



**STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**

REQUEST FOR PROPOSALS

No. 14-005-PPMS

**LEASE OF VACANT PARCEL LOCATED AT 3560 LOWER HONOAPIHLANI HIGHWAY,
LAHAINA, MAUI, HAWAII 96761, TMK: (2) 4-4-001:026**

REGISTRATION:

ALL PERSONS INTERESTED IN THE RFP MUST **REGISTER** WITH THE RFP CONTACT TO RECEIVE NOTICE OF ANY CHANGES OR UPDATES TO THE SOLICITATION. TO REGISTER, EMAIL OR FAX YOUR CONTACT INFORMATION TO THE RFP CONTACT LISTED BELOW.

A **Pre-Proposal Conference** will be held on **April 7, 2014** at **10:00 AM** in the HHFDC Board Room, 677 Queen Street, Suite 300, Honolulu, Hawaii.

Direct all questions, in writing, no later than April 23, 2014 to:

RFP Contact:

Stuart Kritzer, Asset Manager
Hawaii Housing Finance and Development Corporation
Email: Stuart.P.Kritzer@hawaii.gov
Fax: (808) 587-0600

**PROPOSALS DUE MAY 7, 2014
No later than 4:00 PM**

Submit proposals to:

Asset Management
RFP No. 14-005-PPMS
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

**The envelope or enclosure containing proposals should be
clearly marked with the RFP number and title.**

Electronic responses shall **not** be accepted, except where expressly permitted in this RFP.

RFP No. 14-005-PPMS

NOTICE TO INTERESTED PARTIES

Request for Proposals (RFP) No. 14-005-PPMS

LEASE OF VACANT PARCEL LOCATED AT 3560 LOWER HONOAPIILANI HIGHWAY, LAHAINA, MAUI, HAWAII 96761, TMK: (2) 4-4-001:026

The HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION (HHFDC) is requesting proposals from qualified persons or firms interested in leasing the vacant parcel located at 3560 Lower Honoapiilani Highway, Lahaina, Maui, Hawaii 96761, TMK: (2) 4-4-001:026.


Copies of the RFP shall be made available as follows, beginning March 25, 2014:

1. **Electronic copy on the HHFDC website.** A copy of the RFP documents can be reviewed and downloaded online at no cost. Go to <http://hawaii.gov/dbedt/hhfdc/>. Locate and click on the RFP link to download the documents. **Any Offeror who downloads the solicitation documents online is advised to register by e-mail to the RFP Contact.** If Offeror does not register with RFP Contact, Offeror will not receive notification of any changes or addenda to the RFP.
2. **Hard copy picked up at the HHFDC Office.** Notify the RFP Contact below to schedule a pick up. A fee of \$100 per copy will be assessed for administrative and printing costs. The HHFDC Office is located at 677 Queen Street, Suite 300, Honolulu, Hawaii. Fee shall be paid via cashier's check payable to "Hawaii Housing Finance and Development Corporation."
3. **Hard copy by U.S. Postal Service first class mail, Fedex, or equivalent.** Notify the RFP Contact below to arrange mailing of the solicitation documents. Must have carrier account number or documents will be mailed via USPS First Class Mail. A fee of \$100 per copy will be assessed for administrative and printing costs and must be prepaid via cashier's check payable to "Hawaii Housing Finance and Development Corporation."

A **Pre-Proposal Conference** will be held on April 7, 2014 at 10:00 AM in the HHFDC Board Room, 677 Queen Street, Suite 300, Honolulu, Hawaii.

Statements made by HHFDC representatives at the Pre-Proposal Conferences, Site Inspection, or otherwise during the solicitation process shall not be binding on HHFDC unless confirmed by written addendum. Direct all questions regarding the RFP, in writing, to the RFP Contact, Stuart Kritzer, Asset Manager, HHFDC, Email: Stuart.P.Kritzer@hawaii.gov, Fax: (808) 587-0500. The deadline for questions is April 23, 2014.

Proposals must be received no later than 4:00 PM on May 7, 2014 by the RFP Contact at Hawaii Housing Finance and Development Corporation, 677 Queen Street, Suite 300, Honolulu, Hawaii 96813.



Craig K. Hirai, Executive Director
Hawaii Housing Finance and Development Corporation

Legal Ad Date: March 25, 2014

RFP No. 14-005-PPMS

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ATTACHMENTS & EXHIBITS

Attachment 1: OFFER FORM, OF-1

Exhibit A: Sample Lease Agreement*

Exhibit B: Property Map

*** HHFDC reserves the right to make any and all changes to this Sample Lease Agreement prior to the full execution thereof. This sample is provided as a reference only and should not be construed to be the final terms and conditions upon which the Property will be leased.**

SECTION ONE
INTRODUCTION AND KEY INFORMATION

1.1 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

BAFO	= Best and Final Offer.
Contract	= Lease
Executive Director	= Head of the Hawaii Housing Finance and Development Corporation.
GET	= General Excise Tax.
HAR	= Hawaii Administrative Rules.
HHFDC	= Hawaii Housing Finance and Development Corporation.
HRS	= Hawaii Revised Statutes.
Lease	= Refers to the contractual agreement by which the Lessee pays HHFDC for use of the real property or other asset described herein.
Lessee	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, awarded a Lease as a result of this solicitation.
Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation.
Proposer	= Offeror.
RFP	= Request for Proposals.
State	= State of Hawaii, including all departments, attached agencies, and political subdivisions.
Successful Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, awarded a contract as a result of this solicitation.

1.2 INTRODUCTION

The Hawaii Housing Finance and Development Corporation (HHFDC) is requesting proposals from qualified persons or firms interested in leasing a vacant parcel of land located at 3560 Lower Honoapiilani Highway, Lahaina, Maui, Hawaii 96791, TMK: (2) 4-4-001:026 (the “Property”).

a. Purpose

HHFDC intends to issue a ground lease for the Property to the lessee selected through this RFP.

b. Objectives

HHFDC would like to lease the Property to a lessee who will best optimize the use of the Property while providing the most economic benefit to the State, taking into consideration the highest and best use of the land.

c. Scope

The lessee is expected to utilize the Property under the terms and conditions of the ground lease, in accordance with all applicable laws and regulations. This includes securing all permits and approvals necessary to implement any improvements on the Property.

d. Lease Term

The ground lease for the Property may have a maximum term of 55 years from the date of execution. See Section 1.7 of this RFP for additional information about the lease term.

1.3 RFP TIMELINE

The RFP Timeline below is based on approximate dates. If a component of the timeline is changed, such as the Proposal Due date, the timeline will be adjusted accordingly. All times indicated herein are in Hawaii Standard Time (HST).

Advertise and Issue Request for Proposals	March 25, 2014
Pre-Proposal Conference	April 7, 2014 10:00 AM
Deadline for Questions and Clarifications	April 23, 2014
State Response to Questions and Clarifications	April 30, 2014
Proposal Due	May 7, 2014 No later than 4:00 PM
Estimated Lease Award Date	June 1, 2014
Anticipated Lease Start Date	July 1, 2014

NOTE: The RFP Timeline is approximate only and subject to change at the sole discretion of HHFDC.

