

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT #1385

AGREEMENT BETWEEN

OFFICE OF HAWAIIAN AFFAIRS

AND

DEPARTMENT OF TRANSPORTATION

STATE OF HAWAII

COOPERATIVE AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of August, 1999, by and between the DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII, hereinafter called "HDOT" and the OFFICE OF HAWAIIAN AFFAIRS, hereinafter called "OHA";

WITNESSETH THAT:

WHEREAS, a Memorandum of Agreement (MOA) pursuant to regulations implementing Section 106 of the National Historic Preservation Act and relating to the construction of Interstate Route H-3 was entered into on July 21, 1987 by the Federal Highway Administration, U.S. Department of Transportation (FHWA); the State Historic Preservation Officer, State of Hawaii (SHPO); and the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, OHA and HDOT were consulted and concurred in said MOA;

WHEREAS, said MOA requires that any adverse impact of H-3 on the Luluku Discontiguous Archaeological District and any historic property within the highway corridor eligible for inclusion in the National Register of Historic Places, be mitigated through the implementation of, among other measures, an Archaeological Mitigation Plan and an Interpretive Development Plan; and

WHEREAS, OHA and HDOT recognize that the archaeological and cultural resources along the corridor of the H-3 freeway require preservation and interpretation; and

WHEREAS, the Archaeological Mitigation Plan covering North Halawa Valley and the Luluku Discontiguous Archaeological District has been completed; and

WHEREAS, FHWA and HDOT desire to proceed with the Interpretive Development Plan for North Halawa Valley and the Luluku Discontiguous District, hereinafter referred to as the "Project"; and

WHEREAS, OHA agrees to undertake the Project if financial compensation is made by HDOT therefore:

NOW, THEREFORE, in consideration of mutual promises, the parties hereto agree to the following:

1. Scope of Services. As stated in the MOA, the issues to be addressed by OHA shall include provisions for additional studies as necessary and appropriate after coordination with the State Historic Preservation Officer to further interpret the site and to demonstrate its relationship to the surrounding area and structures, removal and control of invasive alien plants, site preservation, access, on-site interpretations, maintenance, appropriate treatment of structural components, water rights, finances, and interpretive concerns. OHA shall prepare and implement the Project in three phases as follows:

- a. Preliminary Design of Interpretive Development Plan
- b. Final Design of Interpretive Development Plan
- c. Implementation of Interpretive Development Plan

2. Term of Agreement. This agreement shall be in effect for two years following the date of execution but may be extended upon mutual written consent of the parties hereto.

3. Responsibilities of the Parties. OHA shall be responsible for furnishing all services, materials, and equipment needed to complete the Project. OHA shall procure and coordinate the required services of interested Native Hawaiian organizations that will assist with the preparation and implementation of the Project subject to the requirements of Paragraph (8) Subcontracting or Assignment of Agreement. OHA shall submit the Preliminary and Final Designs of the Interpretive Development Plan to HDOT for approval.

HDOT will monitor and review OHA's work for conformity with Federal and State standards and procedures, and shall reimburse OHA for all of its authorized expenses. Any necessary insurance purchased by OHA in connection with its performance of its obligations under this agreement shall be deemed a reimbursable expense.

All services, contractor selections, and fees shall be subject to the prior approval of HDOT and FHWA, pursuant to the procedures attached hereto as Exhibit "A".

Upon the execution of this cooperative agreement, HDOT shall as soon as reasonably practicable deposit funds in the amount of ONE HUNDRED THOUSAND AND NO /100 DOLLARS (\$100,000.00) with OHA which shall hereinafter be referred to as the H-3 Funds. OHA shall draw against H-3 Funds for all expenses necessary and proper to meet its responsibilities under the terms of this agreement. OHA shall submit all receipts for all expenses for work previously authorized by HDOT in meeting its responsibilities under the terms of this agreement to HDOT. HDOT shall as soon as reasonably practicable reimburse this H-3 Fund on deposit with OHA for the amount of these receipts. The net effect of the creation of this \$100,000.00 H-3 Fund and reimbursement mechanism is intended by the parties to eliminate use by OHA of its non H-3 Funds to finance expenses incurred under this agreement.

4. Use and Occupancy Provisions. OHA and its sub-contractors shall prepare and execute use and occupancy agreements with HDOT, as well as any other applicable state agency or agencies, prior to using or occupying the property for any work authorized by HDOT in implementing the Project.

5. Procurement Standards. The employment of contractors and administration of the Project by OHA shall be in conformance with Chapter 1 03D of the Hawaii Revised Statutes and Section 3-122, Subchapter 7, Hawaii Administrative Rules ("HAR"), Title 3. Department of Accounting and General Services. Title 3. Subtitle 11 regarding professional services, and 23 CFR-172A governing the administration of engineering and design-related service contracts. Competitive negotiation and consideration to Disadvantaged Business Enterprise (DBE) firms

shall be part of the Project.

6. Project Funds. The maximum amount to be funded under this agreement shall not exceed ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00). The budgetary limits for OHA's expenses and the three Project phases shall be as follows:

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| a. Reimbursable costs to OHA for its administrative costs and other expenses incurred on the Project | \$500,000.00 |
| b. Preliminary Design of Interpretive Development Plan | \$500,000.00 |
| c. Final Design of Interpretive Development Plan | \$500,000.00 |
| d. Implementation of Interpretive Development Plan | \$9,500,000.00 |

The budgetary limits may be adjusted by HDOT as the work progresses.

7. Financing. This agreement is financed by State funds and Federal funds administered by FHWA. Eligibility of costs for Federal reimbursement shall be as prescribed in 48 CFR 31 (Federal Acquisition Regulations).

Ninety percent (90%) of the cost is payable out of Federal funds. It is covenanted and agreed, by and between the parties hereto, that as to the portion of the obligation under this contract to be payable out of Federal funds, that this contract shall be construed to be an agreement to pay such portion to OHA only out of Federal funds if and when such Federal funds shall be received from the Federal government for the purpose of such payment, and that this contract shall not be construed to be a general agreement to pay such portion in all events out of any funds other than those which may be so received from the Federal government

8. Subcontracting or Assignment of Agreement. OHA shall not subcontract or assign all or any part of the work under this agreement without the prior written consent of HDOT, and any consent by HDOT to subcontract, assign, or otherwise dispose of any portion of

this agreement shall not be construed to relieve OHA of any responsibility for the fulfillment of the agreement.

9. Prosecution of the Work. OHA shall be responsible for the accuracy, sufficiency, and completeness of all work. HDOT and OHA shall mutually resolve all questions regarding the manner of performance and progress of the work, compliance with the agreement provisions, compensation, and any other question which may arise under the agreement. Any irreconcilable differences shall be resolved to the extent provided with Paragraph No. 16 below.

10. Alterations or Revisions to the Agreement. HDOT and OHA reserve the right to increase or decrease the scope of services to be provided by OHA under the agreement. Any such amendment, however, must be agreed to, in writing, by both parties.

11. Time of Completion and Extension Thereof. OHA shall complete the work within the time specified herein. Any delay in the progress of the work which may adversely affect the completion of work within the required time shall be promptly reported to HDOT in writing.

If OHA's work is delayed by conditions beyond its control, OHA shall, subject to approval by HDOT, be entitled to a reasonable extension of time to complete its work. Additionally HDOT may, upon request by OHA and regardless of cause, extend the completion date of the agreement at HDOT's sole discretion.

12. Accounting Records. OHA shall maintain accounting records and other evidence pertaining to costs incurred, and shall make such materials available for audit by authorized representatives of HDOT and FHWA

13. Publication. Maps, records, and reports resulting from this Project shall be provided to HDOT. HDOT reserves the right to publish the results or, if already published by OHA, shall upon request be furnished the number of copies required.

The maps, records and reports published by either OHA or HDOT shall contain a statement of the cooperative relationship of OHA, HDOT, and FHWA in the program.

14. Termination or Completion of Agreement. The agreement may be terminated by OHA or HDOT at any time after providing thirty (30) days written notice where the other party fails to keep, perform, or observe any of the terms, conditions, promises or covenants which are set forth in the agreement. Furthermore, OHA or HDOT may terminate the agreement after the Preliminary Design Phase, if the Project is deemed by OHA or HDOT to be unfeasible and impractical after this stage.

Completion of this agreement shall be upon implementation of the Interpretive Development Plan and final acceptance of the Project by OHA and as approved by HDOT and FHWA.

15. Ownership. Upon termination or completion of this agreement, all maps, records, reports, equipment, structures, improvements, and any incidentals purchased with Project funds shall become the property of HDOT. OHA may obtain and keep copies of all maps, records, and reports pertaining to this Project.

16. Dispute Resolution. Should any irreconcilable differences between OHA and HDOT arise during the Project, the disagreement shall be presented to FHWA for resolution as provided in the 1987 Memorandum of Agreement which is attached hereto as Exhibit "B".

17. Scope of Payment. Except as otherwise provided herein, the amount set forth this agreement and any subsequent amendment to this agreement shall be deemed full

compensation for all work performed by OHA. Said compensation shall include all services, materials, supplies, equipment, overhead, incidentals and operating expenses.

18. Reimbursements. As long as the services of OHA and its subcontractors are authorized and performed in a satisfactory manner, HDOT will make reimbursements based upon the value of the services rendered and the costs that were incurred, subject to the financing provisions set forth in Paragraphs 6 and 7 above as well as any applicable federal, state and county laws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

OFFICE OF HAWAIIAN AFFAIRS

DEPARTMENT OF TRANSPORTATION

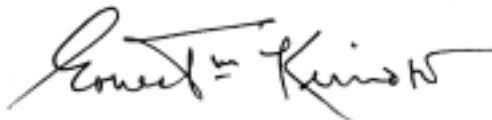


By Rowena Akana
Its Chairperson

By Kazu Hayashida
Its Director of Transportation

APPROVED AS TO FORM

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Staff Attorney
Office of Hawaiian Affairs

Deputy Attorney General
Land Transportation Division