSON, Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



---

DAWN N. S. CHANG, Chairperson  
Board of Land and Natural Resources

Attachments:

**Exhibit 1 – Memorandum of Agreement** between the State of Hawaii Department of Land and Natural Resources' Division of Aquatic Resources and the Arizona Board of Regents, on behalf of Arizona State University and its Center For Global Discovery and Conservation Science.

**MEMORANDUM OF AGREEMENT BETWEEN  
THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES,  
DIVISION OF AQUATIC RESOURCES  
AND THE ARIZONA BOARD OF REGENTS,  
ON BEHALF OF ARIZONA STATE UNIVERSITY AND ITS CENTER FOR GLOBAL  
DISCOVERY AND CONSERVATION SCIENCE,  
REGARDING THE MANAGEMENT OF THE  
RIDGE TO REEF RESTORATION CENTER**

This Memorandum of Agreement (“Agreement”) is effective this day of \_\_\_\_\_ (“Effective Date”), by and between the State of Hawaii, Department of Land and Natural Resources (or “DLNR”), Division of Aquatic Resources (or “DAR”), whose mailing address is 1151 Punchbowl Street, Room 330, Honolulu, Hawaii, 96813, and the Arizona Board of Regents, for and on behalf of Arizona State University and its Center For Global Discovery and Conservation Science, whose mailing address is 660 S. Mill Ave, Suite 310, Tempe, AZ 85281 USA, (Arizona State University or at times herein “ASU”) (DAR and ASU sometimes hereafter collectively referred to as the “Parties”), regarding the cooperation, management, and sharing of resources required for their “West Hawaii Resilient Reefs Initiative – Coral Restoration and Community Co-Management” project, and which is to be located at the Hawai`i Ocean Science and Technology (“HOST”) Park, located in West Hawai`i, Hawai`i Island, at 73-4485 Kahilihili St., Kailua-Kona, Hawaii 96740.

**RECITALS**

WHEREAS, DLNR’s mission is to enhance, protect, conserve, and manage Hawaii’s unique and limited natural, cultural, and historic resources held in public trust for current and future generations, and does so through eight operating divisions; and

WHEREAS, DLNR’s Division of Aquatic Resources’ (“DAR”) mission is to work with the people of Hawaii to manage, conserve and restore the State’s unique aquatic resources and ecosystems for present and future generations, including coral reefs; and

WHEREAS, ASU Center for Global Discovery and Conservation Science leads spatially-explicit scientific and technological research focused on mitigating and adapting to global environmental change; and

WHEREAS, DAR currently leads a large number of efforts aimed at the long-term protection of coral reefs including fishery regulations, education, invasive species removal, coral restoration, and community co-management programs; and

WHEREAS, nearshore coral reefs provide critical habitat for important food sources, protect the coastline from erosion, support strong economic output through tourism and recreation, and are central to Hawaiian culture, history, and sense of place; and

WHEREAS, the essential services provided by coral reefs, as well as their overall health, are threatened by a multitude of factors including unsustainable fishing practices, land-based sources of pollution, physical damage, ocean acidification, climate change, and marine debris; and

WHEREAS, the task of safeguarding and restoring Hawaiian coral reef ecosystems requires an approach that incorporates diverse stakeholders and multiple complementary efforts; and

WHEREAS, a coral restoration nursery is a vital component of coral reef restoration efforts, as controlled nursery environments allow for an enhanced ability to rehabilitate and propagate broken or fragmented corals resulting from physical damage events as well as an opportunity to target resilient coral colonies; and

WHEREAS, although there are two coral facilities on the island of Hawai‘i , they are both located in Hilo, which is located on the eastern side of the island, presenting logistical challenges for responding to coral damage events in West Hawai‘i; and



WHEREAS, management of marine resources for reef resilience has the highest chance of success when approached as a collaborative effort between local communities and resource managers as well as supporting institutions; and

WHEREAS, ASU has indicated a willingness to partner with DAR in the construction and maintenance of a coral nursery facility at the HOST Park, located in West Hawai'i; and