1.4 PRE-PROPOSAL CONFERENCE AND SITE INSPECTION

An optional **Pre-Proposal Conference** will be held in the HHFDC Board Room, 677 Queen Street, Suite 300, Honolulu, Hawaii on the date and time indicated in the RFP Timeline above.

Prior to submittal of the proposal, it is recommended that Offerors familiarize themselves with the RFP documents and Property. Offerors are encouraged to visit the Property and location. No compensation will be allowed by reason of any misunderstanding or error regarding site conditions, project layout or work to be performed.

Questions will be permitted at the Pre-Proposal Conference. However, any statements made by HHFDC representatives are only intended to give Offerors general direction and shall not be binding on HHFDC unless confirmed by written addendum. For an official response, submit all questions **in writing** to the RFP Contact.

1.5 QUESTIONS, CLARIFICATIONS, OR CHANGES

Any Offeror that has questions or requires clarification of the information provided in this RFP must submit specific questions or requests **in writing** to the RFP Contact listed on the cover of the RFP. The deadline for questions is specified in the RFP Timeline above. **Email is the preferred method of communication.** Questions or requests for clarifications are due on the date indicated in the RFP Timeline, unless otherwise amended.

a. Addenda

If HHFDC determines that additional information or interpretation is necessary or that a change is needed regarding this RFP, such information will be supplied in addenda and distributed to all persons or firms who registered for this solicitation. Addenda shall have the same binding effect as though contained in this RFP. The Executive Director will issue all addenda no later than the date indicated in the RFP Timeline, unless otherwise amended.

Up to the date and time that proposals are due, it is the responsibility of all parties interested in this RFP to refer frequently back to the HHFDC website to check for any addenda that have been issued for this RFP. Interested parties who have registered with HHFDC for this proposal will receive courtesy notices of any addendum that has been issued for this RFP; however, interested parties are ultimately responsible for being aware of any addenda issued by HHFDC and modifying their proposal accordingly.

b. Statements by HHFDC Representatives

Statements made by HHFDC representatives at the Pre-Proposal Conference or otherwise during the solicitation process shall not be binding on HHFDC unless confirmed by written addendum.

For an official response, offerors shall submit all questions **in writing** to the RFP Contact.

c. Required Review

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter **must be made in writing and should be received by the HHFDC prior to the Deadline for Questions and Clarifications as stated in the RFP Timeline**. This will allow issuance of any necessary corrections and/or amendments to the RFP.

If Offeror takes exception to any terms, conditions, specifications, or other requirements described herein, Offeror initially should seek an informal resolution with the RFP Contact. If unresolved at the time offers are received, any exceptions taken to the terms, conditions, specifications, or other requirements described herein may be listed in the Exceptions section of the Offeror's proposal.

1.6 UNAUTHORIZED COMMUNICATIONS

The sole point of contact for this solicitation is the RFP Contact named on the front cover of this RFP. All questions and communications regarding this RFP must be directed to the RFP Contact. Offerors must not communicate about this RFP with members of the Evaluation Committee, the HHFDC Board of Directors, or any HHFDC employee not specifically named in this RFP, except upon invitation by HHFDC as part of discussions or best and final offers. Doing so may be cause for proposal rejection.

1.7 LEASE TERM

The Lease shall be for a period of 55 years. Unless terminated, the Lessee and the State may renew the Lease and extend the term for an additional 55 years, or a portion(s) thereof, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the Lease. The lease rent or lease premium paid to the State for the extended period shall be renegotiated at the time of extension and mutually agreed upon in writing by HHFDC and Lessee.

1.8 GOVERNING LAWS AND RULES; COST OF LITIGATION

This RFP is being conducted pursuant to and in accordance with Hawaii Revised Statutes (HRS), §201H-§9(c) and all applicable Hawaii Administrative Rules (HAR). All proposals submitted in response to this RFP are subject to the HRS, HAR, and all terms, conditions, and requirements specified in the RFP.

The validity of the RFP and any of its terms or provisions, as well as the rights and duties of the State, HHFDC, and any party submitting a response to the RFP, shall be governed by the laws of the State of Hawaii. All matters not specifically addressed in the RFP, or a subsequent contract entered into, will be governed by the HRS as well as applicable HAR and any other local, state, and federal rules, laws, and regulations pertaining to procurement and contracting with HHFDC and the State of Hawaii.

Any action at law or equity to enforce or interpret the provisions of the RFP shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

This RFP and award of lease for the Property is not subject to Chapter 103D, Hawaii Revised Statutes, or its related Hawaii Administrative Rules.

1.9 RESERVATION OF RIGHTS

HHFDC, in its sole discretion, reserves the right to:

- a. change or cancel this RFP;
- b. reject any or all proposals received in response to this RFP;
- c. determine whether a proposal submitted in response to this RFP fails to meet the requirements of the RFP in some material respect;
- d. obtain modification or clarification necessary to properly evaluate a proposal;
- e. obtain references regarding any Offeror's past performance from any source; and
- f. execute a contract with the Successful Offeror.

Neither issuance of this RFP nor evaluation of any proposal(s) obligates HHFDC to award a contract from this RFP.

1.10 AGREEMENT FORM AND EXECUTION

The Successful Offeror shall be required to enter into a formal written agreement with the HHFDC, in the form of a Lease, prior to commencement of the services, in accordance with the laws, rules and regulations of the State of Hawaii. See Exhibit A. The stated requirements appearing elsewhere in this RFP shall become part of the terms and conditions of the Contract as though incorporated into the Contract. HHFDC reserves the right to add or modify any Contract term or condition prior to execution of the Contract.

Following award of the Contract, and within ten (10) days after the prescribed forms are presented to the Successful Offeror for signature, unless otherwise specified by HHFDC, the Offeror shall execute and deliver to the HHFDC a Contract in the form required by HHFDC and in such number of counterparts as may be required by HHFDC.

1.11 INSURANCE REQUIREMENTS

Within fifteen days after award of this Contract and prior to the execution of the Contract, unless otherwise specified by HHFDC, the Successful Offeror shall furnish the RFP Contract certificate(s) of insurance as evidence of the existence of the insurance coverage specified in Section Six, in amounts not less than the amounts specified therein. This

insurance must be maintained during the entire performance period of the Contract at the Successful Offeror's own expense.

1.12 DOWNLOADED SOLICITATION

Any Offeror who downloads the solicitation documents online is advised to register its entity by fax or e-mail to the RFP Contact. If Offeror does not register its company, Offeror will not receive notification of any changes or addenda to the RFP.

1.13 RESERVED

1.14 OFFEROR QUALIFICATIONS

Offeror must meet all of the qualification requirements in the RFP. Failure to meet the qualifications as specified in the RFP will likely have an adverse affect on Offeror's proposal evaluation, and may be grounds for non-selection of a proposal.

1.15 SUBMISSION OF PROPOSAL

By submission of a proposal, Offerors warrant and represent that they have read and are familiar with the contractual requirements set forth in the RFP and its attachments and exhibits, the provisions of which are expressly incorporated into this RFP by reference as though fully set forth in its entirety herein.