WHEREAS, ASU has secured funding for the facility location as well as many of the initial facility components including design and permitting, modular life support units, coral raceways, and plumbing, and funding from ASU will primarily support operations including water, power, and consumables as well as facility maintenance technician salaries; and

WHEREAS, the parties and the general public would greatly benefit from a Memorandum of Agreement that clarifies the relationship between DAR and ASU and would enable DAR to access the HOST Park coral nursery to conduct its operations and store its equipment and gear in a convenient, centralized location, with a commitment of maintenance and cooperation by ASU, now both parties hereto deem it mutually advantageous and desirable to cooperate and hereby agree as follows:

Subject to the provisions of this Agreement, ASU agrees to:

1. Allow DAR employees access to the coral nursery facility located at HOST Park, including 24 coral raceways that will be utilized by DAR. The number of coral raceways available for DAR's use may be adjusted through written agreement between ASU and DAR;
2. Ensure that all coral life support systems are fully operational for the duration of this agreement, including but not limited to: the operation and maintenance of coral raceways, life-support systems, pumping apparatus, and other components necessary to ensure uninterrupted use of the HOST Park coral nursery facility;
3. Allow DAR to place a mobile office container on a graded plot of land on the premises of the HOST Park coral nursery facility, which is land that ASU is currently leasing from

Terraformation Inc., and which Terraformation Inc. is currently leasing from the Natural Energy Laboratory of Hawaii Authority (NELHA);

4. Ensure restroom access for DAR employees, 24 hours per day, 7 days per week;
5. Provide electrical outlets, freshwater access, and internet access throughout the facility;
6. Maintain responsibility for non-DAR related coral nursery containers and their cleanliness/maintenance; and
7. Provide a written statement that shows that ASU has obtained proper permission, from the landowner and lessees, to allow DAR to operate the HOST Park coral nursely facility. DAR agrees to:

1. Pay ASU for the services performed under this agreement in accordance with the rate schedule set forth in this paragraph, pending the successful procurement of funds by DAR for its proposed West Hawaii Resilient Reefs Initiative Support Proposal. These services cover a 24-month period beginning on the Effective Date and may be extended at this rate upon agreement of amendment between the parties, in writing. Services and rates include:

- Monthly General Operations:
  - Raceway repairs and maintenance: \$59,930.00 (total over 24 months)
  - Funding a Facility Manager: \$204,400.00 (total over 24 months)
- Monthly Raceway Operations:
  - Seawater and Electrical/Internet Monitoring: \$97,500.00 (total over 24 months)
- Life Support System Fabrication:
  - Equipment, components, and successful test commissioning: \$99,000.000

Subtotal:	\$460,830.00
<u>ASU Surcharge (8.5%):</u>	<u>\$39,170.00</u>
<b>TOTAL:</b>	<b>\$500,000.00</b>

All amounts due under this Agreement shall be paid by DAR upon receipt of invoices from ASU, which shall be issued monthly for the 24-month duration of this Agreement, starting on the Effective Date;

DAR will pay any additional costs incurred by the ASU as a result of any changes or alterations that are directly requested by or result from any changes or alterations requested by DAR to any aspect of the services provided under this Agreement. Such changes or alterations will be subject to the prior approval of the ASU and will be set forth in writing and signed by an authorized representative of each Party.

All fees due under this Agreement shall be made payable in U.S. dollars. DAR will be responsible for any costs of collection incurred by ASU to enforce the payment terms hereunder, including reasonable attorneys' fees and court costs.

2. Permit ASU to involve its students in the conduct and performance of the services;
3. Maintain responsibility for DAR-related containers and their cleanliness/maintenance; and
4. Hire a DAR coral restoration coordinator and other DAR technicians to conduct management-related coral restoration activities at the HOST Park coral nursery facility.