Furthermore, the submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

- a. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, exhibits, plans referred to herein, and any other relevant documents; and
- b. Be familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may, in any manner, affect cost, progress, or performance of the work, the project, and/or the relevant property.

All submitted proposals shall become the property of the HHFDC and be subject to public disclosure in accordance with HRS, Chapter 92F.

1.16 RESPONSIBILITY OF OFFERORS

All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including, but not limited to:

- 1) Chapter 237, tax clearance;

- 2) Chapter 383, unemployment insurance;
- 3) Chapter 386, workers' compensation;
- 4) Chapter 392, temporary disability insurance;
- 5) Chapter 393, prepaid health care; and
- 6) Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Offerors shall produce documents to the RFP Contact to demonstrate compliance prior to award. The State shall verify compliance. If an offeror is not compliant at the time of award, the offeror will not receive the award, even if a notice of intent to award has been issued.

Hawaii Compliance Express. Offerors are strongly encouraged to register with the Hawaii Compliance Express (HCE) system to obtain proof of compliance. HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Offerors are encouraged to register with HCE at <https://vendors.ehawaii.gov> prior to submitting an offer. The annual registration fee is currently \$12.00 and the 'Certificate of Vendor Compliance' is accepted as proof of compliance for award, execution of the contract, and final payment.

Timely Registration on HCE. Offerors are advised to register on HCE soon as possible.

1.17 RESERVED

1.18 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, or correspondence contains information that should be withheld as confidential, then the RFP Contact named on the cover of this RFP should be so advised in writing and provided with legal justification to support the confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential by law. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Offerors may not mark an entire proposal confidential. Should a proposal be submitted in this manner, the HHFDC reserves the right to hold no portion of the proposal as confidential, unless such a portion is determined by the Attorney General to be subject to disclosure pursuant to HRS, Chapter 92F.

1.19 RESERVED

1.20 PROPOSAL AS PART OF THE CONTRACT

This RFP and the Successful Offeror's proposal, as accepted by HHFDC, will be incorporated into the resulting Contract. In the event of conflicts between the RFP and the Successful Offeror's proposal, the RFP will take precedence. The Successful Offeror is required to identify conflicting or omitted sections of the RFP requirements in its proposal.

1.21 ADDITIONAL TERMS AND CONDITIONS

Approvals. Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

Confidentiality of Material. All material given to or made available to the Lessee by virtue of the Lease or any other HHFDC contractual agreements, which is identified as proprietary or confidential information, will be safeguarded by the LESSEE and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agency of the Lessee, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

Records Retention. The Lessee and any subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for six (6) years from the date of final payment under the Agreement.

Competency of Offeror. The Evaluation Committee shall determine whether the Successful Offeror has the financial ability, resources, skills, capability, and business integrity necessary to fulfill the Contract. For this purpose, either before or after the deadline for an offer, the HHFDC may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to satisfactorily fulfill the Contract. Whenever it appears from answers to the questionnaire or otherwise, that the Successful Offeror is not fully qualified and able to fulfill the Contract, a written determination of non-responsibility of an offeror shall be made. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such offeror. The decision of non-responsibility shall be final.

Preparation of Offer. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such submitted offers shall be deemed rejected. Similarly, an Offeror may submit only

one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

The State and HHFDC reserves the right to add terms and conditions to the RFP and Contract. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

1.22 AWARD

Method of Award. The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria.

Responsibility of Highest-Scoring Responsive Offeror. The Selected Offeror shall at the time of award must be compliant with all laws governing entities doing business in the State. If compliance documents have not been submitted to the RFP Contact, the Selected Offeror shall produce documents to the RFP Contact to demonstrate compliance with this section prior to award.

1.23 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for this contract have been appropriated by a legislative body.

Therefore, if awarded a contract in response to this solicitation, Offeror agrees to comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

1.24 CANCELLATION

HHFDC reserves the right to cancel this RFP without liability when it is determined by HHFDC, at its sole discretion, to be in the best interests of the State. In no event shall HHFDC have any liability, monetary or otherwise, for a cancellation. The Offeror assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

1.25 REJECTION OF PROPOSALS

HHFDC reserves the right to reject any or all proposals, in whole or in part, without liability, when it is determined by HHFDC, at its sole discretion, to be in the best interest of the State. The Offeror assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

1.26 COSTS OF PROPOSAL PREPARATION

Costs for preparing and developing the proposal are solely the responsibility of the Offeror, whether or not any award results from this solicitation. State of Hawaii will not reimburse any such costs.

SECTION TWO

PROPERTY DESCRIPTION AND LEASE REQUIREMENTS

2.1 ABOUT HHFDC

The Hawaii Housing Finance and Development Corporation (“HHFDC”) is the primary agency responsible for overseeing affordable housing finance and development in Hawaii. HHFDC is tasked with developing and financing low- and moderate-income housing projects and administering state rental assistance and home ownership programs.

2.2 PROPERTY DESCRIPTION

A. Subject Property

1. The Property consists of 0.90 acres (39,204 sq. ft.) of land located on the island of Maui at 3560 Lower Honoapiilani Highway, Lahaina, Hawaii 96761, TMK (2) 4-4-001:026 (see Exhibit “A”).
2. This vacant Property is zoned R-3 Residential, fenced, relatively flat, and consists primarily of weeds and scrub vegetation. It is adjacent to the 5A Rent-A-Space Retail Center to the north, the Maui County Sewer Pump Station to the south, and the Honokowai Kauhale Apartments to the east.
3. The Property is situated within the County Special Management Area and has frontage on an improved County roadway with sidewalks, curbs, gutters, and utility services.

B. Site Control

1. *Landowner:* The Property is owned by HHFDC and to our knowledge is currently unencumbered. Note that this RFP is issued without a title report for the Property. Proposers wishing a title search must obtain one at their own cost.
2. *Current Use of the Parcel:* Vacant land.

2.3 LEASE REQUIREMENTS

Upon approval and execution of a ground lease, and subject to the terms and conditions therein, the Lessee shall be responsible for all onsite and offsite costs and expenses associated with the ownership, use, maintenance and development of the Property, including planning, design, permit fees, utility charges, and all expenses related thereto, subject to the following conditions:

- A. The Property shall be conveyed in “AS IS” condition. The lessee has the opportunity to make improvements deemed necessary to increase the economic potential of the Property.

- B. Lessee shall be responsible for obtaining all applicable approvals for the use and development of the Property, and for all costs associated therewith.
- C. Lessee shall be responsible for any and all costs for the issuance of the ground lease, including without limitation a title report, metes and bounds description, boundary staking, and closing costs as required by HHFDC.
- D. The lease price and terms are open to offers.
- E. Other conditions required by law and/or standard for State ground leases.
- F. To be considered, potential lessees must submit a proposal in accordance with this RFP.

2.4 RESERVED

2.5 PROPERTY AND OTHER TAXES

The Lessee shall be responsible for paying real property taxes and any other tax obligations or assessments to which the Property is subject during the Lease term.

2.6 BOOKS, RECORDS, ACCOUNTS, AND REPORTS

The Lessee shall keep and maintain accurate, true and complete books and records (hereinafter collectively referred to as “books and records”), which shall fully reflect the financial condition, occupancy, physical condition, maintenance, and operational status of the Property and related project, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any applicable state or local law, regulation or rule now or hereafter in effect. These books, records, accounts, and reports shall be in addition to those documents and information required to be maintained or delivered to the HHFDC by the closing documents.

All books and records shall be kept at the Lessee’s principal office, or at the project location, or at such other place as the HHFDC and the Lessee both agree upon in writing. A back-up set of the books and records shall be kept at a separate location. The books and records shall be available to the HHFDC and its representatives for examination, audit, inspection, and transcription. The HHFDC is herewith granted the right to photocopies of same, at the sole expense of the Lessee. The Lessee shall deliver to the HHFDC, upon such schedule as the HHFDC may establish from time to time, and in such media, including electronic media, as the HHFDC shall select, all information and supporting documentation which the Lessee has maintained or which the HHFDC needs in order for the HHFDC to file any report to any governmental or nongovernmental agency, or which the HHFDC needs to assess the financial condition, performance, occupancy, physical condition, maintenance and operational status of the Property and related project. Such items shall: (a) be in a form satisfactory to the HHFDC, (b) be certified to the HHFDC as true, complete, and accurate by the Lessee, and (c) be taken from the books and records maintained by the Lessee as aforesaid.

HHFDC may require the Lessee to provide certain reports on a periodic basis. The required project reports may include, but are not necessarily limited to, the following:

1. Annual audited financial statements
2. Leasing activity report
3. Units in service
4. Details of loan financings
5. Extraordinary costs or expenditures report

The above list is not inclusive of other information that may be requested by the HHFDC from time to time. Such additional requests may include, but are not limited to, support for the summary reports listed above; rent roll or other information requested by the HHFDC and other reports that are generated by standard property management software packages. The exact format of the reports is flexible to the extent that changes improve the quality and usability of information contained therein. However, budget and financial statements should be provided in a form and format that can be compared to the project pro forma. Submissions should also be compiled in a spreadsheet package such as MS excel. The HHFDC is contemplating other technologies to capture data and reserves the right to require their use at a future date. Reports shall be sent via e-mail to the designated HHFDC representative within twenty (20) calendar days of the end of the reporting period or the date that the request was submitted, except that year-end reports shall be sent within thirty (30) calendar days of the end of the year.

SECTION THREE

PROPOSAL REQUIREMENTS AND EVALUATION CRITERIA

SUMMARY OF PROPOSAL REQUIREMENTS AND EVALUATION CRITERIA FOR THIS RFP	
EVALUATION CRITERIA	MAX POINTS PER CRITERION
<input type="checkbox"/> Plan and Approach	30 Points
<input type="checkbox"/> Experience and Qualifications	30 Points
<input type="checkbox"/> Feasibility and Maximum Economic Benefit to State and HHFDC	40 Points
Total Available Points	100 Points
PROPOSAL REQUIREMENTS	
<input type="checkbox"/> Transmittal Letter	Not Scored
<input type="checkbox"/> Offer Form OF-1	Not Scored
<input type="checkbox"/> Responses to Evaluation Criteria	Scored
<input type="checkbox"/> Confidential Information, if applicable	Not Scored
<input type="checkbox"/> Exceptions, if applicable	Not Scored
<input type="checkbox"/> Additional Information, as required or requested	Not Scored

Offeror's proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP and specifically the **SCOPE OF WORK** in **Section Two**. When an interested offeror submits a proposal, it shall be considered a complete plan for accomplishing all the work specified in the RFP. The interested offeror's proposal must demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in the RFP.

Proposals submitted in response to this RFP will be evaluated in accordance with the following Proposal Requirements and Evaluation Criteria. **INCLUDE A "TABLE OF CONTENTS" AND ORGANIZE YOUR PROPOSAL IN THE FOLLOWING ORDER, AS ADDRESSED IN THIS SECTION:**

- 3.1 Transmittal Letter
- 3.2 Offer Form
- 3.3 Plan and Approach
- 3.4 Experience and Qualifications
- 3.5 Feasibility and Maximum Economic Benefit to State and HHFDC
- 3.6 Confidential Information
- 3.7 Exceptions
- 3.8 Additional Information

All proposal requirements listed as a “Mandatory Requirement” in this section must be addressed in Offeror’s proposal. PROPOSALS THAT DO NOT INCLUDE ALL MANDATORY SECTIONS WILL BE DEEMED NON-RESPONSIVE TO THIS RFP AND WILL NOT BE CONSIDERED FOR AWARD. Failure to address any other proposal requirements may also be deemed non-responsive and not considered for award.

3.1 TRANSMITTAL LETTER
(Proposal Requirement)

Provide a one- to two-page transmittal letter that summarizes Offeror’s proposal and confirms that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP. The transmittal letter should be in the form of a standard business cover letter on official business letterhead and signed by an authorized representative of Offeror.

If a joint partner(s) is involved, append a statement to the transmittal letter from each joint partner, signed by an individual authorized to legally bind the joint partner.

3.2 OFFER FORM
(Proposal Requirement)

Provide a signed Attachment 1, Offer Form OF-1, with the complete name and address of Offeror’s firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror’s proposal.

3.3 PLAN AND APPROACH
(Mandatory Requirement)

Provide a comprehensive plan of how Offeror proposes to use and develop the Property.

3.4 EXPERIENCE AND QUALIFICATIONS
(Mandatory Requirement)

Describe offeror’s qualifications and experience, including, but not limited to, the development and management experience offeror has and the capacity of the offeror and offeror’s team to undertake the Plan and Approach proposed for the Property.

List any team members who would be working with offeror on developing and/or managing the Property and include their resumes as well as a brief description of their roles. Indicate whether or not the member is an employee of offeror or a joint partner.

List and briefly describe any work offeror has done that showcases offeror’s experience and capabilities to execute its Plan and Approach for the Property and meet the requirements of this RFP. Include the name and contact information of at least three (3) references who can verify that such work was satisfactorily completed.

3.5 FINANCIAL FEASIBILITY
(Mandatory Requirement)

Provide a comprehensive financial proposal that identifies Offeror's proposed sources of funding for its Plan and Approach and the specific uses of each funding source for any construction phase planned as well as stabilized operations. Include an in-depth analysis of the financial feasibility of Offeror's proposal and describe in detail the economic benefits its proposal offers the State and HHFDC.

3.6 CONFIDENTIAL INFORMATION
(Proposal Requirement, *if applicable*)

Confidential information shall be submitted in accordance with Section 1.18.

3.7 EXCEPTIONS
(Proposal Requirement, *if applicable*)

Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where exception is taken, describe the exception taken, and provide a proposed alternative, if any.

Offeror initially should seek an informal resolution of any exceptions taken by notifying the RFP Contact in writing prior to the Deadline for Questions and Clarifications. Offeror's notice shall reference the RFP section where exception is taken, describe the exception taken, and provide a proposed alternative, if any. If Offeror's exception has not been resolved by the date on which proposals are due, Offeror shall include said exception in its proposal in accordance with the aforementioned provision.

3.8 ADDITIONAL INFORMATION
(Proposal Requirement, *if applicable*)

Any additional forms or information required or requested in the RFP and not specifically addressed in Section Three shall be marked appropriately and included at the end of the proposal.

SECTION FOUR

PROPOSAL FORMAT AND SUBMISSION

4.1 PROPOSAL FORMAT

Guidelines for formatting proposals:

- a. Proposal includes a one-page transmittal letter as the first page of the proposal.
- b. Proposal includes the Offer Form in Attachment 1 as the second page of the proposal.
- c. Proposal includes all content specified in Section Three in the order presented therein.
- d. Proposal is double-sided when possible. A double-sided sheet is considered equal to two pages.
- e. Proposal is prepared simply and economically, and is comprised of recyclable and recycled materials. Proposal is stapled rather than bound.
- f. There is no page limit restriction on proposals.

Please do not include sales or promotional materials as part of the proposal unless requested.

Economy of Presentation. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content. If any additional information is required by the State regarding any aspects of the Offeror's proposal, it shall be provided within five (5) working days.

4.2 PROPOSAL SUBMISSION

All proposals submitted in response to this RFP are subject to the terms and requirements of this RFP. All matters not specifically addressed in this RFP, or a subsequent contract entered into as a result of this RFP, will be governed by the Hawaii Administrative Rules as well as applicable Hawaii Revised Statutes and other rules pertaining to procurement and contracting.

Provide one (1) original hardcopy proposal marked "ORIGINAL" and five (5) copies of the original marked "COPY" in a sealed envelope or box to:

Stuart Kritzer, Asset Manager
Request for Proposals No. 14-005-PPMS
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

It is imperative to note that the Offeror must submit only one original and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL.

The sealed envelope or box containing proposals will have the following information provided on the outside of the package:

- a. RFP title
- b. RFP number
- c. Offeror name
- d. Offeror address

It is the Offeror's sole responsibility to ensure that its proposal is delivered and time-stamped at the location above prior to the Proposal Due date in Section One, as amended. Proposals not time-stamped at the location above by the Proposal Due date will be considered late and shall not be considered for award.

Proposal forms referenced in the RFP are included in Section Seven. Thoroughly complete and sign all forms that must be submitted with the proposal. Proposals must conform to the Proposal Requirements and Evaluation Criteria described in Section Three, as amended.

Proposals which are incomplete and not responsive to required portions of the RFP may be deemed unacceptable. Unacceptable proposals shall not be considered for award.

Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and indicate exact legal name in the appropriate spaces on Offer Form page OF-1. Failure to do so may delay proper execution of the contract. See Attachment 1.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

A proposal security is NOT required for this RFP.

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237 and, if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii GET and the applicable use tax at the current rates. To obtain a Hawaii Taxpayer ID number online, visit: <https://hbe.ehawaii.gov/>. Otherwise, visit the State of Hawaii Department of Taxation FAQs website at http://www6.hawaii.gov/tax/a7_faq.htm to find out more about obtaining a Hawaii Taxpayer ID number for GET and applicable Use tax purposes. If an Offeror is exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Offeror is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

SECTION FIVE

SELECTION AND AWARD

5.1 SELECTION

- a. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
- b. Proposals shall not be opened publicly, but shall be opened in the presence of at least two (2) government officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

- c. The evaluation committee selected by the Executive Director, shall evaluate the proposals in accordance with the evaluation criteria in Section Three. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
- d. Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary by HHFDC, then prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three (3) responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal.
- e. Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed Offeror. If, during discussions, there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors. The priority-listed Offerors shall be permitted to submit new proposals or to amend those submitted.
- f. Following any discussions, priority-listed offerors may be invited to submit a best and final offer (BAFO), if necessary. The evaluation committee reserves the right to have additional rounds of discussions with the top three (3) priority-listed offerors prior to the submission of the BAFO.
- g. The date and time for Offerors to submit their BAFO, if required, may be indicated in the RFP Timeline in Section One. This date, if indicated, is an estimate only. If Offeror does not submit a notice of withdrawal or a BAFO by the date indicated in the request for BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.

5.2 AWARD

- a. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Three, the evaluation committee will make its recommendation for award. The award shall be subject to approval by the HHFDC Executive Director. Approval by the HHFDC Board of Directors may also be required.
- b. A Lease will be awarded to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section Three.
- c. The contents of any proposal shall not be disclosed until after the lease is executed. Once the award is made, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary in accordance with all applicable laws should be identified by the Offerors and shall be excluded from access.
- d. The evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
- e. The terms and conditions of the RFP, any addenda issued, and the Lessee's proposal shall become a part of the Lease. All proposals shall become the property of the State of Hawaii.

SECTION SIX

SPECIAL PROVISIONS

6.1 AGREEMENT

Lessee shall be required to sign and execute a Lease agreement with HHFDC. A conflict in the Lease agreement and any of the following documents shall be resolved in the priority listed below with the Lease taking precedence over all other documents.

- a. Lease agreement, including all attachments, exhibits, and supplemental documents included in the Lease. See the sample Lease agreement in Exhibit A;
- b. RFP No. 14-005-PPMS, including all attachments, exhibits, and supplemental documents included therein; and
- c. Lessee's accepted proposal.

6.2 TERM OF CONTRACT

The Lease term and any extensions or renewals shall be as specified in Section One of the RFP. The option to extend the Lease will be at the sole discretion of the HHFDC. Submission of a proposal constitutes acknowledgement of the interested Offeror that the interested Offeror is able and willing to enter into an agreement up to the maximum allowable length of the Lease. If the Successful Offeror is unwilling or unable to fulfill the maximum allowable Lease term, the HHFDC reserves the right to assign the costs of re-solicitation to any payments owed under the Lease. These costs may include but are not limited to reproduction costs, staff time, and postage.

When interests of the State so require, the State may terminate the contract for convenience by providing six (6) weeks prior written notice to the Lessee.

6.3 INSURANCE REQUIREMENTS

Lessee shall acquire and maintain the insurance coverage specified below, in amounts not less than the amounts specified, for the entire performance period of the Contract, at the Lessee's own expense.

Lessee shall defend, indemnify, and hold harmless the HHFDC, the State of Hawaii and its departments, boards, and agencies, and all 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 Lessee or the Lessee's officers, employees, agents or subcontractors.

- a. Workers' Compensation

Lessee shall carry Workers' Compensation insurance in such form and amount to satisfy the applicable state Workers' Compensation Law. Workers' Compensation must be issued by an admitted carrier authorized to do business in the State of Hawaii.

b. Liability Insurance

The Lessee shall maintain the following minimum insurance limits and coverage, at no cost or expense to the State:

Coverage

Commercial General Liability
and
Automobile Insurance

Minimum Policy Limits

Lessee's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Lease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

Pollution Liability

Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee all arising out of Lessee's lease and use of the Leased Land. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$5,000,000. The policy shall name the State, Department of Land and Natural Resources and the Lessor as additional

insureds.

Property Insurance

Including Flood and Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Lessee, located on the premises. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. Coverage should be evidenced on form Acord 27, Evidence of Property Insurance.

Builder's Risk

Prior to commencement of any construction, Lessee shall procure an Inland Marine Builder's Risk coverage form providing coverage to protect the interests of the State of Hawaii, Lessor, Lessee, Lessee's contractors, sub-contractors, architects, and engineers, including property in transit on and off-premises, which should become a part of the project. The builder's risk insurance shall be written on an all risk, replacement cost, and completed value form basis for 100% of the projected completed value of current improvements to be constructed. Coverage should be evidenced on form Acord 27, Evidence of Property Insurance.

Contractor's Pollution Liability Insurance

Any general contractor contracted to build a building on the premises shall be required to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of

not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the State of Hawaii and Lessor as additional insured parties.

Each insurance policy required by the Lease shall contain the following clauses:

1. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
2. The State of Hawaii and Lessor are added as additional insured parties for operations performed on the property under this Lease.
3. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Lease.
4. Insurance shall include a cross liability or severability of interest clause.
5. If any of the above required insurance is cancelled before the expiration date thereof, Lessee shall provide Lessor with thirty (30) days advance written notice.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the leased premises, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Lease and on the premises, including operations performed outside the work area and all change order work.

Lessee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee enter into such an agreement on a pre-loss basis.

Lessee agrees to deposit with Lessor, on or before the effective date of this Lease, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Lease have been complied with. Lessee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Lessor during the entire term of this Lease. The certificates of insurance shall refer to this Lease.

Lessor shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Lease. If, in the reasonable opinion of Lessor,

the insurance provisions in this Lease do not provide adequate protection for Lessor, Lessor may require the Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

Lessor shall notify the Lessee in writing of any changes in the insurance requirements desired by Lessor. If the Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to the Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and the Lessee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Lessee shall have the right to contest Lessor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent the Lessee is liable therefor under Sections 11, 15, or 32 of the Lease. See Exhibit A.

All rights or claims or subrogation against the State of Hawaii and Lessor, their officers, employees, and agents are waived.

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

6.4 RESERVED

6.5 CONTRACT ADMINISTRATOR

For the purposes of this contract, an authorized representative of the Asset Management Section of the HHFDC shall be designated the Contract Administrator.

The HHFDC reserves the right to change the designated Contract Administrator. Any changes to the Contract Administrator shall be provided in writing to the Lessee. Once the Lessee has assumed management responsibilities for the property, all communications regarding approvals, reports, requests, and any other contractual item will be directed to the Contract Administrator.

6.6 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

Changes to the Lease may be modified only by written agreement signed by the HHFDC and Lessee representative authorized to sign contracts on behalf of the Lessee.

6.7 GOVERNING LAW: COST OF LITIGATION

The validity of the Lease and any of its terms or provisions, as well as the rights and duties of the parties to the Lease, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of the Lease shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part to any litigation commenced by or against the Lessee in connection with the Lease, the Lessee, shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

6.8 PRICING

The pricing shall be the all-inclusive cost to the State, including labor, materials, supplies, all applicable taxes, such as the GET and Use Tax, and any other costs incurred to provide the services specified in the RFP. No other costs will be honored.

6.9 ADDITION OR MODIFICATION OF TERMS AND CONDITIONS

The State and HHFDC reserves the right to add or modify terms and conditions of the Lease. These additional or modified terms and conditions will be within the scope of the RFP.

6.10 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written agreement. No performance or payment bond is required for this contract.

No work is to be undertaken by the Lessee prior to the effective date of the agreement. The State of Hawaii is not liable for any work, costs, expenses, loss of profits, or any damages whatsoever incurred by the Lessee prior to the official starting date.

6.11 RESERVED

6.12 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the State. No subcontract shall under any circumstances relieve the Contractor of his/her obligations and liability under this contract with the State.

6.13 RESERVED

6.14 NON-DISCRIMINATION

The Lessee shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Lessee or in participation in the benefits of any program or activity funded in whole or in part by the State.

6.15 CONFLICTS OF INTEREST

The Lessee represents that neither the Lessee, nor any employee or agent of the Lessee, 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 Lessee's performance of this contract.

6.16 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.

6.17 SEVERABILITY

In the event that any provision of the Lease is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Lease.

6.18 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS 11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

6.19 COMPLIANCE WITH APPLICABLE LAWS

Lessee must comply with all applicable local, state, and federal laws, rules, and regulations.

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

Attachment 1: OFFER FORM, OF-1

Exhibit A: Sample Lease Agreement*

Exhibit B: Property Map

*** HHFDC reserves the right to make any and all changes to this Sample Lease Agreement prior to the full execution thereof. This sample is provided as a reference only and should not be construed to be the final terms and conditions upon which the Property will be leased.**

**OFFER FORM
OF-1**

**RFP No. 14-005-PPMS
LEASE OF VACANT PARCEL LOCATED AT 3560 LOWER HONOAPIILANI
HIGHWAY, LAHAINA, MAUI, HAWAII 96761, TMK: (2) 4-4-001:026**

**STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**

Stuart Kritzer, Asset Manager
Hawaii Housing Finance and
Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Dear Mr. Kritzer:

The undersigned has carefully read and understands the terms and conditions specified in this Request for Proposals, including all attachments, exhibits, and addenda, and in the General Conditions, attached in Exhibit A and made a part of the Contract; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, the undersigned:

- 1) is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts;
- 2) is certifying that the proposal submitted with this offer form was independently developed without collusion with other proposers;
- 3) is certifying that Offeror shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Lessee or in participation in the benefits of any program or activity funded in whole or in part by the State;
- 4) acknowledges and agrees that Offeror shall comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body;
- 5) acknowledges and agrees that Offeror shall comply with all the requirements, provisions, terms, and conditions specified in this RFP;
- 6) is declaring that the information contained in his/her proposal is true and accurate; and
- 7) is certifying that he/she is authorized to submit this offer.

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other: _____

*State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____ Federal Tax I.D. No. _____

Payment address (if other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____

Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

**** Exact Legal Name of Company**

(Offeror)

****If Offeror is a “dba” or a “division” of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed: _____**

EXHIBIT A

* HHFDC reserves the right to make any and all changes to this Sample Lease Agreement prior to the full execution thereof. This sample is provided as a reference only and should not be construed to be the final terms and conditions upon which the Property will be leased.

REGULAR SYSTEM

LAND COURT SYSTEM

Return by Mail (X) Pickup () To:

Land Court () Regular () Double (X)

Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Attention: Stuart Kritzer, Asset Manager

Total pages _____

TYPE OF DOCUMENT: Ground Lease

PARTIES TO DOCUMENT:

Lessor: Hawaii Housing Finance and Development Corporation
Lessee: XXXXXXXX.

PROPERTY DESCRIPTION

DOCUMENT NO.

DOCUMENT NO.
TRANSFER CERTIFICATE OF
TITLE NO:

TAX MAP KEY NO. (1) XXXXXX

GROUND LEASE
ADDRESS OF PARCEL
KAPOLEI, HI 96707

THIS INDENTURE ("Lease"), made this _____ day of _____, 2012, by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, ("Lessor"), and **DEVELOPERS NAME**, a Hawaii Corporation whose principal place of business and mailing address is ("Lessee");

W I T N E S S E T H:

The Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at XXXXXX, Kapolei, HI 96707 and more particularly described in Exhibit "A" which is attached and incorporated by reference.

It being expressly understood and agreed by Lessor that Lessee is the owner of land and real property improvements and fixtures which are to be constructed or hereafter situated on such land described in Exhibit "A"; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9 and 30 of this Lease, the buildings and real property improvements and fixtures shall not be separated from the premises demised hereby; and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent as provided below in Section 13 pertaining to "Assignments of Lease" even though not expressly mentioned or described in the conveyance or other instrument.

TO HAVE AND TO HOLD the premises unto the Lessee for the term of: SIXTY-FIVE (65) years, commencing on the _____ day of _____, 20____, up to and including the _____ day of _____, 20____, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Lessor, an annual rental as provided hereinbelow:

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall

mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Reserving unto Lessor, its successors and assigns, the right to subdivide the premises and designate easements thereon and thereupon to grant such easements as shall be shown on a duly approved subdivision map to any public utility, or governmental authority or adjoining or nearby owner(s) of land and to record any documents against the premises, as amended, with respect to such grant(s); provided that in no event shall any such recorded document or easement granted with respect to the premises, as amended, after the date hereof (i) contravene, hinder or impair any right or privilege granted Lessee in the Lease, (ii) result in any material interference with the use by Lessee of the premises, for the purposes permitted hereunder or result in damage to existing structures or improvements and/or un-repaired damage to existing water, sewer, electrical, or cable systems and roads.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term.

3. Utility services. The Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as

to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against any one based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall be responsible for the maintenance of the property during the term of this Lease and shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises. Lessee shall be responsible for responding to any complaints against the premises and for resolving any issues arising from the complaints, including but not limited to, taking action to halt any waste, nuisance, or unlawful use of the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall develop a XXXXXX. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of the Lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at its sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted. Lessee shall also, at its own expense, make any and all repairs and perform all work required to keep the Property, buildings, and improvements on the premises in compliance with all applicable County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Lease, and shall

defend, indemnify, and hold harmless the Lessor from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or cause the premises to be used for the purposes of constructing, operating and maintaining a XXXX, together with appurtenant and supportive space, as described in Exhibit "B," attached hereto and incorporated herein by reference, unless otherwise agreed to by Lessor in writing ("Project"). Lessee shall ensure that the use and occupancy of the Property complies with all applicable County, State, and Federal laws and regulations.

13. Assignments of Lease, etc. Lessee shall not assign or mortgage this Lease without the written approval or consent of Lessor. A permitted assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have approved or consented to the assignment or mortgage and shall have received either a true executed copy of such assignment or written notice thereof

14. Subletting. Lessee shall expressly be allowed to rent or sublet the whole or any portion of the premises consistent with the provisions of Section 12 above without the approval or consent of Lessor.

15. Indemnity. The Lessee shall defend, indemnify, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (a) the use, occupancy, maintenance, or enjoyment of the premises; (b) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and (c) from and against all actions, suits damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this Lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Insurance Requirements. Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policy or policies of insurance maintained by the Lessee shall provide the following minimum policy limits and

coverages:

a. Workers' Compensation

Lessee shall carry Workers' Compensation insurance in such form and amount to satisfy the applicable state Workers' Compensation Law. Workers' Compensation must be issued by an admitted carrier authorized to do business in the State of Hawaii.

b. Liability Insurance

The Lessee shall maintain the following minimum insurance limits and coverage, at no cost or expense to the State:

Coverage

Commercial General Liability
and
Automobile Insurance

Minimum Policy Limits

Lessee's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Lease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

Pollution Liability

Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee all arising out of Lessee's lease

and use of the Leased Land. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$5,000,000. The policy shall name the State, Department of Land and Natural Resources and the Lessor as additional insureds.

Property Insurance

Including Flood and Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Lessee, located on the premises. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. Coverage should be evidenced on form Acord 27, Evidence of Property Insurance.

Builder's Risk

Prior to commencement of any construction, Lessee shall procure an Inland Marine Builder's Risk coverage form providing coverage to protect the interests of the State of Hawaii, Lessor, Lessee, Lessee's contractors, sub-contractors, architects, and engineers, including property in transit on and off-premises, which should become a part of the project. The builder's risk insurance shall be written on an all risk, replacement cost, and completed value form basis for 100% of the projected completed value of current improvements to be constructed. Coverage should be evidenced on form Acord 27, Evidence of Property Insurance.

Contractor's Pollution Liability Insurance

Any general contractor contracted to build a building on the premises shall be required to obtain and maintain

Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the State of Hawaii and Lessor as additional insured parties.

Each insurance policy required by the Lease shall contain the following clauses:

1. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
2. The State of Hawaii and Lessor are added as additional insured parties for operations performed on the property under this Lease.
3. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Lease.
4. Insurance shall include a cross liability or severability of interest clause.
5. If any of the above required insurance is cancelled before the expiration date thereof, Lessee shall provide Lessor with thirty (30) days advance written notice.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the leased premises, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Lease and on the premises, including operations performed outside the work area and all change order work.

Lessee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of

Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee enter into such an agreement on a pre-loss basis.

Lessee agrees to deposit with Lessor, on or before the effective date of this Lease, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Lease have been complied with. Lessee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Lessor during the entire term of this Lease. The certificates of insurance shall refer to this Lease.

Lessor shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Lease. If, in the reasonable opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor, Lessor may require the Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

Lessor shall notify the Lessee in writing of any changes in the insurance requirements desired by Lessor. If the Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to the Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and the Lessee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Lessee shall have the right to contest Lessor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent the Lessee is liable therefor under Sections 11, 15, or 32 of the Lease. See Exhibit A.

All rights or claims or subrogation against the State of Hawaii and Lessor, their officers, employees, and agents are waived.

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

18. Property insurance. The Lessee, at its cost and expense, shall procure and

maintain at all times during the term of this Lease, fire and extended coverage insurance as set forth above in Section 17 with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the premises in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Lessor; provided, however, that with the approval of the Lessor, the Lessee may surrender this Lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this Lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this Lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid. Notwithstanding the foregoing, this lien shall be subordinate in all respects to any mortgage which Lessee shall be allowed to place on this Lease or to which Lessor shall consent as provided in this Lease. Upon Lessor's request, Lessee shall execute a UCC-1 statement for recording in the Bureau of Conveyances, State of Hawaii, memorializing Lessor's security interest.

20. Mortgage. Except as provided in this Lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease without the prior written approval of the Lessor and any mortgage, hypothecation, or pledge without Lessor's approval shall be null and void.

Upon due application and with the written consent of the Lessor, the Lessee may mortgage or create a security interest in Lessee's leasehold interest. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee. The interest of the mortgagee or holder

shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, United States Department of Agriculture Rural Development, formerly (Farmers Home Administration), or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

21. Breach. Time is of the essence in this agreement and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this Lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor may at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this Lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor, or shall be removed by Lessee, in either case, at no cost or expense of Lessor; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages. If this Lease is recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction.

22. Right of holder of record of a security interest. During the continuance in effect of any authorized mortgage of this Lease, Lessor will not terminate this Lease because of any default on the part of the Lessee to observe and perform any of the covenants or conditions herein contained if the mortgagee or its assigns, within one hundred twenty (120) days after Lessor has mailed to the mortgagee or its assigns at the last known address thereof a written notice of intention to terminate the interest of the Lessee under this Lease for such cause, shall cure such default, if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter perform all the covenants of this lease capable of performance by the mortgagee or its assigns until such time as this Lease shall be sold upon foreclosure of such mortgage. In case of such undertaking, Lessor will not so terminate within such further time as may be required by the mortgagee to complete foreclosure of such mortgage or other remedy thereunder provided (i) that such remedy is pursued promptly and completed with due diligence, and (ii) that mortgagee has paid all rent and other charges

accruing hereunder as the same become due, and upon foreclosure sale of this Lease the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance by due diligence. Any default consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against said premises junior in priority to such mortgage shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said one hundred twenty (120) day period and thereafter prosecuted in diligent and timely manner. Ownership of Lessor's interest and Lessee's interest by or for the same person shall not affect the merger thereof without the prior written consent of any mortgagee to such merger.

This Lease cannot be amended without the consent of the leasehold mortgagee.

Lessor agrees to provide "estoppel" certificates when requested by the leasehold mortgagee, to establish that there have been no unapproved changes to this Lease, this Lease is in full force and effect, there are no known defaults, and the lease rent has been paid.

Lessor agrees not to accept a voluntary surrender of this Lease at any time when the leasehold estate is encumbered by a leasehold mortgage.

23. Condemnation. If at any time, during the term of this Lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor, State of Hawaii, or the City and County of Honolulu and their agents, representatives, successors or assigns shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor, State or City and County of Honolulu shall not interfere unreasonably with Lessee's use and enjoyment of the premises.

25. Reserved.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this Lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this Lease, when applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified in this Lease for the Lessee to comply, observe, and perform any of the Lease terms, conditions, and covenants.

28. Reserved.

29. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto Lessor possession of the premises, together with all improvements existing or constructed thereon, or Lessee shall remove such improvements, at the option of the Lessor, in either case, at no cost or expense of Lessor. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the Lease.

31. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased "AS IS."

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon

Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials on the premises, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises.

Lessee agrees to defend, indemnify, and hold harmless Lessor from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession or elsewhere if caused by Lessee or persons acting under Lessee. This covenant shall survive the expiration or earlier termination of the Lease.

For the purpose of this Lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

33. Hawaii law. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

34. Exhibits - Incorporation in Lease. All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

35. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Lease.

36. Partial invalidity. If any term, provision, covenant, or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

37. Time is of the essence. Time is of the essence in all provisions of this Lease.

38. Archeological sites. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 587-0047 in compliance with Chapter 6E, Hawaii Revised Statutes ("HRS").

39. Reserved.

40. Counterparts. This Lease may be executed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

[The remainder of this page is blank. The next page is a signature page.]

EXHIBIT A

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee:

Approved by the Board of Directors
Of Hawaii Housing Finance and
Development Corporation at its meeting
held on

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION

By _____

Karen Seddon
Executive Director

"Lessor"

APPROVED AS TO FORM:

Deputy Attorney General

NAME OF DEVELOPER

By _____

"Lessee"

Reviewed by _____, _____

EXHIBIT A

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

On this _____ day of _____, 200____, before me appeared KAREN SEDDON, to me personally known, who, being by me duly sworn, did say that she is the EXECUTIVE DIRECTOR of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of said HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION; that this ____ page of Ground Lease, , Dated _____2012 was signed and sealed in behalf of said HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION by authority of its Board of Directors, and said KAREN SEDDON acknowledged said instrument to be the free act and deed of said HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION.

Name: _____
 Notary Public, State of Hawaii
 1ST Judicial Circuit
 My Commission Expires: _____

EXHIBIT A

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

On this _____ day of _____, 2009, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____, a Hawaii Corporation, that the company has no seal; that this _____ page of Ground Lease, , dated _____ was signed on behalf of _____ by authority of its Board of Directors; and that said _____ acknowledged that said instrument to be the free act and deed of said corporation. .

Name: _____
 Notary Public, State of Hawaii
 1st Judicial Circuit
 My Commission Expires: _____

EXHIBIT A

(Legal description of the Property)

SAMPLE

EXHIBIT "B"

USE RESTRICTIONS

1. Review of Project operations. Lessee shall be responsible for the operation of the Project. The Project shall be operated for the use and purpose described by the terms of this Lease. Lessor and Lessee acknowledge that the lease rent provided in this Lease is significantly below market lease rent in order to minimize the fees and charges to the end users. To ensure furtherance of this objective, Lessor shall have the right, but not the obligation, to a review of all aspects of Lessee's operation of the Project on a regular basis.

a. Annual Operating Budgets. Lessee shall submit to Lessor an operating budget for the upcoming calendar year no later than (30) days prior to the beginning of each calendar year. The operating budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incidental to the operation of the Project, and shall show the expected revenue to pay such expenses. The expenses incurred and disbursements shall not exceed the reasonable and necessary amount thereof.

b. Annual Audited Financial Reports. No later than four (4) calendar months after each calendar year, Lessee shall submit to Lessor audited financial reports of the Project operations for the calendar year just ended. The reports shall be prepared by an independent certified public accountant who shall be approved by Lessor. The annual report shall also include a description of the services offered to end users and the charges for the services provided.

c. Fiscal Year. Upon request by the Lessee and subject to approval by the Lessor, references to the calendar year may be Lessee's fiscal year.

d. Inspections. Equipment, buildings, plans, offices, devices, books, contracts, records, documents, and other papers relating to the Project shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any time by Lessor and its duly authorized agents. Lessee or its agents shall retain copies of all written contracts or

other instruments which affect the Project and the leased premises.

e. Inquiries. At the request of Lessor, its agents, employees, or attorneys from time to time, Lessee shall give specific answers to questions relative to the income, assets, liabilities, contracts, operation, and condition of the Project and the leased premises and any other information regarding the Lessee or the Project and the leased premises.

f. Licenses. Lessee shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect any licenses to operate the Project from the applicable licensing agency(s).

2. Termination for illegal purposes. At any time during the term of this Lease, Lessor shall have the right, notwithstanding any other provision to the contrary, to immediately terminate this Lease if the premises or any part of the premises, appurtenances or improvements are used, or intended to be used, in any manner or in part, to commit or to facilitate the commission of a crime or to endanger public safety.

3. Incorporation of Development Agreement. This Lease incorporates the terms and conditions of the Development Agreement between the Lessor and Lessee for the development of the Project, dated _____. An event of default under the Development Agreement shall constitute an event of default under this Lease.

End of Exhibit "B"