THE PARTIES FURTHER AGREE THAT:

1. This Agreement will remain in effect as long as DAR and ASU abide by the conditions stated herein and may be altered only by written agreement of the parties;
2. This Agreement may be terminated by DAR or ASU upon Thirty (30) Days written notice to the other party. If this Agreement is terminated by DAR, DAR will remain responsible for payment to ASU for all work performed through the date of termination and for reimbursement to ASU of all non-cancelable commitments incurred in the performance of the Services. Any equipment purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise;
3. Force Majeure.

3.1 With the exception of a party's payment obligations, neither party will be liable for the delay in performance caused by force majeure or circumstances beyond the reasonable control of the party affected including, but not limited to, acts of God, fire, flood, substantial snowstorm or other weather condition, or of a public enemy, acts of the Government in either its sovereign or contractual capacity, war, terrorism, embargo, any

United States or foreign government regulation, direction or request, accident, disease, pandemic or epidemic, mass health issues, quarantine restrictions, strike or other labor difficulties, dispute or labor trouble, civil unrest, freight embargoes, natural disasters, or any failure, disruption or delay of any transportation, utilities, power, equipment or communications system, critical electronic systems, acts of terrorism, mass shootings , other emergencies that disrupt a party's operations, or any other or similar cause beyond that party's reasonable control.

3.2 The party which is so prevented from performing shall give prompt notice to the other party of the occurrence of such event of force majeure, the expected duration of such condition and the steps which it is taking to correct such condition. This Agreement may be terminated by either party by written notice upon the occurrence of such event of force majeure which results in a delay of performance hereunder exceeding thirty (30) days;

#### 4. Independent Contractor

4.1 Each party to this Agreement is an independent of each other; under no circumstances should any employees of one party be deemed employees of the other party for any purpose.

4.2 This Agreement does not create a partnership, joint venture, or agency relationship between the parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the parties, except for those obligations expressly and specifically set forth herein. Neither party shall have any right, power, or authority under this Agreement to act as a legal representative of the other party, and neither party shall have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever contrary to the provisions of this Agreement. Each party acknowledges that the relationship of the parties hereunder is non-exclusive.

4.3 Nothing in this Agreement shall be construed to limit the freedom of ASU or of its researchers from engaging in similar services made under other grants, contracts or agreements with parties other than DAR.

5. Each party to this Agreement will retain ownership of its pre-existing intellectual property, including any that may be incorporated into the services or deliverables under this agreement. The parties understand and agree that ASU owns any and all right, title and interest in and to any and all intellectual property developed, created or invented solely by ASU in its performance under this Agreement, including any services and/or any deliverables, and that ASU will have the exclusive right to patent, copyright, publish, distribute, disclose, use or disseminate in whole or in part any such intellectual property. In no event is any ASU intellectual property considered a “work for hire” and, except as provided in this Section 5, in no way does the provision of services, deliverables or work under this Agreement confer any license, right, title or interest in any ASU intellectual property to DAR.

6. Neither party to this Agreement will use any names, service marks, trademarks, trade names, logos or other identifying names, domain names or identifying marks of the other party in any sales promotion work or advertising, press release or any form of publicity, without written permission from the party that owns the marks. Any permitted use of a party’s Marks must comply with the owning party’s requirements, including but not limited to using the “®” indication of a registered trademark. Each party acknowledges and agrees that violation of this Section 6 is a material breach of contract. In no event shall DAR (or its successors, employees, agents and contractors) state or imply in any publication, advertisement or other medium that ASU has approved, endorsed or tested any product or service. In no event shall ASU’s performance of the services described herein be considered a test of the effectiveness or the basis for any endorsement of a product or service.

7. Each party to this Agreement will comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

8. If any provision of this Agreement shall for any reason be found invalid, illegal, unenforceable or in conflict with any valid controlling law:

- Such provision shall be separated from this Agreement.
- This Agreement shall be interpreted and construed as if the provision shall have been held invalid, illegal, unenforceable, or the conflict had never been contained herein.
- Such invalidity, illegality, unenforceability or conflict shall not affect any other provision.

## 9. Modification

9.1 Any modification or amendment of this Agreement or any scope of work hereunder will be effective only if made in writing and signed by an authorized signatory of each party. This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes any and all prior understandings, agreements, representations, and warranties, express or implied, written or oral, between the parties concerning the subject matter of this Agreement.

9.2 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

10. All notices, bills, demands, payments, accounting or other communications that any party desires or is required to give under the provisions of this Memorandum of Agreement shall be given in writing and shall be deemed to have been given if hand delivered, sent by facsimile, emailed, or if mailed by United States mail, prepaid to the party or parties at the address noted below or such other address as a party may designate in writing from time to time:

Department of Land and Natural Resources:  
Division of Aquatic Resources  
1151 Punchbowl Street, Room 330  
Honolulu, Hawaii 96813  
(808) 587-0115

Arizona Board of Regents for and on behalf of Arizona State University  
660 S. Mill Ave, Suite 310  
Tempe, AZ 85281 USA  
with a required copy to [ASU.Awards@asu.edu](mailto:ASU.Awards@asu.edu) and [industryagreements@exchange.asu.edu](mailto:industryagreements@exchange.asu.edu)

11. No Warranty. Due to the nature of research and the unpredictable and experimental nature of research outcomes, any and all deliverables or work provided by ASU hereunder are provided on an “as-is” and “with all faults” basis, with no representations or warranties of any kind whatsoever, express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose, noninfringement, validity of patent rights claims, whether issued or pending, or for the absence of latent or other defects, whether or not discoverable. ASU expressly disclaims any and all such representations or warranties and conditions of any kind, regarding any outcome obtained, deliverable or work delivered hereunder in connection with this Agreement, including any outcome desired by DAR, or concerning intellectual property rights or rights granted. ASU has no obligation to repair any damage to, or defect in the deliverables or work, or replace the same, or otherwise remedy any matter affecting the condition of the deliverables or work. Any decision regarding safety, applicability, marketability, effectiveness for any purpose, or other use or disposition of said outcome will be the sole responsibility of DAR and/or its permitted assigns and licensees.

12. Export Controls. DAR will notify ASU in writing if any technological information or data provided to ASU under this Agreement is subject to export controls under U.S. law or if technological information or data that DAR is requesting ASU to produce during the course of work under this Agreement is expected to be subject to such controls. DAR will notify ASU of the applicable export controls (for example, Commerce Control List designations, reasons for control, countries for which an export license is required). ASU shall have the right to decline export controlled information or tasks requiring production of such information. DAR will comply with Export Control Laws.

13. University and State Required Provisions.

13.1 Conflict of Interest. If within 3 years after the execution of this Agreement, DLNR hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in Arizona Revised Statutes (A.R.S.) § 38–511.

13.2 Failure of Legislature to appropriate. In accordance with A.R.S. § 35–154, if ASU’s performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to DLNR and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

13.3 Indemnification and Liability Limitations. Because ASU is a public institution any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and A.R.S. §§ 35–154 and 41–621. ASU’s liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

13.4 Responsibility. Each party is responsible for the negligent or willful acts or omissions of its employees and agents when acting under such party’s direction and supervision. ASU recognizes an obligation to pay attorneys’ fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of this Agreement or any other document: (i) other than for employees and agents acting under ASU’s direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless they are an authorized signatory in PUR 107, which is located at the following link: <https://www.asu.edu/aad/manuals/pur/pur107.html>.

13.5 No Boycott of Israel. As required by A.R.S. § 35–393.01, DLNR certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Agreement.

13.6 Public Records Notice Provision. Notwithstanding any other provision of this Agreement to the contrary, the parties acknowledge that ASU is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Any



provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

13.7. Notice is hereby provided of the provisions of A.R.S. §§ 12-133 and 12-1518.

IN WITNESS THEREOF, the State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources and the Arizona Board of Regents, for and on behalf of Arizona State University and its Center For Global Discovery and Conservation Science, have executed this Memorandum of Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources

Signature Line \_\_\_\_\_

Title:

Date:

Arizona Board of Regents, for and on behalf of Arizona State University

Signature Line \_\_\_\_\_

Title:

Date: