

## Response to Senator Kim's Sept. 26 Information and Document Request

**1. A complete breakdown of the running total of costs incurred by the University of Hawaii relating to the failed Stevie Wonder Benefit Concert and other relevant costs. Other relevant costs shall include but not be limited to all costs associated with legal services provided, public relations services, and any other services rendered to assist in the preparation and participation in the September 24th and October 2nd informational briefings of this Committee; provided that cost estimates shall be included where actual billings or detailed expenses are not yet available;**

The Agreement for Services produced on Sept. 20, 2012 gave an estimate of 'not to exceed \$25,000' for services and provided a procedure for change orders and price adjustments, if and when circumstances justify them.

**2. Any documents, records and communications related to the creation of the Director of External Affairs and Community Relations position. Also, please provide information as to whether the establishment of this position required that certain personnel policies and procedures be followed and adhered to, and, if so, please explain how such policies and procedures were followed or explain otherwise;**

Copies of the documents, records and communications related to the creation of the Director of External affairs position are bates-stamped 3153 to 3161 and attached.

Part II, Section C, of Section 9-12, Executive and Managerial Personnel Policies, Board of Regents Policy provides that "the University may reassign such personnel to any executive or managerial position at its discretion during the term of an appointment without loss in pay."

Under the circumstances and in consideration of James Donovan's qualifications, the University decided to reassign Mr. Donovan when his appointment ends in March or upon the appointment of a new athletics director, whichever occurs sooner. The Chancellor has authority to approve the creation of the position and secure the funding for it and he has been working with the system offices to prepare for the establishment of the class.

**3. A copy of any and all contracts executed between the University of Hawaii and attorney Mark Bennett;**

Copies of the nine contracts between the University of Hawaii and Mark Bennett are bates stamped 3180 to 3346 and attached. The subjects of the service covered by two of the contracts are redacted at bates-stamped pages 3234, 3238 and 3263, to protect privacy of the individuals involved.

**4. The scope of authority and proposed timeline of all phases of work to be undertaken and completed by the Operational & Financial Control Improvement Advisory Task Group (Task Group);**

A copy of the documents describing the scope of authority and phases of work of the task force are bates-stamped 3173 to 3179 and attached. The Regents asked the Task Group to

provide their phase #1 report or advise the Regents on their progress during the October 18, 2012 meeting.

**5. The method, criteria and process by which Task Group members were selected to participate in the Task Group;**

According to Article II Section D.7. of the Bylaws of the Board of Regents and to facilitate the Board's oversight, the Chairperson proposed at the Regents September 5, 2012 meeting the formation of the Operational and Financial Controls Improvement Advisory Task Group to guide the scope of the evaluation, monitor activities and progress related to the evaluation, and review the merits and efficacy of the proposed plans for improvement. The Chair proposed four members of the Board (each members of the Board's Committee on University Audits including the Committee's Chair and Vice Chair) and professionals from the Hawaii business community with knowledge and experience in providing advisory, business consulting and assurance services. The Regents discussed and deliberated formation of the proposed Task Group and as part of its action, the Board approved the proposed membership of the Task Group with the addition of Regent Ben Kudo.

**6. Under what procurement provision was the public accounting firm KMH LLP selected as a consultant for the Task Group, including but not limited to the costs associated with the hiring of KMH LLP as a consultant;**

KMH was selected according to Haw. Rev. Stat. § 103D-304. The contract is for a fee not to exceed \$50,000 for phase 1 of the work.

**7. Any estimated and already incurred costs related to the consultant contract of the Task Group;**

It is estimated that as of September 30, 2012, the consultant has incurred fees of approximately \$20,000 on their contract to assist the task group.

**8. A list of all University administration settlement agreements over \$500,000, including but not limited to the names of the individuals involved, the dates of settlement, and the total amounts of such settlements;**

- a) Evan S. Dobbelle; August 14, 2004; \$1,340, 000
- b) UH Lab School fire; April 2010; \$7,334,885.99 (An insurance company paid the University and required a "settlement" in exchange for those insurance proceeds.)
- c) Phillippe Gross v. UH; January 25, 2012; \$656,026.00
- d) Auction rate securities (Citicorp); March 7, 2011; difference between \$74,300,000.00 and the market value of University's portfolio of auction rate securities (ARS), with approximate value of the settlement being between \$15 million and \$18 million, but potentially more or less.

With respect to the ARS matter, the value of the settlement to the University was equivalent to the difference between \$74,300,000.00 (the approximate par value of the University's ARS portfolio) and the market value of the University's ARS portfolio, with the difference likely between \$15 million and \$18 million, but potentially more or less.

The par (approximate purchase) price of the University's ARS portfolio, in early 2011, was approximately \$74.3 million. There was no ready market for the securities at that time. Thus, approximating market value was difficult. It is likely that there would have been a 20%-25% discount to par, or about \$15 million-\$18 million, but it is certainly possible the difference between par and actual market value (which, as noted, would have been difficult to determine, as there was no ready market), could have been materially larger or smaller. A Bloomberg March 2010 web article estimated that there had been a loss to the State's ARS portfolio (discussed below) of about 25%. Applied to the University's holdings, it would equal a potential loss of about \$18 million.

The State of Hawai'i (which at one time had an ARS investment of over \$1 billion) was able to negotiate a settlement agreement with CGMI that required CGMI to repurchase the State's remaining ARS investment by 2015 for at least its par value, meaning that the State would at least recover the principal amount of its ARS investment. Mark Bennett, who was the State's Attorney General at the time, led the State's negotiating team. A Bloomberg web article at the time of the settlement quoted an expert familiar with the issues who described the settlement as "a big win for Hawaii."

In the absence of a settlement agreement similar to the one between the State of Hawai'i and CGMI, there was no mechanism in place to sell the University's auction rate securities (at any price), and the University was at risk to lose its entire investment amount (although despite the securities not being very liquid, a market at a big discount could likely have been found). Bennett was willing to assist the University in negotiating a similar settlement with CGMI to help assure that the University would be able to least recover the principal amount of its ARS investment, however, Bennett requested, from the beginning, that his work be Pro Bono (free of charge). Bennett negotiated with CGMI and Citigroup, pursuant to which CGMI signed a written agreement to buy back all of the UH's distressed \$74.3 million auction rate securities portfolio by 2015, which obligation was guaranteed by Citigroup. Pursuant to that agreement, CGMI has now bought back the entire portfolio (at par, plus accrued interest).

- d) Townsend Hawai'i LLC matter; October 28, 2010; \$2,500,000.00
- e) Judith Vergun v. UH; November 2010; \$800,000.00

With respect to the Judith Vergun matter, per the terms of the settlement agreement, UH agreed to Plaintiff a total of \$800,000 in installments of:

- \$400,000 with 30 days of settlement
- \$200,000 12 months after settlement
- \$200,000 24 months after settlement

ACE Insurance agreed to pay \$700,000 out of the \$800,000 settlement amount. UH has paid the first two installments and received reimbursement from ACE (\$600,000 to date). After the final payment of \$200,000 is made, ACE will reimburse UH \$100,000.

**9. Copies of all subcontract agreements that were executed in conjunction with the contract between the University of Hawaii and Torkildson, Katz, Moore, Hetherington, and Harris (Torkildson);**

Torkildson advised the University that it deemed consultation with Hoakea necessary, furnished information as to the reasons for the consultation and the estimated cost and exchanged confirming e-mails with the University before proceeding.

**10. Copies of all subcontract agreements that were executed in conjunction with the contract between the University of Hawaii and Cades Schutte LLP;**

There are no such agreements.

**11. The process by which the Torkildson law firm was selected to provide services relating to the failed Stevie Wonder Benefit Concert investigation and any preparation for this Committee's informational briefings, including the names of the committee members who selected the Torkildson law firm for the contract in question and information on whether the membership for these types of professional service contracts remains static or change from contract to contract and any other related details;**

The eight staff attorneys in the Office of General Counsel are a streamlined, concentrated core providing legal services to the University system statewide. It would be impossible for such a small staff to manage the volume of complaints, cases, actions, and matters that come in every year, particularly when many frequently require attorneys with specialized skills in a particular area. The specific instances in which the OGC seeks to hire outside counsel are as follows: (1) Conflict of interest. If there is a legal conflict of interest with the office being able to represent more than one party in the case (for instance, it was an employee complaint against an employee and UH and UH is the employer); (2) Specialized knowledge required. If there was a particular specialized field or area of knowledge that is not adequately covered by or represented on the current staff; or (3) Complex litigation. It is a large, complex litigation case that would require dedication of significant attorney and staff time away from other priority legal matters and occupy an inordinate amount of attorney and staff time to properly supervise and monitor. At least instances (1) and (2) applied to the selection of the Torkildson fir,

When the current General Counsel joined the University system in the latter part of 2006, she established a more formal process to select and retain outside counsel. This process involves the steps listed below and is followed as a regular practice:

1. Request for Qualifications. Annual RFQ (Request for Qualifications) conducted through both advertising and internal industry communication. Names, expressions of interest, statements of qualifications, and resumes received by the University Procurement Office are forwarded to OGC. One or more committees made up of

members of the OGC office review all of the submissions and determines whether the attorneys are qualified to perform legal services in the areas for which they applied (e.g., creates an “approved vendor” list).

2. Need for outside counsel. OGC determines whether outside counsel is needed in a particular case.

3. Screening committee. Three-member internal committee made up of staff attorneys, excluding the General Counsel, evaluates the listing of qualified attorneys in the relevant field or fields of law. The screening committee ranks the top 3 attorneys as to suitability for a particular case and submits them to the General Counsel for consideration. The screening committee frequently consults with clients regarding the type of attorney they seek to assist them, particularly if it is a specialized area of law.

4. Selection. The General Counsel selects from the list submitted by the screening committee. Although GC has the prerogative to choose an attorney not ranked first by the screening committee, the General Counsel almost always selects the top ranked attorney, as recommended by screening committee. Additionally, if it is discovered after the selection that the first ranked attorney has a legal conflict and is unable to accept the matter from the University, the General Counsel may select another attorney from the recommended list submitted by the screening committee.

5. Compensation. Rates and specific attorneys who staff any matter are negotiated by the General Counsel to obtain the optimum rates and results on behalf of the University. If no agreement can be reached, then the General Counsel may select the next ranked attorney and commence negotiations toward a contract.

The current selection system was specifically created by the current General Counsel: (a) so that selection of outside counsel is handled in a professional, transparent, and fair manner and (b) to help ensure that the attorney selected was well qualified to handle the matter, bringing the experience, skills, and expertise necessary to best position the University for success and capable of delivering quality legal services in a timely manner. The selection system was followed in the selection of the Torkildson firm.

Documents relating to this response are bates-stamped 3348 to 3383 and attached.

**12. A detailed accounting of the number of hours spent redacting documents in Binders 9 & 10, as provided to this Committee, as well as an explanation as to the guidelines followed in making such redactions, including actions taken in compliance with the open records law;**

University Human Resources spent about an hour and a half redacting documents in Binders 9 & 10, for personal privacy reasons.

**13. Copies of employment contracts, professional development leave agreements and tenure agreements between the University of Hawaii and Virginia Hinshaw;**

There are no employment contracts, professional development leave agreements or tenure agreements between the University of Hawaii and Virginia Hinshaw.

A copy of the memorandum regarding professional development leave is bates-stamped 3162 to 3165 and attached.

**14. Copies of employment contracts and tenure agreements between the University of Hawaii and Rose Tseng;**

A copy of the appointment agreement between the University of Hawaii and Rose Tseng is bates-stamped 3166 to 3172 and attached.

**15. Any and all contracts or documents, records and communications related to the investigation of Greg McMackin or any other individual associated with the University of Hawaii at Manoa athletics program that resulted in the contracting of professional services to perform investigations, as discussed at the September 24<sup>th</sup> informational briefing;**

The University is unaware of any investigation with regard to Greg McMackin specifically, especially of the type that Jim Donovan referred in his Senate testimony last week.

Purchase orders issued by the Athletic Department regarding two investigations related to other individuals and conducted by Dennis Chong Kee from the Cades Schutte firm are bates stamped 3384 to 3386 and attached. The subject of the service covered by one of the two purchase orders is redacted at bates-stamped page 3386, to protect privacy of the individuals involved.

**16. Names of members of the Board of Regents consult group and citation to which statutory provision or Board Policy allows for the formation of;**

Board of Regents Chair Eric Martinson and Vice Chairs James Lee and Carl Carlson belong to the consult group.

Haw. Rev. Stat. §92-2.5(a) provides that: "Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board." The provision relates to discussion between board members. It permits any two board members to meet with the President as long no commitment to vote is made or sought. After the legislature authorized a second Vice Chair for the board in 2011, Mr. Lee clarified with OIP Director Cheryl Kakazu that the Chair and two Vice Chairs could meet with the President to discuss and develop the Board of Regents meeting agenda, as long as no vote commitment is made or sought.

Haw. Rev. Stat. § 92-2.5(g) provides that: “Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.” Haw. Rev. Stat. §26-35(a) provides:

(a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:

(1) The head of the department shall represent the board or commission in communications with the governor and with the legislature; unless the legislature or a legislative committee requests to communicate directly with the board or commission;

(2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department;

(3) All rules adopted by the board or commission shall be subject to the approval of the governor;

(4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws;

(5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department;

(6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission;

(7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department; and

(8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.

Based on Haw. Rev. Stat. §26-35(a), the President, Chair and Vice-chairs may discuss the following matters: Communications with the Governor (26-35(a)(1)); finance and budget items (26-35(a)(2)); employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board (26-35(a)(4)); purchases (HRS 26-35(a)(5)), and allocation of space (HRS 26-35(a)(6)). They may not discuss judicial or quasi-judicial functions to be conducted by the board (HRS 26-35(a)(7)).

**17. Who has the responsibility to oversee any legal consultant(s) hired by the University of Hawaii;**

The Office of the Vice President for Legal Affairs and University General Counsel (for the sake of brevity, hereinafter referred to as “OGC”) has the primary responsibility of overseeing the work of attorneys retained to represent the University in various legal matters. The only exceptions are when it is determined that: (a) more direct and frequent interaction is required between the client administrators and the University’s outside counsel (e.g., trial or hearing preparation, negotiations, urgent or emergency matters, etc.) (“Direct contact exception”) or (b) the OGC’s involvement should be eliminated or scaled back because of a potential or actual conflict of interest (“Conflict of Interest exception”). Other than these relatively rare exceptions, the OGC works closely with the University’s Office of Procurement and Real Property Management (OPRPM) and the respective University fiscal offices and monitors the work of the University’s outside counsel (e.g., often offering comments, suggestions, and input as to: (a) strategy and approach as to litigation and proposed transactions and (b) specific documents, agreements, and contracts).

Except for the Direct contact exception and the Conflict of Interest exception, the OGC also reviews all of the legal service invoices submitted by the University’s outside legal counsel to: (1) ensure the work was appropriately within the scope of the client's legal needs as specified in the legal services agreement and (2) the fees and costs assessed were reasonable and did not include any inappropriate charges (i.e., food).

An example of the Direct contact exception is the handling of the legal matter relating to the permitting for and construction of the Thirty Meter Telescope (“TMT”) within the Mauna Kea summit area that the University is leasing from the State Board of Land and Natural Resources (collectively the “TMT Work”). The outside counsel for the TMT Work works directly with the client administrators. Because the OVPLAGC is not closely involved with the TMT Work: (1) OGC reviews the legal service invoices for the TMT Work to confirm whether the fees and costs were reasonable and that they do not contain any inappropriate charges and (2) approval of the TMT Work invoices are also obtained from the client administrators to confirm that the TMT Work performed was appropriately authorized and within the scope of the client’s legal needs.

An example of the Conflict of Interest exception is the handling of the legal matters that have arisen in the aftermath of the Stevie Wonder matter. The University retained the law firm of Torkildson Katz Moore Hetherington & Harris (“Torkildson”) to represent the University in these matters (“SW Matter”). Outside counsel was retained for this because the OGC was deemed to have a conflict of interest. Consequently, the OGC will not be involved with



overseeing the SW Matter or reviewing any of the legal service invoices submitted by Torkildson. Under their legal services agreement to perform the work for the SW Matter, Torkildson will instead be reporting directly to the University's President and Board of Regents, who will also be primarily responsible for reviewing any legal service invoices.

The University has in the past permitted the University's outside legal counsel to retain sub-consultants to perform work that the University's outside legal counsel have deemed necessary to complete their work (e.g., to obtain advice regarding a particular legal issue or specialty, geographic based expertise, and survey work).

Excluding matters falling within the Conflict of Interest exception, the OGC also reviews the sub-consultant invoices submitted by the University's outside counsel to verify that the work performed was within the approved scope, reasonable, and appropriate. For matters falling within the Conflict of interest exception, such as the Torkildson legal services agreement for the SW Matter, review of the sub-consultant invoices would be completed by someone other than the OGC.

**18. Who has the responsibility to evaluate the work of consultants that are hired by the University of Hawaii to ensure that the contracted for services are satisfactorily completed and in a timely manner?**

See answer to question #17.

Director of External Affairs and Community Relations for the University of Hawai'i at  
Mānoa (UHM) Land Grant Mission Initiative

The purpose of this position is to develop and execute multi-channel brand marketing and promotional programs that promote the growth of UHM and its brand recognition as a premier land grant institution. This position is responsible for targeting the University community, community at large and higher education community to increase their awareness of the UHM brand, fulfilling its land grant missions, and increasing support for UHM.

**Duties and Responsibilities**

The Director serves as the authority and promoter of the UHM brand, ensuring consistent brand expression through all constituent consumer and cultural touch points, both external and internal with responsibility for, but not limited to:

**35% Marketing/Branding Plan Development and Execution**

- Design, plan, and implement a marketing plan for UHM that includes a rolling marketing and promotional calendar to inform communications, promotional initiatives, and engage the target supporters (existing and potential) with the brand based on
  - Marketing plan including marketing strategies, issues analysis, vision, budget, objectives and lifecycle recommendations for campus and unit brands and managing the development of campus promotional materials;
  - Strategies and marketing designs and activities plan and activities designed to establish and maintain brand presence in the market;
  - Definition of product strategies and creation of road maps;
  - Creation of marketing plans geared toward specific target audiences; and
  - Application of state-of-the-art and emerging strategies, techniques, tactics, tools and collaterals that result in effective product positioning in the market.
- Lead the creative development of brand themes that convey the brand point-of-view, and target audiences.
- Ensure best practices in the development of marketing programs including the writing and sharing of strong creative briefs that will result in creative

communications that are on strategy, on brand, and on deadline within the master timeline for implementation.

- Support and facilitate development and implementation of unit marketing plans.
- Translate UHM unit objectives and strategies to develop brand portfolio objectives, strategies and plans to facilitate unit growth.
- Develops marketing strategy, based on knowledge of established policy and procedures, nature of market, copyright requirements, and cost sharing factors.
- Develops strategy based on continuous monitoring of competing institutions and brand performance of brands using internal and external data resources to identify issues and opportunities to drive both brand development volume performance.
- Collaborates with business analysis and financial team specialists to measure and analyze marketing impact and return-on-investment of marketing expenditures.
- Develop business strategies and achieve performance targets.

**20% Support, Coordinate and Integrate Campus Unit Marketing Development and Initiatives with UHM Communication and Advance Programs and Initiatives**

- Collaborate in designing,, planning and external and internal communications strategies and activities for the campus in concert with the system offices. Develops presentations for internal and external meetings.
- Develop and deliver insightful presentations and strategies to the business unit and executive committee where appropriate.
- Ensure the integration of the business unit marketing function within that of the greater group, and ensure that the business unit optimizes its use of shared and support services.
- Collaborates with the UHM Advancement Team in developing and evaluating all media plans and initiatives, both on national and regional/local levels. Collaborates in the development of all national and local consumer promotion programming in the identification and development of all event marketing programming, including all sponsored events, charitable donations, and trade related functions, etc.

- Collaborates with the in-house designer to produce materials of visual impact and within brand guidelines. Develops new ideas for reaching end user markets using the latest in electronic technologies.
  - Liaison with media and publishers as required.
  - Collaborates in the design, creation and implementation of marketing communications.
  - Liaise with event coordinators to maximize visibility at conferences, including compiling a list of products and literature to display/demo, and producing delegate inserts, etc.
  - Use email, AdWords and other electronic marketing techniques to inform customers of programs, and initiatives to promote brand and image of the UHM.
- Collaborates and coordinates with system offices on designing and implementing prospecting and campus contact systems.
  - Plan, organize and coordinate the execution of communication initiatives with vendors and consultants.
  - Write copy for marketing and branding initiatives, reflecting key messages, features and benefits.
  - Design, develop, and when appropriate provide employee training/development, problem resolution and work assignment delegation and offers coaching for UHM executives, staff and units relating to meetings, presentations, etc.

### **15% Marketing and branding program administration and coordination**

- Plan, develop, and administer the UHM marketing/branding operations budget.
- Manages marketing and branding budgets by ensuring that funds allocated and spent in an efficient and effective manner within budgetary parameters.
- Responsible for maintaining these budgets throughout the year, balancing expenditures against volume and profitability expectations.
- Negotiates with media agents to secure agreements for translation of materials into other media.
- Develop promotional materials including marketing collateral and print copies.

- Assist units to meet its objectives, live the values and culture and to practice UHM policies.
- Collaborate with UH attorneys in strategic planning for presentations, e.g., media events, promotional activities, etc.

**15% Oversight of Marketing Research to help determine target audience, demographic and psychographic profile of audience**

- Creation of a data driven decision matrix based on research to determine brand and communications weaknesses and areas to be modified;
  - Conduct competitive strategic analysis, constituent segmentation, and constituent insight development;
  - Coordinate with research unit or outside contractor to determine demographic and psychographic profiles of our target audiences
  - Coordinate focus group & survey research on our target audiences
  - Ensures appropriate qualitative and quantitative research is conducted to ensure overall brand success
  - Perform market research and competitor analysis to assess competitiveness of UHM and strategies to promote UHM's programs, branding, and image to measure success of recent campaigns

**10% Develop and administer marketing program**

- Develop and maintain a marketing data base that includes professional sector news, client and prospect information, mailing list applications, access to financial reports, etc.
- Develops and implements short and long term marketing objectives, strategies and tactics to deliver against agreed upon brand, business and financial goals.
- Works with the constituents and program managers to develop brand strategy, consumer segmentation, targeting and positioning of brand and in the development of the brand architecture.
- Ensure that best project management practices are employed to deliver all marketing communications within strategy, budget, and deadline.

- Collaborates in the design, development and implementation of the UHM website and coordinates with unit websites to insure consistent brand.
- Liaise with the University General Counsel to ensure compliance with applicable statutes and requirements relating to agreements, contracts, logos, trademarks, etc.

**5% Performs other duties as may be assigned**

Qualification Requirements

Minimum Experience, Education and Knowledge and Skills

- Education: Bachelor's degree in a marketing, social science or other related degree.
- Experience: Seven (7) years of progressively professional work experience that included two (2) years in direct brand marketing and promotions for a vertical multi-channel organization, using broad marketing mix (Advertising, PR, Events, Promotions, etc.) or equivalent combination of training and experience.
- Knowledge and Skills
  - Demonstrated knowledge and skills
    - Application of creative thinking in the design, planning and execution of a branding plan clear communications skills are essential - both written and verbal.
    - Demonstrated leadership that demonstrated a highly skilled organization with attention to detail requiring the exercise of initiative, seasoned judgment and the ability to work in a complex organization with multiple levels.
    - Ability to collaborate with a variety of professional and technical personnel.
    - Excellent sense of prioritization and time management.
    - Professional demeanor in an environment of multiple goals and objective with short turn-around.
    - Strategic orientation.

- Knowledge and skill in strategy development, market analysis, project management, new product development as well as promotions.
- Ability to think strategically by identifying and analyzing consumer and market insights and translating these into effective strategies.
- Well-developed communication skills (orally and in writing).
- Budget and project management.
- Analytical skills, extensive experience with data delivery systems.
- Experience working with senior leadership on complex problems.

#### Desirable Qualifications

##### Education:

- Master's in Business Administration
- Professional certification and/or completed professional post-baccalaureate program in marketing

##### Experience:

- Marketing and branding at university or college level.

##### Knowledge and Skills

- Knowledge of the University of Hawai'i and its programs



UNIVERSITY  
of HAWAII  
MĀNOA

University-3159  
OFFICE OF THE CHANCELLOR

MEMORANDUM AND AGREEMENT

August 11, 2012

TO: James Donovan  
Athletics Director *[Signature]*

FROM: Tom Apple  
Chancellor *[Signature]*

SUBJECT: Return from Leave With Pay

1. I want to thank you for your understanding and cooperation during these recent events. It has been a difficult time for all of us and in particular for you and your family. During this period, you have conducted yourself with great honor and as a gentleman for whom I have developed an even higher regard and respect.

2. Subject to the approval of the President, effective with the date of this memorandum, I am returning you from leave with pay to full active service. Coincident with your return to full active service, as we discussed and with your agreement, I am reassigning you to the Office of the Chancellor, University of Hawai'i at Mānoa as provided for in Board of Regents Policy Chapter 9-12, Executive and Managerial Personnel Policies, Part II Recruitment and Appointment of Executive and Managerial Personnel, Section C2 Reappointment, Reassignments and Non-renewal of Appointments.

3. In conjunction with your reassignment, you will continue to receive your current reduced base compensation. Your reduced base compensation rate of pay will continue through the end of your current appointment, which ends March 23, 2013, but you will not be receiving any bonuses that may have been payable under your contract. The University of Hawaii will pay your attorney David Simons \$30,000 in payment of attorneys' fees incurred in connection with the investigation and related matters (with a 1099 form issued to Mr. Simons).

4. I will be submitting prior to the expiration of your current appointment a memorandum to the President requesting your appointment to a managerial position that we discussed that will report to me with responsibility for among other activities enhancing the University's missions, including its land grant mission, marketing and branding, promotion, community communications and outreach for UHM, and otherwise promoting the UHM. I will recommend a three (3) year appointment beginning effective March 24, 2013 to this new managerial position, at a salary of \$211,200 (temporarily reduced to \$200,640) that shall be subject to any other executive/managerial adjustments as appropriate. All applicable policies and procedures of the University will apply with the exception that the University may terminate you only for cause during the three (3) year appointment. My recommendation shall be submitted in accordance with applicable policies and procedures.

5. In exchange for the above, you agree to and do fully and completely release and hold harmless the University of Hawai'i and all past or present regents, officers, agents, attorneys, predecessors, successors, parents, subsidiaries, divisions and any affiliated entities of the University of Hawai'i, including all campuses in the University of Hawai'i system, from any and all past and present claims or causes of action of any kind that you have or may have related to your employment with the University, including any and all claims relating in any way to the Stevie Wonder concert, your leave, and the investigation of that matter. You agree that you have not filed and will not file any form of charge, claim or complaint against the University involving any matter occurring on or prior to the effective date of this memorandum, or

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An Equal Opportunity / Affirmative Action Institution

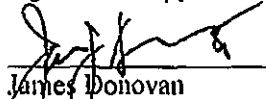


involving the alleged continuing effects of actions or practices which arose prior to the effective date of this memorandum. In the event that the appointment set forth in paragraph 4 is not made, the release in this paragraph will not be effective.

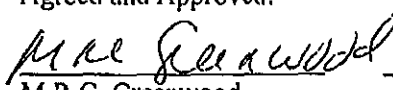
6. The terms and provisions of this Agreement shall not be construed as a precedent for any future claims or matters by any person.

I look forward to working with you to help our University of Hawai'i at Mānoa (UHM) become an even greater institution. Together I believe we can make it happen.

Agreed and Approved:

 8/11/12  
James Donovan Date  
Athletic Director

Agreed and Approved:

 8/11/12  
M.R.C. Greenwood Date  
President

- C: Chair of the Board of Regents Eric Martinson
- Executive Administrator and Secretary of the Board Keith Amemiya
- Vice President for Student Affairs and University/Community Relations Rockne Freitas
- UHM Human Resource Director Tammy Kuniyoshi
- System Director of Human Resources Debra Ishii

DRAFT

University-3161  
State of Hawaii  
University of Hawaii  
University of Hawaii at Manoa  
OFFICE OF THE CHANCELLOR  
ORGANIZATION CHART  
CHART I-A

GENERAL FUND FTE: 18.00

**MANOA FACULTY SENATE**  
Org Code: MAFS

Chair, Manoa Faculty Senate††  
Admin & Fiscal Support Spec, PBB, #79192 1.00  
Office Assistant III, SR-08, #41556\*\* 1.00

**OFFICE OF THE CHANCELLOR**  
**UNIVERSITY OF HAWAII AT MANOA**  
Org Code: MACHNC

Chancellor, #89261 1.00  
Private Secretary II, SR-22, #100053 1.00  
Administrative Assistant, #89365 1.00  
Executive Assistant, #89117 1.00  
Admin & Fiscal Support Spec, PBA, #77952 1.00  
Secretary I, SR-12, #15584 1.00  
Special Advisor for Hawaiian Affairs\*  
  
Faculty Athletic Representative (0.50)†

**OFFICE OF COMMUNICATIONS**  
Org Code: MAOCOM

Director of Public Affairs, #89145\*\* (vacant) 1.00  
Secretary I, SR-12\* 4.00  
Public Information Officer, PBB:  
#77451, #78138, #78574, #78873  
Public Information Officer, PBB, #81787 1.00  
Public Information Officer, PBA, #81239 1.00  
Public Information Officer, PBB, #80951 1.00

Director of External Affairs and Community Relations  
for the University of Hawaii at Manoa (UHM)  
Land Grant Mission Initiative, # \_\_\_\_\_ \* 1.0

**OFFICE OF THE OMBUDSPERSON**  
Org Code: MAOMBD

Specialist\*  
Specialist Type Faculty:  
#85485, #88099 2.00

\*New, pending approval

\*\*Position abolished, to be re-established

†Position annually elected by the Manoa Chancellor

††Position annually elected by the Manoa Faculty Senate

..... Dotted lines denote advisory relationships



UNIVERSITY  
of HAWAI'I  
SYSTEM

**CONFIDENTIAL**

UNIVERSITY OF HAWAII  
SYSTEM

January 11, 2012

12 JAN 12 11:00 AM

MEMORANDUM

TO: Eric Martinson  
Chair, Board of Regents

FROM: M.R.C. Greenwood *M.R.C. Greenwood*  
President

SUBJECT: Professional Improvement Leave and Emerita Title for  
Chancellor Virginia Hinshaw

SPECIFIC ACTION REQUESTED:

It is requested that, in conjunction with Chancellor Virginia Hinshaw's return to the faculty, the Board of Regents grant Dr. Hinshaw a period of professional improvement leave not to exceed ten months as an exception to Board policy. The professional leave will be at her current executive salary of \$344,880 (with 5% reduction; Chancellor Hinshaw's pre-reduction salary is \$363,024), subject to any generally applicable executive salary adjustments, and will be subject to the return service obligation which, as provided in the bargaining unit 7 agreement, is service equivalent to the period of leave.

It is also requested that the Board of Regents confer the title Chancellor Emerita to Dr. Hinshaw upon her return to faculty as an exception to Board policies.

RECOMMENDED EFFECTIVE DATE:

July 1, 2012

ADDITIONAL COST:

No additional cost, as salary is covered by current budgeted funds. Additional cost will be incurred for the new Chancellor.

PURPOSE:

Providing the requested professional improvement leave will allow Chancellor Hinshaw to prepare for her return to the faculty and the awarding of the title Chancellor Emerita will serve to provide recognition for her distinguished service as the Chancellor of the University of Hawai'i at Mānoa.

Eric Martinson  
January 11, 2012  
Page 2

**BACKGROUND:**

It was with respect and gratitude that I have accepted Chancellor Hinshaw's decision to return to the faculty. In her message to the campus, as follows, Chancellor Hinshaw has captured why it has been my honor to have worked with her and why approval of the requested exceptions to Board of Regent Policies is merited.

*"Aloha! I am now entering the fifth year of my commitment to serve as chancellor and I remain tremendously excited about UH Mānoa – truly a jewel created over the last century by the people of Hawai'i. As I look to the future, I also believe this is an opportune time for me to announce my decision to transition out of my role as chancellor during July 2012, to allow sufficient time to complete a search for a new chancellor.*

*My favorite Native Hawaiian saying is "By working together, we make progress." As I review the last four years in my heart and mind, I feel deeply satisfied with the progress we have made by working together. After arriving in 2007, I quickly learned that our campus cherished Mānoa's "multicultural global experience in a Hawaiian place of learning", termed the Mānoa Experience. Considering that vision and the campus strategic plan, I developed three goals for UH Mānoa – to serve as: a destination of choice for great faculty, staff, students, the citizens of Hawai'i and beyond; a global leading research university solving society's problems; and a respectful, inclusive community that welcomes and nurtures diversity – that represents Hawai'i. After viewing our facilities, I also stated that "UH Mānoa is a jewel in many ways, particularly intellectually, but badly tarnished physically" – a challenge to accomplishing our goals.*

*Since that time, I have enjoyed the Mānoa Experience each and every day – working with and learning from our diverse community full of the aloha spirit – and that has created exciting progress in areas critical for the future of UH Mānoa and Hawai'i. Much of our progress is based on partnering, both at the campus level and with the broader community, and communicating the value UH Mānoa provides to Hawai'i and the world.*

*During this time, we have celebrated many special accomplishments which I call "Mānoa Moments." UH Mānoa has earned full WASC accreditation for the maximum term of ten years – a clear indication of our advances in ensuring student success, ranging from enhanced advising with four-year graduation plans to availability of required courses. We now welcome a growing student population and house almost 4,000 students in transformed residence halls, now described as "awesome." We offer increased financial aid to ensure access for Hawai'i's students and also provide a smoother transition for transfer students from UH Community Colleges to continue their education. Our Hawaiinuiākea School of Hawaiian Knowledge is rapidly securing Mānoa's global leadership as an indigenous serving institution and recently received a \$2M endowment for the dean's position. Our campus community is highly active in partnering with community groups to enhance our citizens' lives – such as, providing medical care for the underserved, encouraging our keiki to see college as their future and sharing expertise in solving Hawai'i's challenges, ranging from dealing with climate change to building financial security.*

Eric Martinson  
January 11, 2012  
Page 3

*"Polishing the Mānoa jewel" is definitely well underway – major renovations / new buildings / repairs supported through increased state and private support are evident, such as opening the Center for Microbial Oceanography: Research and Education, building gathering spaces, updating classrooms, replacing old, energy consuming equipment and the list goes on – all with an eye to providing a great learning environment – and also demonstrating sustainable practices and promoting community.*

*Our innovative research enterprise continues to be an international leader and is close to generating \$500M per year with increasing partnerships across our campus, UH institutions, local businesses and government agencies – joined together in creating careers for our graduates. Our new cluster hiring initiative in Sustainability and Native Hawaiian opportunities will bring expertise to strengthen our progress in those campus priorities. Private donors have generously stepped forward with over \$130M over the last four years to support our mission, because they share our excitement. Our alumni and friends now receive frequent communications about the accomplishments of their university and increasingly join us at gatherings, from Homecoming and campus open houses, to alumni events around the world – sharing their respect and love for this university – and wearing their Mānoa pins with pride.*

*In essence, our progress is reflected in the title of our updated campus strategic plan "Achieving Our Destiny" – achieving is truly what UH Mānoa is doing. Making such progress during a global recession is particularly impressive. There are also many advances in process, such as ensuring the success of the great new faculty we just welcomed, opening our new Cancer Center and Campus Center Extension, installing solar photovoltaic panels on buildings, initiating a new comprehensive campaign and much more. During this coming year, I will devote my energy and passion to working with you on the campus priorities of retention and graduation, Native Hawaiian advancement and graduate education quality.*

*UH Mānoa is truly an impressive university – "like no place else on earth" – with many accomplishments yet to come. I am confident that UH Mānoa is moving forward in a very positive direction, but there is also much yet to do. So I am strongly dedicated to a smooth transition for the campus as the next chancellor is selected. I know that individual will feel as I do – blessed to serve this university and be part of the Mānoa ohana. My heart is smiling as I envision the future for UH Mānoa and Hawai'i – mahalo nui loa!"*

Chancellor Hinshaw has accomplished much and I am indebted to her for her service to the University and to the people of the State of Hawai'i, in particular the students who attended the University of Hawai'i at Mānoa.

The Board is being requested to approve an exception to its policy requiring six years of service before becoming eligible for professional improvement leave. As indicated above, Chancellor Hinshaw has performed exceptionally well during her tenure. As such, an exception to the minimum service requirement is appropriate.

Eric Martinson  
January 11, 2012  
Page 4

It is also requested that the Board grant an exception to its policy requiring that candidates for emeritus/emerita recognition be retired from University service. It is intended that the title be confirmed upon Dr. Hinshaw's return to faculty in recognition of her dedicated and honorable service as chancellor.

At the time of her appointment as Chancellor, she was awarded tenure as a faculty member in the John A. Burns School of Medicine. Following completion of her professional improvement leave, in consideration of her outstanding academic and research record and in the context of compensation paid other School of Medicine faculty members, Dr. Hinshaw will assume the duties of her 11-month tenured faculty position at an annual salary of \$292,188.

**ACTION RECOMMENDED:**

It is requested that, in conjunction with Chancellor Virginia Hinshaw's return to the faculty, the Board of Regents grant Dr. Hinshaw a period of professional improvement leave not to exceed ten months as an exception to Board policy. The professional leave will be at her current executive salary of \$344,880 (with 5% reduction; Chancellor Hinshaw's pre-reduction salary is \$363,024), subject to any generally applicable executive salary adjustments, and will be subject to the return service obligation which, as provided in the bargaining unit 7 agreement, is service equivalent to the period of leave.

It is also requested that the Board of Regents confer the title Chancellor Emerita to Dr. Hinshaw upon her return to faculty as an exception to Board policies.

cc: Executive Administrator and Secretary of the Board Keith Amemiya

**APPOINTMENT AGREEMENT  
(Dr. Rose Tseng)**

THIS AGREEMENT made and entered by and between the University of Hawai'i, hereinafter sometimes referred to as the "University," and Dr. Rose Tseng.

WITNESSETH:

WHEREAS, the University requires the services of Dr. Rose Tseng to serve in the capacity of Senior Vice President of the University of Hawai'i and Chancellor of the University of Hawai'i at Hilo; and

WHEREAS, Dr. Rose Tseng is willing to serve in the capacity of Senior Vice President of the University of Hawai'i and Chancellor of the University of Hawai'i at Hilo but is unable to resign from her position at the West Valley-Mission Community College District at this time without forfeiting significant retirement benefits; and

WHEREAS, under the laws of the State of Hawai'i employees of another government may be temporarily assigned to work for an agency of the State of Hawai'i without being considered an employee of the State of Hawai'i; and

WHEREAS, the West Valley-Mission Community College District is agreeable to the assignment of Dr. Tseng to the University of Hawai'i.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the University and Dr. Rose Tseng agree as follows:

1. **TERM:** Dr. Tseng's appointment shall commence on August 1, 1998 and shall continue for five (5) years.

2. **DUTIES:** Dr. Tseng, under the direction and control of the President of the University of Hawai'i, shall perform the duties and responsibilities of a senior level executive of the University of Hawai'i and the chief executive officer of the University of Hawai'i at Hilo which duties shall include, but not be limited to, administering the institution, implementing the policies, rules, and directives adopted by the Board of Regents and the University, and discharging all duties and responsibilities as may be required by Hawai'i law in accordance with the Board of Regents' Bylaws and Policies, Executive Policies, and Administrative Procedures of the University of Hawai'i.

3. **SALARY:** Dr. Tseng shall be compensated in accordance with the Intergovernmental Assignment Agreement to be executed between the University of Hawai'i and West Valley-Mission Community College District.

4. **BENEFITS:** Dr. Tseng shall continue to accrue the normal benefits accorded to employees of the West Valley-Mission Community College District from the West Valley Mission Community College District and the State of California. Except as provided herein, the University of Hawai'i, and the State of Hawai'i shall have no obligation to provide Dr. Tseng retirement benefits, medical, dental or vision insurance coverage, or any other employment benefit.

The University shall grant Dr. Tseng the same holidays granted to other University of Hawai'i Executive/Managerial employees, as well as twenty one (21) vacation leave days and twenty one (21) sick leave days per year which shall accrue at the rate of one and three fourths (1 3/4) days per month of service. It is understood that sick leave is being accorded to Dr. Tseng on an informal basis and that they are not accruable for retirement



or other purposes. At the expiration or termination of this Agreement, the University shall have no obligation to pay Dr. Tseng for any unused sick leave days accrued under this Agreement, nor shall any such days be credited to Dr. Tseng if she should become an employee of the University of Hawai'i. Dr. Tseng shall be allowed to accrue vacation leave in accordance with University policies and procedures. At the expiration or termination of this Agreement, the University shall pay Dr. Tseng for accrued vacation leave. During the term of this Agreement, Dr. Tseng shall not be entitled to professional improvement leave.

The University shall provide Dr. Tseng with workers' compensation and temporary disability benefits coverage during the term of this Agreement. In the event that Dr. Tseng receives any wage replacement under workers' compensation or temporary disability benefits, she may utilize any sick or vacation leave accrued under this article to supplement her income. In such event, the University shall continue to reimburse the West Valley-Mission Community College District for Dr. Tseng's salary and salary related benefits, reduced only by the cost of workers' compensation or temporary disability benefits received by Dr. Tseng. Upon exhausting her accumulated sick or vacation leave, the University shall suspend reimbursements to the West Valley-Mission Community College District and shall be liable to Dr. Tseng only for workers' compensation or temporary disability benefits to which she is entitled under the laws of the State of Hawai'i. It is understood and agreed that any additional income to Dr. Tseng under these circumstances shall be arranged for between Dr. Tseng and the West Valley-Mission Community College District without expense to the University of Hawai'i or the State of Hawai'i.

It is further understood and agreed that Dr. Tseng shall be allowed to utilize any sick

or vacation leave accrued pursuant to this article for family leave in accordance with the policies and procedures of the University of Hawai'i.

**5. UNIVERSITY RESIDENCE:** The University will provide an official residence in which Dr. Tseng shall be required to reside as a condition of employment and as a matter of convenience to the University. The residence will be used for official functions of the University of Hawai'i. The University shall cover the cost of rent for the official residence, all other costs shall be the responsibility of Dr. Tseng. In the event of expiration or termination of this Agreement, Dr. Tseng shall be allowed to reside at the residence for an additional forty-five (45) days under the terms contained herein.

**6. RELOCATION EXPENSES:** The University shall reimburse Dr. Tseng for reasonable relocation costs for her move to Hawai'i.

**7. AGENT OF THE UNIVERSITY OF HAWAII':** By virtue of her appointment as Senior Vice President, University of Hawai'i and Chancellor, University of Hawai'i at Hilo, Dr. Tseng will be an agent of the University of Hawai'i and her actions, if within the course and scope of her appointment, shall be considered the acts of the University of Hawai'i. In the event of a suit or claim against her for such actions, Dr. Tseng will be afforded the legal representation which would be accorded a compensated University Executive/Managerial employee.

**8. UNIVERSITY POLICIES AND PROCEDURES:** While on assignment at the University of Hawai'i, Dr. Tseng shall be subject to all applicable University policies and procedures, except as they may be modified herein.

**9. TERMINATION:** The University shall have the right to terminate this Agreement

at any time during its term for convenience and without cause by providing written notice to Dr. Tseng. In such event, the University shall continue the agreed upon reimbursements to the West Valley-Mission Community College District for Dr. Tseng's salary and salary related benefits for the remaining term of this Agreement unless other terms are agreed upon between the parties. In the event that the University is legally prohibited from continuing the Intergovernmental Assignment Agreement with West Valley-Mission Community College District, payments previously made to West Valley shall be paid to Dr. Tseng, unless other terms are agreed upon between the parties. The University shall have the right to terminate this Agreement with no further liability to Dr. Tseng or the West Valley-Mission Community College District in the event that Dr. Tseng is removed from her position for cause, materially breaches this Agreement, or is unable to return to service for whatever reason after a period of six (6) months absence.

10. **SUBJECT TO APPROPRIATIONS:** The terms and conditions of this Agreement are subject to legislative appropriations and the parties acknowledge that future legislative action may require the modification or termination of this Agreement.

11. **WAIVER OF BREACH:** The waiver of the breach of any provision in this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.

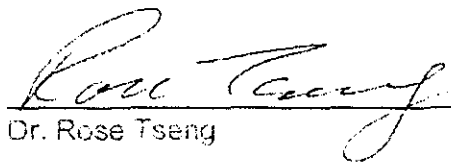
12. **MODIFICATION:** This Agreement may not be modified or extended except by written agreement of the parties.

13. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties with regard to the matters set forth herein. All of the terms herein

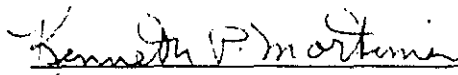
agreed upon between the undersigned parties supersedes and cancels each and every other conflicting agreement or promise between them.

14. **EFFECTIVENESS:** This Agreement shall be effective immediately following execution by each of the undersigned parties.

IN WITNESS WHEREOF, the University of Hawai'i and Dr. Rose Tseng have executed this Agreement on the dates indicated below.

  
\_\_\_\_\_  
Dr. Rose Tseng

May 20, 1998  
Date

  
\_\_\_\_\_  
Kenneth P. Mortimer  
President, University of Hawai'i and  
Chancellor, University of Hawai'i at Mānoa

May 15, 1998  
Date

APPROVED by the Board of Regents of  
the University of Hawai'i on April 17, 1998

**AMENDMENT OF APPOINTMENT AGREEMENT  
(Dr. Rose Tseng)**

THIS AMENDMENT OF APPOINTMENT AGREEMENT is made and entered by and between the University of Hawai'i, hereinafter referred to as the "University," and Dr. Rose Tseng.

WITNESSETH:

WHEREAS, the University and Dr. Rose Tseng entered into that certain Appointment Agreement, a copy of which is attached hereto; and

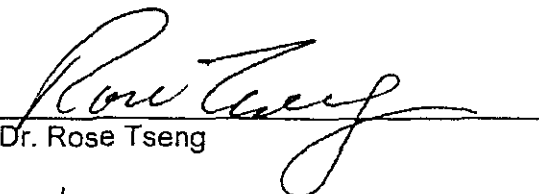
WHEREAS, the University and Dr. Rose Tseng now desire to amend that certain Appointment Agreement;

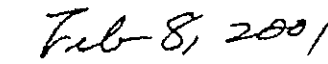
NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the University and Dr. Rose Tseng agree as follows:

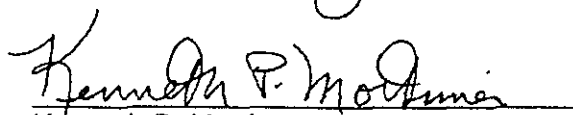
The Appointment Agreement shall be amended by adding a new article to read as follows:

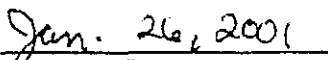
**"15. NOTICE OF EXTENSION:** On or before August 1, 2002, the University shall provide written notification to Dr. Rose Tseng whether her appointment as Senior Vice President of the University of Hawai'i and Chancellor of the University of Hawai'i at Hilo will be recommended for extension beyond July 31, 2003. It is understood that under current University policy any such extension is subject to approval by the Board of Regents. Nothing in this article shall be construed to limit the right of the University to terminate the Appointment Agreement pursuant to Article 9 of said Agreement."

IN WITNESS WHEREOF, the University and Dr. Rose Tseng have executed this Amendment of Appointment Agreement on the date(s) indicated below.

  
Dr. Rose Tseng

  
Date

  
Kenneth P. Mortimer  
President, University of Hawai'i and  
Chancellor, University of Hawai'i at Mānoa

  
Date

TO: Board of Regents  
FROM: Eric Martinson, Chair  
DATE: September 4, 2012

RE: Approval of the Formation of an Operational and Financial Controls Improvement Advisory Task Group

I'm requesting the Board of Regents' ("BOR") approval of the formation of an Operational and Financial Controls Improvement Advisory Task Group.

The reasons, include, but are not limited to, the following:

- The Stevie Wonder Concert investigative report shows a failure of management in the UH-Mānoa Athletics Department and additional issues with respect to financial controls at several levels.
- The BOR expects and supports the public's demand for accountability.
- In the aftermath of the concert issue, the University needs to evaluate its procedures, controls, and oversight practices.

The University administration is tasked with reporting back to the BOR with specific improvement plans. Certain problematic policies and practices have already been identified and actions are being taken to strengthen the system.

The BOR will oversee these improvements.

To facilitate the BOR's oversight, the Chair requests the BOR's approval to form the Advisory Task Group to guide the scope of the evaluation, monitor activities and progress related to the evaluation, and review the merits and efficacy of the proposed plans for improvement. In turn, the Advisory Task Group will report to the BOR's Committee on University Audits.

The proposed members of the Advisory Task Group are:

- James H. Q. Lee, Vice Chair, Board of Regents and Chair, Committee on University Audits
- Barry Mizuno, Regent and Vice Chair, Committee on University Audits
- Saedene Ota, Regent and Member, Committee on University Audits
- Jan N. Sullivan, Regent and Member, Committee on University Audits
- Terri Fujii, Managing Partner, Hawaii Practice of Ernst & Young LLP

- Cory Kubota, Assurance Principal, Accuity LLP
- Patrick Oki, Managing Partner, PKF Pacific Hawaii LLP
- Lawrence D. Rodriguez, Business Consultant

The University's Internal Auditor will serve as the liaison to the Advisory Task Group, and KMH LLP will be engaged to perform the evaluation.

The Advisory Task Group is requested to complete its evaluation and report on or before the BOR's October 18, 2012 meeting.

## **External Participants for the Operational and Financial Controls Improvement Advisory Task Group**



**Terri Fujii, Managing Partner, Hawaii Practice of Ernst & Young LLP**

Terri T. Fujii is the Office Managing Partner of the Honolulu office of Ernst & Young LLP. In addition to overseeing the operations of the Honolulu office, Fujii is also an assurance partner leading the healthcare and not-for-profit practice in the Honolulu office. In her 25 years with Ernst & Young LLP, Fujii led audit engagements in a range of industries including healthcare, not-for-profits, higher education, airlines, retail, hospitality, real estate, insurance and state government.

Fujii earned a Bachelor in Business Administration degree and a Masters in Accounting degree from the University of Hawai'i at Mānoa.

In 2007, Fujii was inducted into the University of Hawai'i Shidler College of Business Hall of Honor, and she was a finalist in Pacific Business News' Women Who Mean Business recognition program.



**Cory Kubota, Assurance Principal, Accuity LLP**

Cory Kubota is the Principal for the external audit of the University of Hawai'i System for Accuity LLP.

He spent the past 15 years with Accuity, with expertise in Real estate, hospitality, agriculture, insurance, healthcare, secondary and post-secondary education, state and local government, and non-profit organizations.

He is a licensed Certified Public Accountant in Hawai'i and the territory of Guam, and is also a Certified Fraud Examiner and holds a Certified in Financial Forensics credential. He received his BBA in Accounting and Finance, at the University of Michigan at Ann Arbor.





**Patrick Oki, Managing Partner, PKF Pacific Hawai'i LLP**

Patrick Oki is the managing partner of PKF Pacific Hawai'i. Patrick Oki has more than 17 years of experience servicing public and private companies as well as government agencies in the Hawai'i market. Prior to founding PKF, Patrick was an audit and advisory partner at Grant Thornton for nearly five years. He joined Grant Thornton after serving the majority of his career in audit and advisory services with the Honolulu office of PricewaterhouseCoopers and was the practice leader for their local advisory group.

Oki earned his Bachelor of Business Administration in Accounting at the University of Hawai'i at Mānoa. He is a Certified Fraud Examiner and holds a Certified in Financial Forensics credential. He is also a licensed Certified Public Accountant in the State of Hawai'i and the territory of Guam.



**Lawrence D. Rodriguez, Business Consultant**

Lawrence "Larry" Rodriguez is the former Managing Partner of the Hawai'i practice of Ernst & Young LLP. He was responsible for all aspects of the Firm's operations in Hawai'i. He graduated from California State University, Los Angeles in 1967 with a Bachelor of Science Degree in Business Administration. He joined Arthur Young & Company (which would eventually merge with Ernst & Whinney to form Ernst & Young) in 1967. After more than 40 years, Larry retired from Ernst & Young on June 30, 2007.

In July 2007, Rodriguez formed Lawrence D. Rodriguez, LLC, a business consulting company, which helps organizations in Hawai'i with financial, organizational and other business matters. In January 2010, he was engaged by the Audit Committee of the Board of Central Pacific Financial Corp. to assist in various matters related to its primary subsidiary, Central Pacific Bank. His consulting contract was later amended to include full-time participation as an acting Chief Financial Officer. In August 2010, Larry became the full time Executive Vice President and Chief Financial Officer of Central Pacific Financial Corp./Central Pacific Bank and held that position until he retired in November 2011.

In 2009 he was presented with the Lifetime Achievement Award from Pacific Business News. He is a licensed Certified Public Accountant in Hawai'i, California, and Guam, and is also a Certified Fraud Examiner.

**Charter of the Operational and Financial Controls Improvement  
Advisory Task Group  
of the Board of Regents of the  
University of Hawai'i**

**Purpose**

The purpose and primary function of the Operational and Financial Controls Improvement Advisory Task Group (Advisory Task Group) is to oversee, provide input, monitor activities, and guide the scope of an evaluation and improvement initiative specific to the significant operational and financial processes and related internal controls of the University of Hawai'i (University). The improvement initiative may also include comparing higher education "best practices" to those currently in place at the University in addition to determining if the University's current policies require clarification and revision with respect to the assignment of responsibility, delegation of authority, and accountability for duties performed by University personnel. The Advisory Task Group was established by the Board of Regents at their September 5, 2012 meeting.

**Authority**

The Advisory Task Group is established by the Board of Regents of the University and will report to the Board of Regents' Committee on University Audits. The Advisory Task Group shall have the authority to conduct reviews, studies or investigations into any matter within its scope of responsibilities, and shall recommend to the Committee on University Audits the retention of professional service providers to assist in the conduct of such reviews. The Advisory Task Group shall have the authority to seek information it requires with full, free and unrestricted and timely access to members of management, the Board of Regents, external consultants and advisors, all University functions, books, records, information systems, data, personnel, and property as necessary to carry out its duties.

**Term**

The Board of Regents' Committee on University Audits will determine when the services of the Advisory Task Group are complete.

**Membership**

The Advisory Task Group shall be comprised of members of the Board of Regents and professionals from the Hawaii business community with extensive knowledge and experience in providing advisory, business consulting and assurance services. The initial members are as follows:

- James H. Q. Lee, Vice Chair, Board of Regents and Chair, Committee on University Audits
- Barry Mizuno, Regent and Vice Chair, Committee on University Audits
- Saedene Ota, Regent and Member, Committee on University Audits

**Charter of the Operational and Financial Controls Improvement  
Advisory Task Group  
of the Board of Regents of the  
University of Hawai'i**

- Jan N. Sullivan, Regent and Member, Committee on University Audits
- Benjamin Kudo, Regent
- Lawrence D. Rodriguez, Business Consultant
- Terri Fujii, Managing Partner, Honolulu Office of Ernst & Young LLP
- Patrick Oki, Managing Partner, PKF Pacific Hawaii LLP
- Cory Kubota, Assurance Principal, Accuity LLP

The Chair of the Committee on University Audits may change the membership composition when deemed necessary. The University's Internal Auditor will serve as liaison to the Advisory Task Group.

**Duties, Responsibilities and Scope of Work**

The Advisory Task Group shall determine the scope, approach and timing of the evaluation. In addition, the Advisory Task Group shall monitor activities and the progress related to the evaluation as well as reviewing the merits and efficacy of proposed plans for improvement.

The Advisory Task Group has been requested to complete its initial evaluation and report on or before the Board of Regents October 18, 2012 meeting. To meet this timeframe, the Advisory Task Group will separate the evaluation into phases. Phase 1 of the evaluation will be completed prior to October 18, 2012. The initial report in connection with Phase 1 will at a minimum present the Advisory Task Groups' assessment and evaluation of the operational and financial processes that resulted in the failed Stevie Wonder transaction. The preliminary scope of work and expected deliverable for Phase 1 is more fully described at Attachment I.

The Advisory Task Group will determine the scope and timing of subsequent phases upon the completion and issuance of the Phase 1 report. The anticipated scope of Phase 2 will include reviewing the University's operational and financial processes and controls on a system wide basis including determining if the University's current policies (Board, Executive, and Administrative) require clarification and revision with respect to the assignment of responsibility, delegation of authority, and accountability for duties performed by University personnel. The scope of Phase 3 may consist of comparing higher education operational and financial process "best practices" to those currently in place at the University.

**Meetings**

The Advisory Task Group shall meet as often as it determines necessary to carry out its duties and responsibilities. The Advisory Task Group, in its discretion, may ask others to attend its meetings (or portions thereof) and to provide pertinent information as necessary.

**Preliminary Scope of Work (Phase 1):**

The preliminary scope of work will include the following:

- Review of the investigative report prepared by Cades Schutte (Factfinders Report), including all related attachments and exhibits.
- Review of applicable University policies, procedures, and delegation of authority specific to the procurement, contracting, cash disbursements and related financial transactions associated with the Stevie Wonder transaction, in addition to State of Hawai'i statutes and regulations where applicable, existing at the time of the Stevie Wonder transaction.
- Review of University policy and procedure revisions or proposed revisions resulting from the Stevie Wonder transaction.
- Specific to the Stevie Wonder transaction noted above, assessment of compliance with the applicable University policies, procedures and related internal controls.
- Identification of any deficiencies in the design of the University's operational and financial processes, internal controls, and/or policies and procedures, specific to the Stevie Wonder transaction. This may involve performing walk-throughs and reviewing documents to corroborate our understanding of the operational and financial processes and related internal controls.
- Where deemed necessary, interview University management, members of the Board of Regents, the Factfinders and other relevant individuals.
- Review other applicable documents that will supplement the information obtained during the procedures noted above.
- Preparation of a report summarizing the work performed, observations, conclusions and recommendations, if any. Also recommendation of next steps for the Advisory Task Group to consider in guiding the improvement initiatives in subsequent phases to strengthen the University's internal controls and related operational and financial processes. The report is expected to be made available to the public at the same time that it is provided to the Board of Regents.



UNIVERSITY OF HAWAII  
OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in a total amount not to exceed N/A NO/100 DOLLARS (\$ N/A), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

UNIVERSITY OF HAWAII

By

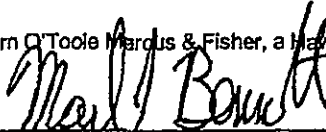


Its Director of the Office of Procurement and Real Property Management

CONTRACTOR

Starn O'Toole Marcus & Fisher, a Hawaii law corporation

By



Name: Mark A. Bennett

Title

Partner

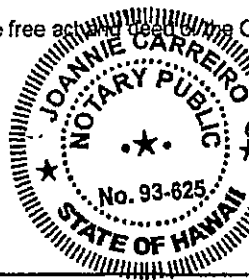
\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

STATE OF HAWAII  
NOTARY PUBLIC  
HONOLULU  
SILVA DEBROS

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

On this 28th day of March, 2011, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a partner in Stern O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

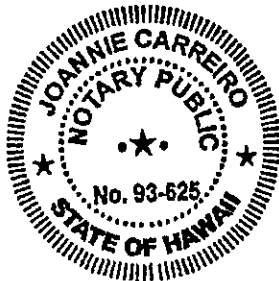


Joannie Carreiro  
Notary Public, Joannie Carreiro  
My commission expires: 11/11/13

Document Date: 03/28/11 Number of Pages: 19  
Notary Name: Joannie Carreiro First Judicial Circuit  
Document Description: University of Hawaii Agreement for Services

Joannie Carreiro 03/28/11  
Notary Signature Date

NOTARY CERTIFICATION



## SCOPE OF SERVICES

The UNIVERSITY hereby retains Mark J. Bennett of the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") in connection with negotiating and resolving issues relating to the UNIVERSITY's investment in and purchase, holding, and sale of Auction Rate Securities and Student Loan Auction Rate Securities (hereafter collectively the "Securities") as it involves Citigroup and its subsidiaries, including Citibank, CGMI, and Morgan Stanley Smith Barney (collectively the "Citigroup Investment Issues"). The term "Project" as referred to herein shall mean the resolution of the Citigroup Investment Issues, through an administrative or alternative dispute resolution process or by settlement or other agreement.

The CONTRACTOR's work in connection with this Project shall include, without limitation, preparing agreements, contracts, and other documents necessary to resolve the Citigroup Investment Issues and implement such resolution, furnishing counsel, advice, and analysis on any issue relating to the Project as may be requested or deemed necessary by the UNIVERSITY (including any procurement, contract formation or operation, and financing issues), preparing opinions or memorandums on any such issues, and handling or assisting in the handling of any administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination), whether the proceedings or actions are conducted within administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with negotiating and preparing Project documentation. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, providing assistance in: (1) developing and formulating the University's position in any negotiations or discussions with Citigroup and its subsidiaries, including Citibank, CGMI, and Morgan Stanley Smith Barney (collectively "Citigroup") and (2) preparing agreements, contracts, and other documents as may be necessary to resolve the Project and the Citigroup Investment Issues and implement the resolution.

B. Assist with negotiations, and documentation. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, providing assistance in: (1) handling any administrative actions and proceedings relating to the Project, (2) developing and formulating the University's position in any disputes involving the Project, (3) negotiating settlement or termination agreements pertaining to any disputes involving the Project, (4) expediting the resolution of the Project, and (5) preparing all necessary documents, such as tolling, settlement, termination, release, waiver, and other agreements that may be needed to resolve the Project and the Citigroup Investment Issues and implement such resolution.



C. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the resolution of the Project or any statutory, constitutional, or other legal issues that arise during the handling of any matter relating to the resolution of the Project. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other cases or matters that involve issues similar to any of the Project issues.

D. Extent of involvement to be determined by the UNIVERSITY. Actual time spent and fees incurred depend on the difficulty in completing the tasks requested by the UNIVERSITY under this Agreement. The scope of the CONTRACTOR's services, the degree of the CONTRACTOR's involvement with the Project (or any other similar case or matter), and the number and nature of any assigned tasks will be determined on a case by case basis by the UNIVERSITY, including the UNIVERSITY's General Counsel's office, with input from the UNIVERSITY administration.

E. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

F. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

G. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

H. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

I. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

J. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

K. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

#### TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on January 26, 2011, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of N/A AND NO/100 DOLLARS (\$ N/A):

Attorneys:

Mark J. Bennett

\$ N/A per hour

For the work under this Agreement, Mark J. Bennett will be providing services on a pro-bono basis for the benefit of the UNIVERSITY.

2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, 3/28/11

CONTRACTOR  
 Stam O'Toole Marcus & Fisher  
 By [Signature]  
 Name: Mark J. Bennett  
 Title: Partner

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

Attachment 5

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
3. Nondiscrimination

No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.
5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.
6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.
7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.



## Attachment 5

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.

- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

## Attachment 5

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures: Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Project and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Citigroup Investment Issues and the implementation of any such resolution (such as actions relating to the Project and matters described in the Scope of Services), including, without limitation, preparing and assisting in the negotiation of agreements and providing advice, counsel and analysis on of the Citigroup Investment Issues and any issue relating to the Project. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

2. INSURANCE

[Reserved]

3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$ N/A and \$ N/A per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government

Attachment 6

contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

C110122

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES

This Agreement, effective the 22nd day of March, 2011, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Starn O'Toole Marcus & Fisher (hereinafter "CONTRACTOR"), a Law Corporation (Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.) under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813; Taxpayer Identification Number 99-0215189.

RECITALS

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
- B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.
- C. Money is available to fund this Agreement pursuant to:

- (1) 254581 or  
(Identify state sources)
- (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ 50,000.00  
Federal \$ \_\_\_\_\_

D. Pursuant to Section 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
- 2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.



3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

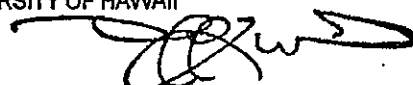
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

UNIVERSITY OF HAWAII

By \_\_\_\_\_

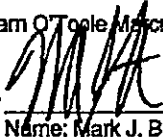


Its Director of the Office of Procurement and Real Property Management

CONTRACTOR

Stam O'Toole, Marcus & Fisher, a Hawaii law corporation

By \_\_\_\_\_



Name: Mark J. Bennett

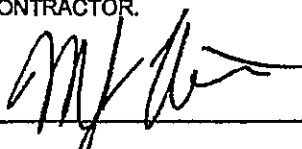
Title Director \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

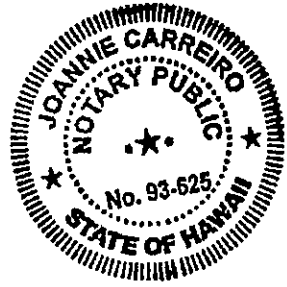
On this 18th day of May, 2011, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

  
\_\_\_\_\_  
Notary Public, Joannie Carreiro  
My commission expires: 11/11/13

Document Date: May 18, 2011 Number of Pages: 19  
Notary Name: Joannie Carreiro First Judicial Circuit  
Document Description: University of Hawaii Agreement for Services

Joannie Carreiro \_\_\_\_\_  
Notary Signature Date May 18, 2011

NOTARY CERTIFICATION



## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") in connection with negotiating and resolving issues relating to and handling, defending, and managing the litigation matter entitled Philippe Gross v. University of Hawai'i, et al., Civil No. 10-00684 (hereafter collectively the "Litigation"). The term "Litigation" as referred to herein shall mean the resolution of the Litigation, through an administrative, judicial, or alternative dispute resolution process or by settlement or other agreement.

The CONTRACTOR's work in connection with the Litigation shall include any and all legal analysis and evaluation necessary to handle, defend, manage, and resolve the Litigation, including without limitation: (1) identifying and selecting individuals and entities to facilitate resolution, (2) negotiating and preparing agreements, contracts, and other documents necessary for the resolution, and implementing such resolution, (3) preparing, filing, and submitting motions, statements, and other documents relating to pre-trial matters, (4) handling and overseeing the discovery process, (5) entering appearances and advocating the UNIVERSITY's position before any administrative, judicial, or alternative dispute resolution decision maker (judge, hearing officer, mediator, etc.), tribunal, or panel, (6) preparing for and handling all pre-trial and trial matters (including directing and taking the lead role in presenting and advocating the University's position during trial), (7) furnishing counsel, advice, and analysis on any issue relating to the Litigation as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and (8) handling or assisting in the handling of any litigation, administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Litigation, including, without limitation, providing assistance in: (1) developing and formulating the University's settlement and overall litigation positions, (2) representing the University in any judicial, administrative, or alternative dispute resolution proceedings related to the Litigation, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Litigation, (4) handling any judicial and administrative actions and proceedings relating to the Litigation, including advising administrators and regents, (5) expediting the resolution of the Litigation, and (6) preparing all necessary documents, such as tolling, settlement, termination, release, waiver, and other agreements that may be needed to resolve the Litigation and implement such resolution..

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with

## Attachment 1

respect to matters related to the Litigation and any attempted resolution. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other cases or matters that involve issues similar to any of the Litigation issues.

C. Litigation. The CONTRACTOR shall also provide legal services in connection with any administrative or court proceeding or action or litigation involving the Litigation and any appeals therefrom to the state circuit and/or appellate courts.

D. Extent of involvement to be determined by the UNIVERSITY. Actual time spent and fees incurred depend on the difficulty in completing the tasks requested by the UNIVERSITY under this Agreement. The scope of the CONTRACTOR's services, the degree of the CONTRACTOR's involvement with the Litigation, and the number and nature of any assigned tasks will be determined on a case by case basis by the UNIVERSITY, including the UNIVERSITY's General Counsel's office, with input from the UNIVERSITY administration.

E. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of Mark J. Bennett and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

F. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

G. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

H. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

I. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the

Attachment 1

UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

J. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

K. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

### TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on March 21, 2011, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of FIFTY THOUSAND AND NO/100 DOLLARS-(\$50,000.00):

**Attorneys:**

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$200.00 per hour

**Paralegal:**

Various	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawai'i, MAY 18 2011

CONTRACTOR  
Stam O'Toole Marcus & Fisher

By   
Name: Mark J. Bennett  
Title: Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.



UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities
  - a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
  - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
2. Personnel Requirements
  - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

## Attachment 5

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

Attachment 5

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action; remedy such omission; or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures: Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

## Attachment 5

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

Attachment 5

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.



## SPECIAL CONDITIONS

1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Litigation and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Litigation and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

2. INSURANCE

The CONTRACTOR shall maintain professional liability insurance acceptable to the UNIVERSITY in full force and effect throughout the term of this Agreement. The policy or policies of such professional liability insurance acceptable to the UNIVERSITY and maintained by the CONTRACTOR shall provide single limit coverage in the amount of \$5,000,000 per claim and \$5,000,000 aggregate for all claims made during the policy period (hereafter the "CONTRACTOR's Insurance").

The CONTRACTOR's Insurance shall be in force the first day of the term of this Agreement.

3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

Attachment 6

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

*cap*

OPRPM FORM 51  
(Rev. 2/00)

UNIVERSITY OF HAWAII		<b>MODIFICATION OF CONTRACT</b>	PAGE 1 of 1
1. MODIFICATION NO.  1	3. CONTRACT NO. <u>C110122</u> Dated <u>03/22/11</u> / PROJECT TITLE  Legal Services to Advise and Represent the University of Hawaii in the Matter of Phillippe Gross vs. University of Hawaii, et al., Civil No. 10-00684		
2. EFFECTIVE DATE  August 18, 2011			
4. ISSUED BY  Director, Office of Procurement and Real Property Management 1400 Lower Campus Road, Room 15 Honolulu Hawaii 96822 BUYER: K. Minato		5. CONTRACTOR (NAME AND ADDRESS)  Starn O'Toole Marcus & Fisher Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, Hawaii 96813	

6. (a)  This Change Order is issued pursuant to \_\_\_\_\_  
The changes set forth in block 7 are made to the above numbered contract.  
(b)  The above numbered contract is modified to reflect administrative change.  
(c)  This Supplemental Agreement is entered into to modify the contract as set forth in block 7

7. DESCRIPTION OF MODIFICATION

Pursuant to paragraph 8, Modification of Agreement, of the UNIVERSITY OF HAWAII GENERAL CONDITIONS FOR AGREEMENTS FOR SERVICES, the subject contract shall be modified as follows:


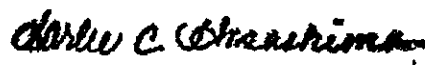

- a. The maximum ceiling amount in Attachment 3, COMPENSATION AND PAYMENT SCHEDULE, shall be increased by \$50,000.00 for a new compensation ceiling \$100,000.00.  
b. All other terms and conditions shall remain the same.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN BLOCK 3 UNLESS HERETOFORE AMENDED, REMAIN UNCHANGED.

8. APPROPRIATION/FUNDING/ACCOUNTING DATA (IF REQUIRED)

9.  CONTRACTOR IS NOT REQUIRED TO SIGN THIS DOCUMENT.       CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ORIGINAL AND ALL COPIES TO THE DIRECTOR, OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT

STARN O'TOOLE MARCUS & FISHER

10. NAME OF CONTRACTOR  BY  / _____ (authorized signature)      DATE	12. UNIVERSITY OF HAWAII  BY  / _____ DATE      SEP - 2 2011
11. NAME & TITLE OF SIGNER (TYPE OR PRINT)  Mark J. Bennett, Director	13. NAME & TITLE OF SIGNER (TYPE OR PRINT)   Duff Zwald, Director, Office of Procurement and Real Property Management

UNIVERSITY OF HAWAII		MODIFICATION OF CONTRACT	PAGE 1 of 1
1. MODIFICATION NO.  2	3. CONTRACT NO. <u>C110122</u> Dated <u>03/22/11</u> / PROJECT TITLE  Legal Services to Advise and Represent the University of Hawai'i in the Matter of Philippe Gross vs. University of Hawai'i, et al., Civil No. 10-00684		
2. EFFECTIVE DATE  December 8, 2011			
4. ISSUED BY  Director, Office of Procurement and Real Property Management 1400 Lower Campus Road, Room 15 Honolulu Hawai'i 96822 BUYER: K. Minato		5. CONTRACTOR (NAME AND ADDRESS)  Starn O'Toole Marcus & Fisher Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, Hawai'i 96813	

6. (a)  This Change Order is issued pursuant to \_\_\_\_\_  
The changes set forth in block 7 are made to the above numbered contract.  
(b)  The above numbered contract is modified to reflect administrative change.  
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7. DESCRIPTION OF MODIFICATION


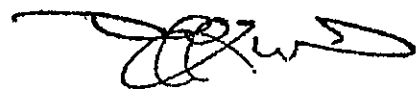
Pursuant to paragraph 8, Modification of Agreement, of the UNIVERSITY OF HAWAII GENERAL CONDITIONS FOR AGREEMENTS FOR SERVICES, the subject contract shall be modified as follows:

- a. The maximum ceiling amount in Attachment 3, COMPENSATION AND PAYMENT SCHEDULE, shall be increased by \$10,000.00 for a new compensation ceiling \$110,000.00.  
b. All other terms and conditions shall remain the same.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN BLOCK 3 UNLESS HERETOFORE AMENDED, REMAIN UNCHANGED.

8. APPROPRIATION/FUNDING/ACCOUNTING DATA (IF REQUIRED)

9.  CONTRACTOR IS NOT REQUIRED TO SIGN THIS DOCUMENT.  CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ORIGINAL AND ALL COPIES TO THE DIRECTOR, OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT

10. NAME OF CONTRACTOR  BY  / _____ (authorized signature) DATE	12. UNIVERSITY OF HAWAII  BY  / _____ DATE JAN 13 2012
11. NAME & TITLE OF SIGNER (TYPE OR PRINT)  Mark J. Bennett Director	13. NAME & TITLE OF SIGNER (TYPE OR PRINT)  Duff Zwald, Director, Office of Procurement and Real Property Management

*Darolyn L. [Signature]*

UNIVERSITY OF HAWAII		MODIFICATION OF CONTRACT	PAGE 1 of 1
1. MODIFICATION NO.  3	3. CONTRACT NO. <u>C110122</u> Dated <u>03/22/11</u> / PROJECT TITLE  Legal Services to Advise and Represent the University of Hawai'i in the Matter of Philippe Gross vs. University of Hawai'i, et al., Civil No. 10-00684		
2. EFFECTIVE DATE  April 18, 2012			
4. ISSUED BY  Director, Office of Procurement and Real Property Management 1400 Lower Campus Road, Room 15 Honolulu Hawai'i 96822 BUYER: K. Minato		5. CONTRACTOR (NAME AND ADDRESS)  Starn O'Toole Marcus & Fisher Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, Hawai'i 96813	

6. (a)  This Change Order is issued pursuant to \_\_\_\_\_  
The changes set forth in block 7 are made to the above numbered contract.  
 (b)  The above numbered contract is modified to reflect administrative change.  
 (c)  This Supplemental Agreement is entered into to modify the contract as set forth in block 7

7. DESCRIPTION OF MODIFICATION

Pursuant to paragraph 8, Modification of Agreement, of the UNIVERSITY OF HAWAII GENERAL CONDITIONS FOR AGREEMENTS FOR SERVICES, the subject contract shall be modified as follows:

- a. The maximum ceiling amount in Attachment 3, COMPENSATION AND PAYMENT SCHEDULE, shall be increased by \$50,000.00 for a new compensation ceiling \$160,000.00.
- b. All other terms and conditions shall remain the same.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN BLOCK 3 UNLESS HERETOFORE AMENDED, REMAIN UNCHANGED.

8. APPROPRIATION/FUNDING/ACCOUNTING DATA (IF REQUIRED)

9.  CONTRACTOR IS NOT REQUIRED TO SIGN THIS DOCUMENT.       CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ORIGINAL AND ALL COPIES TO THE DIRECTOR, OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT

10. NAME OF CONTRACTOR  <i>Mark Bernick</i> BY _____ DATE <u>MAY 16 2012</u> <small>(authorized signature)      DATE</small>	12. UNIVERSITY OF HAWAII  <i>[Signature]</i> BY _____ DATE <u>MAY 21 2012</u> <small>DATE</small>
11. NAME & TITLE OF SIGNER (TYPE OR PRINT)	13. NAME & TITLE OF SIGNER (TYPE OR PRINT)  Duff Zwald, Director, Office of Procurement and Real Property Management

C110121

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES

This Agreement, effective the 18th day of April, 2011, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Starn O'Toole Marcus & Fisher (hereinafter "CONTRACTOR"), a Law Corporation (Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.) under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813; Taxpayer Identification Number 99-0215189.

RECITALS

A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.

B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

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

(1) 242581 or  
(Identify state sources)

(2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ 50,000.00

Federal \$ \_\_\_\_\_

D. Pursuant to Section 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.

2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed \$50,000 Fifty thousand and NO/100 DOLLARS (\$50,000), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

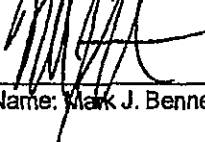
UNIVERSITY

UNIVERSITY OF HAWAII

By   
Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Mark J. Bennett of Starn O'Toole Marcus & Fisher, a  
Hawaii law corporation

By   
Name: Mark J. Bennett  
Title Director \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

On this 18th day of May, 2011, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.



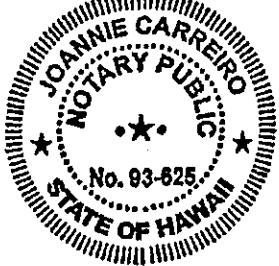
Notary Public, Joannie Carreiro

My commission expires: 11/11/13

Document Date: May 18, 2011 Number of Pages: 17  
Notary Name: Joannie Carreiro First Judicial Circuit  
Document Description: University of Hawaii Agreement for Services

Joannie Carreiro May 18, 2011  
Notary Signature Date

NOTARY CERTIFICATION





## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") in connection with an investigation(s) being conducted by

(hereafter collectively the "Investigation").

The CONTRACTOR's work in connection with the Investigation shall include any and all legal analysis, evaluation and representation necessary in response to the Investigation, including without limitation, meeting with individuals, negotiating and preparing agreements, contracts, and other necessary documents, and furnishing counsel, advice, and analysis on any issue relating to the Investigation as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and handling or assisting in the handling of any administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination of individuals and entities), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Investigation, including, without limitation, providing assistance in: (1) developing and formulating the University's legal position, (2) representing the University in any proceedings related to the Investigation, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Investigation, (4) handling any administrative actions and proceedings relating to the Investigation, including advising administrators and regents, and (5) expediting the resolution of the Investigation, as requested by the UNIVERSITY.

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the Investigation. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other issues or matters that involve issues similar to any of the Investigation issues.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence,

documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

I. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

## TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on April 19, 2011, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00):

**Attorneys:**

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$200.00 per hour

**Paralegal:**

Connie Gardner	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

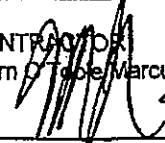
"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices,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

On behalf of Mark J. Bennett of Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, MAY 18 2011

CONTRACTOR  
 Stam O'Toole Marcus & Fisher  
 By   
 Name: Mark J. Bennett  
 Title \_\_\_\_\_

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.



- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures: Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

### 1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Investigation and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Investigation and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

### 2. INSURANCE

[Reserved]

### 3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$200.00 and \$375.00 per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

### 4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

AMENDMENT NO. 1

TO AGREEMENT FOR SERVICES BETWEEN  
THE UNIVERSITY OF HAWAII  
AND STARN O'TOOLE MARCUS & FISHER, LC

This Amendment No. 1 is made and entered into this 26th day of January, 2012, but effective as of October 27, 2011, by and between the University of Hawaii (hereafter the "UNIVERSITY") and STARN O'TOOLE MARCUS & FISHER, LC (hereafter the "Contractor").

WITNESSETH THAT:

WHEREAS, the University and the Contractor entered into that certain Agreement for Services dated April 18, 2011, (hereafter the "Agreement"), whereby the Contractor agreed to provide the legal services described in the Agreement.

WHEREAS, the University and the Contractor agree to revise the scope of services under the Agreement to specifically include Contractor's legal advice regarding additional contracts by the same party for which Contractor was engaged by University in the Agreement.

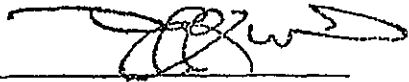
NOW, THEREFORE, in consideration of mutual promises, the University and the Contractor agree to modify the Agreement as follows:

Amend the provision relating to the scope of services as follows:

1. **Scope of Services.** The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") in connection with (1) an investigation(s) being conducted by \_\_\_\_\_, (2) matters related to Wahiawa General Hospital and the John A. Burns School of Medicine, and (3) inquiries relating to possible misuse of UCERA resources by faculty members (hereafter collectively the "Service Matters").
2. **No other changes.** It is understood that this Amendment No. 1 amends and modifies and is supplemental to the Agreement, and that all terms, conditions, and provisions of the Agreement shall remain in full force and effect unless specifically modified, altered, or changed herein in writing agreed to by University and Contractor.

UNIVERSITY:

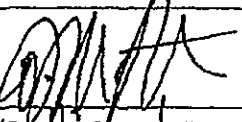
UNIVERSITY OF HAWAI'I

By   
Its Director, Office of Procurement  
and Real Property Management

Date: January 26, 2012

CONTRACTOR:

STARN O'TOOLE MARCUS & FISHER

By   
Its Director

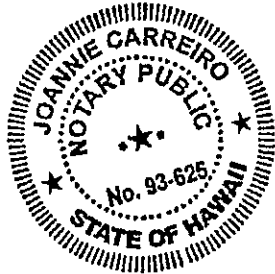
Date: December 19, 2011



CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

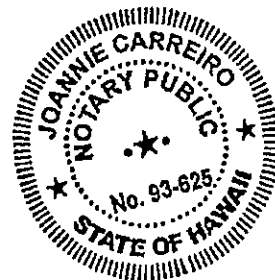
On this 19th day of December, 2011, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he she is the a Director of Starn O'Toole Marcus & Fisher, LC, a Hawai'i limited liability partnership, the CONTRACTOR named in the foregoing instrument, and that he she is authorized to sign said instrument in behalf of the CONTRACTOR, and said \_\_\_\_\_ acknowledged that he she executed said instrument as the free act and deed of the CONTRACTOR.



*Joannie Carreiro*

Notary Public, Joannie Carreiro

My commission expires: 11/11/13



NOTARY CERTIFICATION

Doc. Date: 12/19/11 # Pages: 3

Notary Name: Joannie Circuit First

Doc. Description Carreiro

Amendment No. 1 to Agreement

*Joannie Carreiro* 12/19/11  
Notary Signature Date

OPRPM FORM 107L  
(Rev. 10/06)

**UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES**

This Agreement, effective the 10th day of August, 2011, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Starn O'Toole Marcus & Fisher

(hereafter "CONTRACTOR"), a law corporation  
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)  
under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawai'i 96813; Taxpayer Identification Number

**RECITALS**

A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.

B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

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

(1) Account No. 254582 of  
(Identify state source)

(2) \_\_\_\_\_  
(Identify federal source)

or both, in the following amounts: State \$ 20,000.00

Federal \$ N/A

D. Pursuant to Sections 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.

2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.


UNIVERSITY

UNIVERSITY OF HAWAII

By   
Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Starn O'Toole Marcus & Fisher, a Hawai'i law corporation

By   
Name: Mark J. Bennett

Title Director \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

On this 10<sup>th</sup> day of August, 2011, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument, and that he is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

Valeri S. Nomura  
Notary Public, State of Hawaii  
My commission expires: 3-12-13

Document Date: 8/10/11 Number of Pages: 19  
Notary Name: Valerie Nomura 1<sup>st</sup> Judicial Circuit  
Document Description: University of Hawaii Agreement for Services

Valeri S. Nomura 8-10-11  
Notary Signature Date

NOTARY CERTIFICATION

## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") in connection with negotiating and resolving issues relating to and handling, defending, and managing the litigation matter entitled Gregory Carter v. University of Hawai'i Civil No. 11-87 (hereafter collectively the "Litigation"). The term "Litigation" as referred to herein shall mean the resolution of the Litigation, through an administrative, judicial, or alternative dispute resolution process or by settlement or other agreement.

The CONTRACTOR's work in connection with the Litigation shall include any and all legal analysis and evaluation necessary to handle, defend, manage, and resolve the Litigation, including without limitation: (1) identifying and selecting individuals and entities to facilitate resolution, (2) negotiating and preparing agreements, contracts, and other documents necessary for the resolution, and implementing such resolution, (3) preparing, filing, and submitting motions, statements, and other documents relating to pre-trial matters, (4) handling and overseeing the discovery process, (5) entering appearances and advocating the UNIVERSITY's position before any administrative, judicial, or alternative dispute resolution decision maker (judge, hearing officer, mediator, etc.), tribunal, or panel, (6) preparing for and handling all pre-trial and trial matters (including directing and taking the lead role in presenting and advocating the University's position during trial), (7) furnishing counsel, advice, and analysis on any issue relating to the Litigation as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and (8) handling or assisting in the handling of any litigation, administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Litigation, including, without limitation, providing assistance in: (1) developing and formulating the University's settlement and overall litigation positions, (2) representing the University in any judicial, administrative, or alternative dispute resolution proceedings related to the Litigation, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Litigation, (4) handling any judicial and administrative actions and proceedings relating to the Litigation, including advising administrators and regents, (5) expediting the resolution of the Litigation, and (6) preparing all necessary documents, such as tolling, settlement, termination, release, waiver, and other agreements that may be needed to resolve the Litigation and implement such resolution..

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with

respect to matters related to the Litigation and any attempted resolution. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other cases or matters that involve issues similar to any of the Litigation issues.

C. Litigation. The CONTRACTOR shall also provide legal services in connection with any administrative or court proceeding or action or litigation involving the Litigation and any appeals therefrom to the state circuit and/or appellate courts.

D. Extent of involvement to be determined by the UNIVERSITY. Actual time spent and fees incurred depend on the difficulty in completing the tasks requested by the UNIVERSITY under this Agreement. The scope of the CONTRACTOR's services, the degree of the CONTRACTOR's involvement with the Litigation, and the number and nature of any assigned tasks will be determined on a case by case basis by the UNIVERSITY, including the UNIVERSITY's General Counsel's office, with input from the UNIVERSITY administration.

E. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

F. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

G. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

H. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

I. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the

Attachment 1

UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

J. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

K. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

## TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on August 09, 2011, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.



## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00):

**Attorneys:**

Mark J. Bennett	\$375.00 per hour
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**Paralegal:**

Various	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) ~~(is not)~~ a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, AUG 10 2011

CONTRACTOR  
Starn O'Toole Marcus & Fisher

By [Signature]  
Name: Mark J. Bennett  
Title Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-16, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities
  - a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
  - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
2. Personnel Requirements
  - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

Attachment 5

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
  - c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.
13. Claims Based on a Procurement Officer's Actions or Omissions
- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
    - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
      - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
      - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
      - (C) Within such further time as may be allowed by the procurement officer in writing.
    - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
    - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
    - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
  - b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
  - c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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



## Attachment 5

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

### 1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Litigation and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Litigation and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

### 2. INSURANCE

The CONTRACTOR shall maintain professional liability insurance acceptable to the UNIVERSITY in full force and effect throughout the term of this Agreement. The policy or policies of such professional liability insurance acceptable to the UNIVERSITY and maintained by the CONTRACTOR shall provide single limit coverage in the amount of \$5,000,000 per claim and \$5,000,000 aggregate for all claims made during the policy period (hereafter the "CONTRACTOR's Insurance").

The CONTRACTOR's Insurance shall be in force the first day of the term of this Agreement.

### 3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

OPRPM FORM 107L  
(Rev. 10/06)

C120072

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES

This Agreement, effective the 29 day of November, 2011, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Starn O'Toole Marcus & Fisher

(hereafter "CONTRACTOR"), a law corporation  
(insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)  
under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813; Taxpayer Identification Number: 99-0215189

RECITALS

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
- B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.
- C. Money is available to fund this Agreement pursuant to:

- (1) Account No. 326832 Athletics Director's General Operations Account or  
(Identify state sources)
- (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts:

State	\$	<u>\$50,000</u>
Federal	\$	<u>N/A</u>

D. Pursuant to Sections 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed \$50,000 Fifty thousand and NO/100 DOLLARS (\$50,000), including taxes, according to the "Compensation and Payment Schedule" set forth in

Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.


UNIVERSITY

UNIVERSITY OF HAWAII

By   
Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Mark J. Bennett of Starn O'Toole Marcus & Fisher, a  
Hawaii law corporation

By   
Name: Mark J. Bennett

Title Director \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 )  
City and County of Honolulu ) SS.

On this 9th day of January, 2012, before me personally appeared  
Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in  
Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument,  
and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he  
executed said instrument as the free act and deed of the CONTRACTOR.

Joannie Carreiro

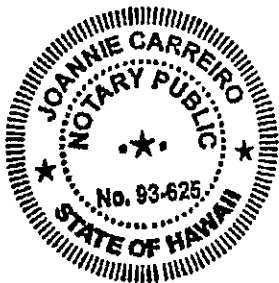
Notary Public, Joannie Carreiro

My commission expires: 11/11/13

Document Date: November 29, 2011 Number of Pages: 17  
Notary Name: Joannie Carreiro First      Judicial Circuit  
Document Description: University of Hawaii Agreement for Services

Joannie Carreiro January 9, 2012  
Notary Signature Joannie Carreiro Date

NOTARY CERTIFICATION



## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") with respect to ongoing investigations pertaining

(hereafter collectively the "Investigation").

The CONTRACTOR's work in connection with the Investigation shall include any and all legal analysis, evaluation and representation necessary in response to the Investigation, including without limitation, meeting with individuals, negotiating and preparing agreements, contracts, and other necessary documents, and furnishing counsel, advice, and analysis on any issue relating to the Investigation as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and handling or assisting in the handling of any administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination of individuals and entities), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Investigation, including, without limitation, providing assistance in: (1) developing and formulating the University's legal position, (2) representing the University in any proceedings related to the Investigation, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Investigation, (4) handling any administrative actions and proceedings relating to the Investigation, including advising administrators and regents, and (5) expediting the resolution of the Investigation, as requested by the UNIVERSITY.

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the Investigation. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other issues or matters that involve issues similar to any of the Investigation issues.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.



D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

I. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

## TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on November 29, 2011, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00):

**Attorneys:**

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$200.00 per hour

**Paralegal:**

Connie Gardner	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, January 9, 2012

CONTRACTOR  
Starn O'Toole Marcus & Fisher

By \_\_\_\_\_

Name: Mark J. Bennett

Title Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.



- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

### 1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Investigation and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Investigation and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

### 2. INSURANCE

[Reserved]

### 3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$200.00 and \$375.00 per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

### 4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

OPRPM FORM 107L  
(Rev. 10/06)

**UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES**

This Agreement, effective the 16th day of December, 2011, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Stam O'Toole Marcus & Fisher (hereafter "CONTRACTOR"), a law corporation  
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)

under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813; Taxpayer Identification Number: 99-0215189

**RECITALS**

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
  - B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.
  - C. Money is available to fund this Agreement pursuant to:
    - (1) Account No. 326832 \_\_\_\_\_ or  
(Identify state sources)
    - (2) \_\_\_\_\_  
(Identify federal sources)
- or both, in the following amounts:
- |         |    |                 |
|---------|----|-----------------|
| State   | \$ | <u>\$50,000</u> |
| Federal | \$ | <u>N/A</u>      |
- D. Pursuant to Sections 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed \$50,000 Fifty thousand and NO/100 DOLLARS (\$50,000), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

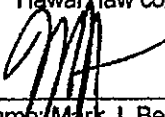
UNIVERSITY

UNIVERSITY OF HAWAII

By \_\_\_\_\_  
Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Mark J. Bennett of Starn O'Toole Marcus & Fisher, a  
Hawaii law corporation

By  \_\_\_\_\_  
Name: Mark J. Bennett

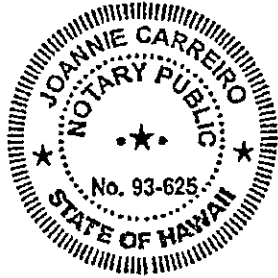
Title: Director \_\_\_\_\_ \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

On this 23rd day of January, 2012, before me personally appeared \_\_\_\_\_  
Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in  
Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument,  
and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he  
executed said instrument as the free act and deed of the CONTRACTOR.



Joannie Carreiro

Notary Public, Joannie Carreiro

My commission expires: 11/11/13

Document Date: 01/23/12

Number of Pages: 17

Notary Name: Joannie Carreiro

First Judicial Circuit

Document Description: University of Hawaii Agreement for Services

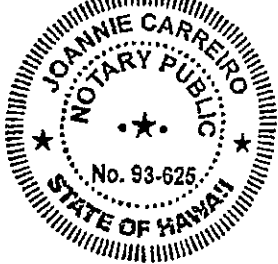
Joannie Carreiro

Notary Signature

01/23/12

Date

NOTARY CERTIFICATION





## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") with respect to issues regarding athletic conference realignment, contract negotiations and drafting (hereafter "Project").

The CONTRACTOR's work in connection with the Project shall include any and all legal analysis, evaluation and representation necessary in response to the Project, including without limitation, meeting with individuals, negotiating and preparing agreements, contracts, and other necessary documents, and furnishing counsel, advice, and analysis on any issue relating to the Project as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and handling or assisting in the handling of any administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination of individuals and entities), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, providing assistance in: (1) developing and formulating the University's legal position, (2) representing the University in any proceedings related to the Project, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Project, (4) handling any administrative actions and proceedings relating to the Project, including advising administrators and regents, and (5) expediting the resolution of the Project, as requested by the UNIVERSITY.

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the Project. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other issues or matters that involve issues similar to any of the Project issues.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

I. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

## TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on December 16, 2011, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00):

Attorneys:

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$200.00 per hour

Paralegal:

Connie Gardner	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

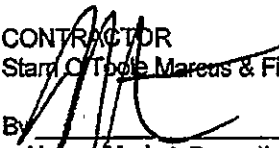
"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices,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

On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

- 1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
- 2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
- 3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
- 4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
- 5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
- 6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, JAN 23 2012

CONTRACTOR  
 Starn O'Toole Marcus & Fisher  
 By   
 Name: Mark J. Bennett  
 Title: Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.



- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Investigation and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Investigation and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

2. INSURANCE

[Reserved]

3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$200.00 and \$375.00 per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

OPRPM FORM 107L  
(Rev. 10/06)

C120117

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES

This Agreement, effective the 6 day of February, 2012, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Mark J. Bennett of Starn O'Toole Marcus & Fisher

(hereafter "CONTRACTOR"), a law corporation  
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)  
under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawai'i 96813; Taxpayer Identification Number: 99-0215189

RECITALS

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
- B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

- C. Money is available to fund this Agreement pursuant to:
  - (1) 254582 or  
(Identify state sources)
  - (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts:

State	\$	<u>\$10,000</u>
Federal	\$	<u>N/A</u>

D. Pursuant to Sections 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed \$10,000 Ten thousand and NO/100 DOLLARS (\$10,000), including taxes, according to the "Compensation and Payment Schedule" set forth in

DOLLARS, including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

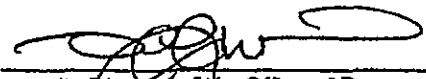
5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

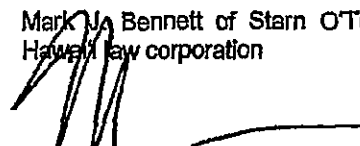
IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

UNIVERSITY OF HAWAII

By   
His Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Mark J. Bennett of Starn O'Toole Marcus & Fisher, a  
Hawaii law corporation  
By   
Name: Mark J. Bennett  
Title Director \*

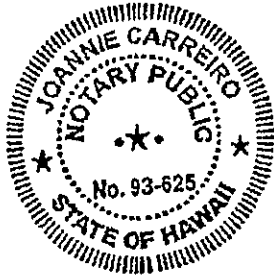
\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.



CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 )  
City and County of Honolulu ) ss.

On this 27th day of March, 2012, before me personally appeared  
Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in  
Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing Instrument,  
and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he  
executed said instrument as the free act and deed of the CONTRACTOR.



Joannie Carreiro

Notary Public, Joannie Carreiro

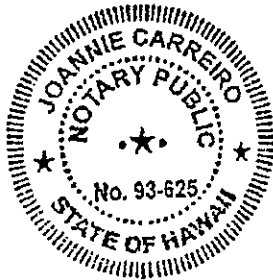
My commission expires: 11/11/13

Document Date: March 27, 2012 Number of Pages: 18  
Notary Name: Joannie Carreiro First Judicial Circuit  
Document Description: University of Hawaii Agreement for Services  
.xxxwebsite

Joannie Carreiro  
Notary Signature

March 27, 2012  
Date

NOTARY CERTIFICATION



## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") in connection with negotiating, resolving, handling, prosecuting, and managing any issues and litigation related to the University and the owners/operators of the domain name universityofhawaii.xxx (hereafter collectively the "Litigation"). The term "Litigation" as referred to herein shall mean the resolution of the Litigation, through an administrative, judicial, or alternative dispute resolution process or by settlement or other agreement.

The CONTRACTOR's work in connection with the Litigation shall include any and all legal analysis and evaluation necessary to handle, prosecute, manage, and resolve the Litigation, including without limitation: (1) identifying and selecting individuals and entities to facilitate resolution, (2) negotiating and preparing agreements, contracts, and other documents necessary for the resolution, and implementing such resolution, (3) preparing, filing, and submitting motions, statements, and other documents relating to pre-trial matters, (4) handling and overseeing the discovery process, (5) entering appearances and advocating the UNIVERSITY's position before any administrative, judicial, or alternative dispute resolution decision maker (judge, hearing officer, mediator, etc...), tribunal or panel, (6) preparing for and handling all pre-trial and trial matters (including directing and taking the lead role in presenting and advocating the University's position during trial), (7) furnishing counsel, advice, and analysis on any issues relating to the Litigation as may be requested or deemed necessary by the UNVIERSITY, including preparing opinions or memorandums on any issues, and (8) handling or assisting in the handling of any litigation, administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination), whether the proceedings or actions are conducted within judicial, administrative, or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Investigation, including, without limitation, providing assistance in: (1) developing and formulating the University's legal position, (2) representing the University in any proceedings related to the Investigation, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Investigation, (4) handling any administrative actions and proceedings relating to the Investigation, including advising administrators and regents, and (5) expediting the resolution of the Investigation, as requested by the UNIVERSITY.

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the Investigation. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other issues or matters that involve issues similar to any of the Investigation issues.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

I. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR.

Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

### TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on February 6, 2012, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of TEN THOUSAND AND NO/100 DOLLARS (\$50,000.00):

**Attorneys:**

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$200.00 per hour

**Paralegal:**

Connie Gardner	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawaii law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) ~~(is not)~~ a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, March 27, 2012

CONTRACTOR  
Starn O'Toole Marcus & Fisher

By [Signature]  
Name: Mark J. Bennett  
Title Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.



- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures: Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-63, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

### 1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Investigation and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Investigation and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

### 2. INSURANCE

[Reserved]

### 3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$200.00 and \$375.00 per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

### 4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.



OPRPM FORM 107L  
(Rev. 10/06)

C130029

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES

This Agreement, effective the 10th day of August, 2012, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Starn O'Toole Marcus & Fisher

(hereafter "CONTRACTOR"), a law corporation  
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)

under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813; Taxpayer Identification Number: 99-0215189

RECITALS

A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.

B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

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

(1) Account No. 2254582 Risk Management Special Fund or  
(Identify state sources)

(2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ \$20,000

Federal \$ N/A

D. Pursuant to Sections 304A-103 and 304A-105, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.

2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed \$20,000 Twenty thousand and NO/100 DOLLARS (\$20,000), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

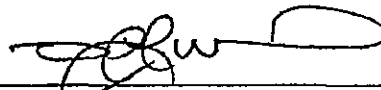
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

UNIVERSITY OF HAWAII

By

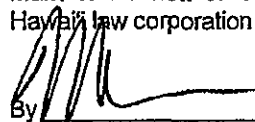


Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Mark J. Bennett of Starn O'Toole Marcus & Fisher, a  
Hawaii law corporation

By



Name: Mark J. Bennett

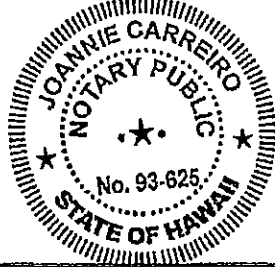
Title Director \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

On this 20th day of August, 2012, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

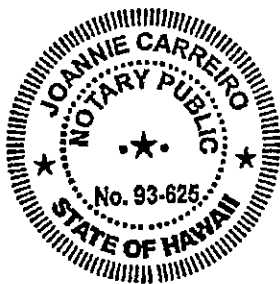


Joannie Carreiro  
Notary Public, Joannie Carreiro  
My commission expires: 11/11/13

Document Date: 08/20/12 Number of Pages: 17  
Notary Name: Joannie Carreiro First Judicial Circuit  
Document Description: University of Hawaii - Agreement for Services  
(Lillian Jones v. University of Hawaii, U.S. Supreme Court Case 12-69)

Joannie Carreiro 08/20/12  
Notary Signature Date

NOTARY CERTIFICATION



## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") relating to the litigation matter, *Lillian Jones v. University of Hawai'i*, U.S. Supreme Court Case No. 12-69 (hereafter collectively the "Project").

The CONTRACTOR's work in connection with the Project shall include any and all legal analysis, evaluation and representation necessary in response to the Project, including without limitation, meeting with individuals, negotiating and preparing agreements, contracts, and other necessary documents, and furnishing counsel, advice, and analysis on any issue relating to the Project as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and handling or assisting in the handling of any administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination of individuals and entities), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, providing assistance in: (1) developing and formulating the University's legal position, (2) representing the University in any proceedings related to the Project, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Project, (4) handling any administrative actions and proceedings relating to the Project, including advising administrators and regents, and (5) expediting the resolution of the Project, as requested by the UNIVERSITY.

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the Project. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other issues or matters that involve issues similar to any of the Project issues.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

I. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

## TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on August 10, 2012, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00):

Attorneys:

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$225.00 per hour

Paralegal:

Connie Gardner	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Stam O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) ~~(is not)~~ a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

AUG 20 2012

DATED: Honolulu, Hawaii, \_\_\_\_\_

CONTRACTOR  
Stam O'Toole Marcus & Fisher

By \_\_\_\_\_  
Name: Mark J. Bennett  
Title: Director

*[Handwritten signature]* 9/28/12

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.



STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

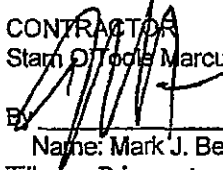
1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

**AUG 20 2012**

DATED: Honolulu, Hawaii, \_\_\_\_\_

CONTRACTOR  
Starn O'Toole Marcus & Fisher

By   
Name: Mark J. Bennett  
Title Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities
  - a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
  - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
2. Personnel Requirements
  - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement.

The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.



19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

### 1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Project and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Project and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

### 2. INSURANCE

[Reserved]

### 3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$225.00 and \$375.00 per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

### 4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.



3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in an total amount not to exceed \$75,000 Seventy five thousand and NO/100 DOLLARS (\$75,000), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.


UNIVERSITY

UNIVERSITY OF HAWAII

By   
Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Mark J. Bennett of Starn O'Toole Marcus & Fisher, a  
Hawai'i law corporation

By   
Name: Mark J. Bennett

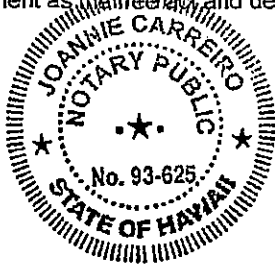
Title Director \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii )  
 ) SS.  
City and County of Honolulu )

On this 20th day of August, 2012, before me personally appeared Mark J. Bennett, to me personally known, who being by me duly sworn, did say that he is a director in Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

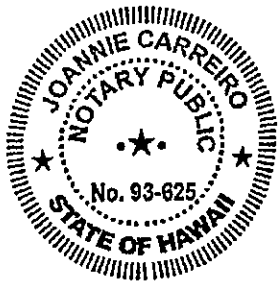


Joannie Carreiro  
Notary Public, Joannie Carreiro  
My commission expires: 11/11/13

Document Date: 08/20/12 Number of Pages: 17  
Notary Name: Joannie Carreiro First Judicial Circuit  
Document Description: University of Hawaii - Agreement for Services  
(Athletics event at the Stan Sheriff Center)

Joannie Carreiro 08/20/12  
Notary Signature Date

NOTARY CERTIFICATION



## SCOPE OF SERVICES

The UNIVERSITY hereby retains the law firm of STARN O'TOOLE MARCUS & FISHER, a Hawai'i law corporation (hereafter referred to as "CONTRACTOR") to provide legal counsel, advice, and services to the University of Hawai'i (hereafter the "UNIVERSITY") relating to criminal, law enforcement, and/or civil litigation activities and/or administrative matters relating to an Athletics event at the Stan Sheriff Center and funds expended therein (hereafter collectively the "Project").

The CONTRACTOR's work in connection with the Project shall include any and all legal analysis, evaluation and representation necessary in response to the Investigation, including without limitation, meeting with individuals, negotiating and preparing agreements, contracts, and other necessary documents, and furnishing counsel, advice, and analysis on any issue relating to the Project as may be requested or deemed necessary by the UNIVERSITY, including preparing opinions or memorandums on any issues, and handling or assisting in the handling of any administrative proceedings, procurement matters, disputes, alternative dispute resolution proceedings, contractual matters and actions (such as formation and termination of individuals and entities), whether the proceedings or actions are conducted within judicial, administrative or alternative dispute resolution forums.

The CONTRACTOR's work hereunder shall include at least the following:

A. Assist with implementing, negotiating and preparing agreements. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, providing assistance in: (1) developing and formulating the University's legal position, (2) representing the University in any proceedings related to the Project, (3) preparing agreements, contracts, and other documents as may be necessary to resolve the Project, (4) handling any administrative actions and proceedings relating to the Project, including advising administrators and regents, and (5) expediting the resolution of the Project, as requested by the UNIVERSITY.

B. Advice and counsel. The CONTRACTOR shall provide advice and counsel, including, without limitation, researching and preparing legal opinions or memorandums, with respect to matters related to the Project. The CONTRACTOR agrees, if so requested by the UNIVERSITY, to provide advice and counsel and other legal services to the UNIVERSITY with respect to any other issues or matters that involve issues similar to any of the Project issues.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of **Mark J. Bennett** and he or his designated representative shall report to the UNIVERSITY's General Counsel or designated representative.

D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's General Counsel or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's General Counsel or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's General Counsel or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's General Counsel or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding to incur or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in the matters described herein, including related matters and matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

I. Separate matters. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the UNIVERSITY may be requesting the CONTRACTOR to provide legal services covering work and activities in a number of different areas (2) the funding to cover specific assignments or tasks may come from multiple sources within the UNIVERSITY, and (3) to expedite the processing of the invoices, the CONTRACTOR agrees to provide invoices that clearly detail and breakdown the hours spent for each specific assignment and task, and in accordance with such sub-accounts for specific subject areas covering such assignments and tasks, all as may be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. Part of the reason for requiring such a breakdown is to enable each source of funding to more easily identify and verify the portion of each invoice for which it is responsible, if such a breakdown is necessary.

## TIME OF PERFORMANCE

Services by CONTRACTOR under this Agreement shall commence on July 10, 2012, and shall continue until the matters specified herein are resolved, unless earlier terminated by the UNIVERSITY as provided herein, or until funds allocated to this Agreement have been exhausted.



## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00):

Attorneys:

Mark J. Bennett	\$375.00 per hour
Brandi J. Buehn	\$225.00 per hour

Paralegal:

Connie Gardner	\$120.00 per hour
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2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred that require payment to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be submitted (and billed) on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by the CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (3) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (4) The hourly rate of the attorney or paralegal performing the task.
- (5) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawaii law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) ~~(is not)~~ a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, AUG 20 2012

CONTRACTOR  
 Starn O'Toole Marcus & Fisher  
 By [Signature]  
 Name: Mark J. Bennett  
 Title: Director

9/28/12

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

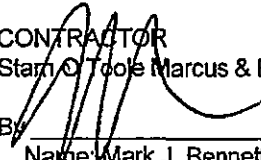
On behalf of Mark J. Bennett of Starn O'Toole Marcus & Fisher, a Hawai'i law corporation, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, AUG 20 2012

CONTRACTOR  
Starn O'Toole Marcus & Fisher

By   
Name: Mark J. Bennett  
Title: Director

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement.

The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

## 9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

## 10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
  - (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
  - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.



14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Project and the matters described in the Scope of Services. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the resolution of the Project and the implementation of any such resolution. The CONTRACTOR agrees to use its best efforts to provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide the UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

2. INSURANCE

[Reserved]

3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign **Mark J. Bennett** as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The CONTRACTOR, with the UNIVERSITY's prior written consent, may assign other attorneys to perform legal services requested by the UNIVERSITY under this Agreement, and the hourly rates for such other attorneys shall range between \$225.00 and \$375.00 per hour, with the exact hourly rate to be mutually agreed upon between the UNIVERSITY and the CONTRACTOR. The UNIVERSITY shall advise the CONTRACTOR of the hourly rate that the UNIVERSITY is willing to pay for the services of such other attorneys.

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.

**NOTICE TO ATTORNEYS  
INTERESTED IN PROVIDING LEGAL SERVICES  
TO THE UNIVERSITY OF HAWAII**

The University of Hawai'i hereby invites licensed attorneys to submit letters of interest and statements of qualifications to provide legal services on a contract basis as the need arises for the fiscal year commencing July 1, 2012.

At minimum, the University anticipates the need to contract for legal services in the following areas:

Administrative Law	Estates & Trusts	Procurement Law
Admiralty	Family Law	Product Liability
Aerospace	Federal Government	Public Financing, including
Antitrust	Contracting	Bond Counsel, Lease
Appellate Practice	Federal Legislation	Financing
Athletics	Federal-State Relations	Public Records Law
Aviation	Fiduciary Duties	Public Meeting Law
Banking	and Relationships	Public Utilities
Bankruptcy	Hospital/Health Law	Real Property
Business and Corporate	Immigration	Rule Drafting
Cable Television	Information and	Securities Law
Civil Rights	Computer Technology	Surety Law
Collections	Insurance Law	State Legislation
Commercial Law	Intellectual Property	Taxation
Complex Civil Litigation	International Law	Telecommunications
Constitutional Law	Investigations	Torts
Construction Law	Labor Law	Transportation Law
Contract Law	Land Use, including Zoning	Unfair & Deceptive Acts
Defamation	Landlord/Tenant	Water Rights
Eminent Domain	Maritime	Workers' Compensation
Employment Law	Medical Malpractice	
Energy Law	Military Law	
Environmental Law	Negligent Misrepresentation	

Attorneys interested in being retained to provide legal services in these areas, or any other area of practice which an attorney wishes to suggest might be needed, should submit a letter of interest together with a statement of qualifications which includes the following information:

1. The name, business address, telephone and fax number(s), and e-mail address of the attorney.
2. The name of the law firm with which the attorney is affiliated, if any, the number of years the attorney has been with the firm, whether the attorney is a partner, shareholder or employee of the firm, and what, if any, special practice units are part of the firm.
3. A summary of the attorney's educational and employment background.

4. The jurisdictions (state and courts) in which the attorney is licensed and authorized to practice.
5. A brief description of other staff and facilities available to the attorney, including secretarial and paralegal support, and other attorneys.
6. The range of hourly rates charged by the attorney, and a summary of the types and amounts of costs charged by the firm.
7. The area(s) of practice in which the attorney is interested in being retained with a brief summary of the attorney's experience and types of cases/matters the attorney has handled.

Letters of interest and statements of qualifications should be sent to:

Director  
Office of Procurement and Real Property Management  
1400 Lower Campus Road, Room 15  
Honolulu, Hawaii 96822

Attorneys from the same firm wishing to be considered must submit separate statements.

There is no deadline for submission. The University conducts a continuous recruitment for the aforementioned legal services.

All questions pertaining to this solicitation may be directed to Mr. Kurt Minato, telephone (808) 956-7159.

M.R.C. Greenwood  
President, University of Hawai'i

Posting Date: June 12, 2012

Prepared by Office of Procurement and Real Property Management.  
This replaces Administrative Procedure No. A8.245 dated  
July 2010

A8.245

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A8.200 Procurement

July 2012

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P 1 of 6

A8.245 Professional Services Procurement

1. General

- a) "Professional Services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, public finance bond underwriting, public finance bond investment banking, or any other practice defined as professional by the laws of Hawaii or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standard Handbook (available at <http://www.opm.gov/qualifications/standards/group-stds/GS-PROF.asp>)
- b) Professional services may generally be procured through any of the source selection methods provided in these procedures as applicable. However, the acquisition of design professional services in the disciplines of engineering, architecture, land surveying, and/or landscape architecture and furnished by licensees under Chapter 464, HRS, shall be procured in accordance with the procedures set forth in Section 103D-304, HRS, and in this section, except in the case of an emergency procurement.

2. Public Notice for Professional Services

- a. Before the beginning of each fiscal year, the University shall give public notice to invite persons engaged in performing designated professional services to submit current statements of qualifications and

expressions of interest for services which the University anticipates needing in the performance of its operations during the fiscal year.

- b. Additional public notices inviting persons engaged in providing professional services may be made if the response to the initial notice is not adequate, if the response to the initial notice does not result in an adequate representation of available sources, or if previously unanticipated needs for professional services arise.

3. Review of Submitted Statements of Qualifications

A review committee shall be designated to evaluate statements of qualifications and related information submitted for the purpose of compiling a list of qualified persons or firms to provide particular types of professional services. The review committee shall consist of at least three persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. The review committee shall evaluate all submissions and other pertinent information and compile a list of qualified professionals to provide the particular services. The names of the members of the review committee shall be placed in the contract file.

4. Procedure for the Acquisition of Professional Services

- a. If a University program identifies a need to procure professional services, the following procedures shall apply:
  - 1) A selection committee shall be established consisting of at least three persons with sufficient education, training, and licenses or credentials in the area of the services required. For the procurement of professional services in architecture, engineering, and other design-related areas, the selection committee shall include at least three University employees from the Office of Capital Improvements and/or the Facilities Management Office that will be responsible for the management of the



professional services to be acquired. The names of the members of the selection committee shall be placed in the contract file.

- 2) The selection criteria to be employed in descending order of importance shall be:
  - a) Experience and professional qualifications relevant to the project type;
  - b) Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies;
  - c) Capacity to accomplish the work in the required time; and
  - d) Any additional criteria determined in writing by the selection committee to be relevant to the University's needs or necessary and appropriate to ensure full, open, and fair competition, such as the following:
    - 1) Specialized experience, equipment and technical competence to be applied;
    - 2) Quality control practices, techniques and methods used;
    - 3) Ability to work effectively with University and user program staff; and
    - 4) Familiarity with and knowledge of all applicable laws, codes and ordinances.
- 3) The selection committee shall evaluate the submissions of the list of qualified persons or firms against the selection criteria. Committee members may use OPRPM Form 153, Individual Evaluation Form for Professional Services, (**Attachment 245.2**), or similar form, for evaluation purposes. The committee may conduct confidential discussions with any person or firm

on the list of qualified professionals regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from competing offerors.

- 4) The selection committee shall provide the University's designated officer overseeing the particular procurement of professional services with the ranking of a minimum of three persons or firms based on the selection criteria, together with a summary of their qualifications for the ranking of each person or firm on OPRPM Form 134, Evaluation Summary Abstract, (**Attachment 245.1**), or similar form, for the contract file.
- 5) The University's designated officer shall thereafter seek to negotiate a contract with the first-ranked individual or firm, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first-ranked individual or firm, such negotiations shall be terminated and negotiations with the other individuals or firms in order of their rankings shall commence.
- 6) If a contract at a fair and reasonable price cannot be negotiated, the selection committee may be asked to submit the ranking of three (3) additional individuals or firms to the University's designated officer, and the University's designated officer may resume negotiations in the same manner provided in these procedures.
- 7) Upon completion of negotiations, the University program shall forward the following documents to the OPRPM for processing:
  - a) Original fee proposal from selected individual/firm, if applicable;

- b) Completed OPRPM Form 95, Determination of Cost or Price Reasonableness (**Attachment 285.1**);
  - c) A requisition for contract encumbrance purposes; and
  - d) A draft of the proposed contract terms relating to the scope of services, time of performance, and the compensation and payment schedule (see attachment 1 through 3, OPRPM Form 107G, University of Hawaii Agreement for Services, **Attachment 230.3**)
- b. All contracts processed under these professional services procurement procedures shall be submitted to the OPRPM for review, regardless of the dollar amount of the contract.

5. Posting of Awards

Contracts awarded under this section for \$5,000 or more shall be posted electronically within seven days of the contract award by the OPRPM and shall remain posted for at least one year. Information to be posted shall include, but not be limited to:

- a. The names of the persons or firms ranked by the selection committee;
- b. The name of the person or firm receiving the award;
- c. The dollar amount of the contract;
- d. The name of the University officer making the selection; and
- e. Any relationship of the principals to the officer making the award.

6. Public Inspection

After the contract is awarded, the following information shall be open to public inspection, including but not

limited to: the contract; the list of qualified persons; the selection committee's criteria for selection; and the statements of qualifications and related information submitted by the qualified persons, except those portions for which a written request for confidentiality has been made.

7. Debriefing

- a. The purpose of a debriefing is to inform the providers of professional services of the basis for nonselection.
- b. A written request for a debriefing by a non-selected provider shall be made within three working days after the posting of the award of the contract.
- c. Debriefing shall be held by the procurement officer or designee, to the maximum extent practicable, within seven working days; provided the procurement officer or designee may determine whether or not to conduct individual or combined debriefings.

OPRPM Form 134  
(Rev. 01/2005)

### Evaluation Summary Abstract

Project: Advise re: Fact-Finding Report

Project No. (if applicable): \_\_\_\_\_

#### TOTAL OVERALL SCORE

	Evaluator #1	Evaluator #2	Evaluator #3	Subtotals
Individual/Firm #1: <u>Patrick Jones / Marr Jones &amp; Wang</u>				
1. Experience/Professional Qualifications	<u>20</u>	<u>20</u>	<u>20</u>	<u>60</u>
2. Past Performance	<u>12</u>	<u>12</u>	<u>12</u>	<u>36</u>
3. Ability to Meet Project Schedule	<u>10</u>	<u>10</u>	<u>8</u>	<u>28</u>
4. Other: _____	_____	_____	_____	_____
5. Other: _____	_____	_____	_____	_____
				Individual/Firm #1 Total: <u>124</u>

(2)

Individual/Firm #2: <u>Robert Katz / Torkildson Katz Moore Hetherington &amp; Harris</u>				
1. Experience/Professional Qualifications	<u>20</u>	<u>20</u>	<u>20</u>	<u>60</u>
2. Past Performance	<u>15</u>	<u>15</u>	<u>12</u>	<u>42</u>
3. Ability to Meet Project Schedule	<u>10</u>	<u>10</u>	<u>10</u>	<u>30</u>
4. Other: _____	_____	_____	_____	_____
5. Other: _____	_____	_____	_____	_____
				Individual/Firm #2 Total: <u>132</u>

(1)

Individual/Firm #3: <u>Barbara Petrus / Goodsill Anderson Quinn &amp; Stifel</u>				
1. Experience/Professional Qualifications	<u>16</u>	<u>20</u>	<u>16</u>	<u>52</u>
2. Past Performance	<u>12</u>	<u>12</u>	<u>12</u>	<u>36</u>
3. Ability to Meet Project Schedule	<u>10</u>	<u>10</u>	<u>8</u>	<u>28</u>
4. Other: _____	_____	_____	_____	_____
5. Other: _____	_____	_____	_____	_____
				Individual/Firm #3 Total: <u>116</u>

(3)

(Attach additional sheets if necessary)

Evaluator Name:  
 #1 Christine S.Y. Chun  
 #2 Bruce Y. Matsui  
 #3 Randall K. Ishikawa

Evaluator Signature:  
Christine S.Y. Chun  
Bruce Y. Matsui  
Randall K. Ishikawa



OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: PATRICK JONES - MACK JONES & WANG

PROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications Comments:	4x	5	4	3	2	1	= <u>20</u>
2. Past Performance Comments:	3x	5	4	3	2	1	= <u>12</u>
3. Ability to Meet Project Schedule Comments:	2x	5	4	3	2	1	= <u>10</u>
4. Other: _____ Comments:	1x	5	4	3	2	1	= _____
5. Other: _____ Comments:	1x	5	4	3	2	1	= _____

**TOTAL SCORE:** 42

(Attach additional sheets if necessary)

EVALUATOR: Christine A. Y. Chen DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: Patrick Jones Harr Jones + Wang

PROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications Comments:	4x	5	4	3	2	1	= <u>20</u>
2. Past Performance Comments:	3x	5	4	3	2	1	= <u>12</u>
3. Ability to Meet Project Schedule Comments:	2x	5	4	3	2	1	= <u>10</u>
4. Other: _____ Comments:	1x	5	4	3	2	1	= _____
5. Other: _____ Comments:	1x	5	4	3	2	1	= _____

**TOTAL SCORE:** 42

(Attach additional sheets if necessary)

EVALUATOR: Bruce P. Matsui Bruce P. Matsui DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: Patrick Jones, Marr Jones & Wang

PROJECT: Advise re: Fact-Finding Report


PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications Comments:	4x	<u>5</u>	4	3	2	1	= <u>20</u>
2. Past Performance Comments:	3x	5	<u>4</u>	3	2	1	= <u>12</u>
3. Ability to Meet Project Schedule Comments:	2x	5	<u>4</u>	3	2	1	= <u>8</u>
4. Other: _____ Comments:	1x	5	4	3	2	1	= _____
5. Other: _____ Comments:	1x	5	4	3	2	1	= _____

**TOTAL SCORE: 40**

(Attach additional sheets if necessary)

EVALUATOR:  DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).



OPRPM Form 153  
(01/2005)INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICESINDIVIDUAL/FIRM NAME: ROBERT KATZ - TORKILDSON KATZPROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

## Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications	4x	5	4	3	2	1	= <u>20</u>
Comments:							
2. Past Performance	3x	5	4	3	2	1	= <u>15</u>
Comments:							
3. Ability to Meet Project Schedule	2x	5	4	3	2	1	= <u>10</u>
Comments:							
4. Other: _____	1x	5	4	3	2	1	= _____
Comments:							
5. Other: _____	1x	5	4	3	2	1	= _____
Comments:							

TOTAL SCORE: 45

(Attach additional sheets if necessary)

EVALUATOR: Christine A. G. Chen DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: Robert Katz Torkildsen Katz  
 PROJECT: Advise re: Fact-Finding Report  
 PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications Comments:	4x	(5)	4	3	2	1	= <u>20</u>
2. Past Performance Comments:	3x	(5)	4	3	2	1	= <u>15</u>
3. Ability to Meet Project Schedule Comments:	2x	(5)	4	3	2	1	= <u>10</u>
4. Other: _____ Comments:	1x	5	4	3	2	1	= _____
5. Other: _____ Comments:	1x	5	4	3	2	1	= _____

**TOTAL SCORE: 45**

(Attach additional sheets if necessary)

EVALUATOR: [Signature] Bruce Y. Matsui DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICESINDIVIDUAL/FIRM NAME: Robert Katz, Torildan KatzPROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications	4x	(5)	4	3	2	1	= <u>20</u>
Comments:							
2. Past Performance	3x	5	(4)	3	2	1	= <u>12</u>
Comments:							
3. Ability to Meet Project Schedule	2x	(5)	4	3	2	1	= <u>10</u>
Comments:							
4. Other: _____	1x	5	4	3	2	1	= _____
Comments:							
5. Other: _____	1x	5	4	3	2	1	= _____
Comments:							

TOTAL SCORE: 42

(Attach additional sheets if necessary)

EVALUATOR: DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: BARBARA PETRUS - GOODSILL ANDERSON

PROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications Comments:	4x	5	4	3	2	1	= <u>16</u>
2. Past Performance Comments:	3x	5	4	3	2	1	= <u>12</u>
3. Ability to Meet Project Schedule Comments:	2x	5	4	3	2	1	= <u>10</u>
4. Other: _____ Comments:	1x	5	4	3	2	1	= _____
5. Other: _____ Comments:	1x	5	4	3	2	1	= _____

**TOTAL SCORE: 38**

(Attach additional sheets if necessary)

EVALUATOR: Christine N.Y. Lohr DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: Barbara Petrus Goodwill Anderson Quinn + Stifel

PROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications	4x	5	4	3	2	1	= <u>20</u>
Comments:							
2. Past Performance	3x	5	4	3	2	1	= <u>12</u>
Comments:							
3. Ability to Meet Project Schedule	2x	5	4	3	2	1	= <u>10</u>
Comments:							
4. Other: _____	1x	5	4	3	2	1	= _____
Comments:							
5. Other: _____	1x	5	4	3	2	1	= _____
Comments:							

**TOTAL SCORE:** 42

(Attach additional sheets if necessary)

EVALUATOR: Bruce Y. Matsui Bruce Y. Matsui DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM Form 153  
(01/2005)

**INDIVIDUAL EVALUATION FORM  
FOR PROFESSIONAL SERVICES**

INDIVIDUAL/FIRM NAME: Barbara Petrus, Goodwill

PROJECT: Advise re: Fact-Finding Report

PROJECT NO. (if applicable): \_\_\_\_\_

Rating Scale (Circle One)

CRITERIA	Weight*	Rating Scale (Circle One)					SCORE
		Excellent	Good	Average	Below Average	Poor	
1. Experience/Professional Qualifications	4x	5	(4)	3	2	1	= <u>16</u>
Comments:							
2. Past Performance	3x	5	(4)	3	2	1	= <u>12</u>
Comments:							
3. Ability to Meet Project Schedule	2x	5	(4)	3	2	1	= <u>8</u>
Comments:							
4. Other: _____	1x	5	4	3	2	1	= _____
Comments:							
5. Other: _____	1x	5	4	3	2	1	= _____
Comments:							

**TOTAL SCORE: 36**

(Attach additional sheets if necessary)

EVALUATOR:  DATE: 8/21/12

\* Note to Evaluators: The number of points given to an individual/firm for a particular criteria shall be multiplied by the weight of the criteria. For example, if the evaluator gives a rating of excellent (5) for criteria number 1, the rating shall be multiplied by the weight (4). Therefore the score for criteria no. 1 would be 20. All scores shall be transferred to the Evaluation Summary Abstract (OPRPM Form 134).

OPRPM FORM 107L  
(Rev. 10/06)

C130023

**UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES**

This Agreement, effective the 20th day of August, 2012, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Torkildson, Katz, Moore, Hetherington & Harris

(hereinafter "CONTRACTOR"), a law corporation  
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)

under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: 700 Bishop Street, 15th Floor, Honolulu, Hawai'i 96813-4187

Fed. I.D. No. 99-0155867

**RECITALS**

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
- B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.
- C. Money is available to fund this Agreement pursuant to:

- (1) Account No. 2269712 or  
(Identify state sources)
- (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ 25,000.00  
Federal \$ \_\_\_\_\_

D. Pursuant to Section 304A-103, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

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

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
- 2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in a total amount not to exceed TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$ 25,000.00 ), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

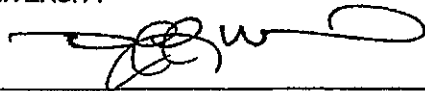
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

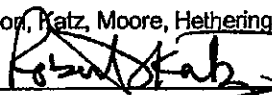
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

By  \_\_\_\_\_  
Its Director of the Office of Procurement  
and Real Property Management

CONTRACTOR

Torkildson, Katz, Moore, Hetherington & Harris  
By  \_\_\_\_\_  
Title Attorney \*

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.



CONTRACTOR'S ACKNOWLEDGMENT

State of Hawai'i )  
 ) SS.  
City and County of Honolulu )

On this 30<sup>th</sup> day of August, 2012, before me personally appeared ROBERT S. KATZ, to me personally known, who being by me duly sworn, did say that he/she is the Attorney of Torkelson, KATZ, Moore, Helberstein + HARRIS, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

Rosemarie L. Pettus 54  
Notary Public, STATE OF HAWAII  
My commission expires: 7-31-2013

NOTARY CERTIFICATION  
Doc. Date: 8-30-2012 # Pages: 18  
Notary Name: ROSEMARIE L. PETTUS 1 Circuit  
Doc. Description: University of Hawaii Agreement for services  
Rosemarie L. Pettus 8-30-2012  
Notary Signature Date 55

## SCOPE OF SERVICES

University hereby retains the law firm of Torkildson, Katz, Moore, Hetherington & Harris a Hawai'i Law Corporation (hereafter referred to as "CONTRACTOR") specifically to retain the services of Robert Katz to represent the University of Hawai'i (hereafter the "UNIVERSITY") and provide advice and counsel in the matter relating to the Fact-Finders Investigative Report regarding a benefit event and in responding to inquiries by the media and third parties and related issues (hereafter the "Project"), including, without limitation, handling any litigation, legislative and administrative proceedings, protests, procurement matters, disputes, alternative dispute resolution proceedings, and other legal issues relating to the Project, whether the proceedings or actions are conducted within administrative, judicial, or alternative dispute resolution forums. The CONTRACTOR's work hereunder shall include at least the following:

A. Advise with respect to Investigative Report. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, consulting with and advising the President and the Board of Regents on the handling of the Fact-Finders Investigative Report regarding a benefit event and in responding to inquiries by the media and third parties.

B. Litigation. The CONTRACTOR shall also provide legal services in connection with any administrative proceeding or action or litigation involving the Project.

C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of Robert S. Katz and he or his designated representative shall report to the UNIVERSITY's President and Board of Regents or designated representative.

D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's President and Board of Regents or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's President and Board of Regents or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.

E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's President and Board of Regents or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's President and Board of Regents or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in matters relating to the Project, including matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

## TIME OF PERFORMANCE

Services by the CONTRACTOR under this Agreement shall commence on August 20, 2012, and shall continue until the matters specified herein are resolved, unless earlier terminated by the University as provided herein, or until funds allocated to this Agreement have been exhausted.

## COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00):

Robert Katz	\$300.00 per hour
Jeffrey S. Harris	\$300.00 per hour
Kalani Morse	\$250.00 per hour
John Mackey	\$250.00 per hour
Margaret Kageyama	\$145.00 per hour
Vanessa Harms	\$145.00 per hour
Michele Ferguson	\$100.00 per hour

Payment shall be made from UNIVERSITY funds.

2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be billed on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (2) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (3) The hourly rate of the attorney or paralegal performing the task.
- (4) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Torkildson Katz Moore Hetherington & Harris, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: Honolulu, Hawaii, August 29, 2012

CONTRACTOR  
Torkildson, Katz, Moore, Hetherington & Harris  
By [Signature]  
Title Attorney

\* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII  
AGREEMENT FOR SERVICES  
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

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

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.



9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Agreement or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

#### 11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

#### 12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
  - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

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

- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

19. Termination for Convenience

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

20. Governing Law

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

21. Severability

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

22. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

## SPECIAL CONDITIONS

### 1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Project. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the implementation of the Project, including, without limitation, handling and resolving any legislative, administrative and judicial proceedings and actions relating to the Project. It is anticipated that at least initially, much of the requested assistance will involve providing assistance in: (1) consulting with and advising the President and the Board of Regents on the handling of the Fact-Finders Investigative Report regarding a benefit event and in responding to inquiries by the media and third parties, (2) handling any related legislative, administrative and judicial actions and proceedings, (3) developing and formulating the University's position in any disputes involving the Project, (4) negotiating settlement or termination agreements pertaining to any disputes involving the Project, and (5) preparing all necessary documents, such as tolling, settlement, termination, release, waiver, and other agreements. The CONTRACTOR agrees to use its best efforts provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

### 2. INSURANCE

The CONTRACTOR shall maintain professional liability insurance acceptable to the UNIVERSITY in full force and effect throughout the term of this Agreement. The policy or policies of insurance maintained by the CONTRACTOR shall provide single limit coverage in the amount of \$5,000,000 per claim and \$5,000,000 aggregate for all claims made during the policy period.

Insurance shall be in force the first day of the term of this Agreement.

### 3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign Robert Katz as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The

CONTRACTOR may also assign Jeffrey Harris (\$300.00 per hour) and Kalani Morse (\$250.00 per hour) to perform legal services requested by the UNIVERSITY under this Agreement, with the exact hourly rate to be selected and set by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The UNIVERSITY also acknowledges that the CONTRACTOR may use paralegals, such as Margaret Kageyama and Vanessa Harms (each at \$145.00 per hour). The UNIVERSITY shall advise the CONTRACTOR of the hourly rate the UNIVERSITY is willing to pay for the services of such other attorneys, paralegals, and other staff.

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) or at (808) 586-0285.



FMS-31 UNIVERSITY OF HAWAII DATE 06-20-2011 AT 9:56:16 AM PURCHASE ORDER No. MA-P536597-00067

THIS IS OF THE ESSENCE AND THIS ORDER IS CONTINGENT UPON YOUR ACCEPTANCE OF THE SPECIFIED TERMS AND CONDITIONS AND YOUR ABILITY TO MEET THE BELOW STATED DELIVERY DATE; OTHERWISE THIS PURCHASE ORDER IS VOID DELIVERY ADDRESS, PURCHASE ORDER NUMBER, AND REQUISITIONER MUST APPEAR ON ALL PACKAGES, INVOICES AND SHIPPING NOTICES  
 FEDERAL FUNDS APPLY YES  NO   
 IF YES, THE ATTACHED FEDERAL PROVISIONS SHALL ALSO APPLY

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDE

DELIVER TO: (ALL TRANSPORTATION CHARGES MUST BE PREPAID F.O.B. DESTINATION)  
 University of Hawaii Athletics  
 Athletic Business Office  
 1337 Lower Campus Rd  
 Honolulu, HI 96822


REQUISITIONER: Paula Nishimoto PHONE NO.: 808-956-6505  
 DELIVER ON/BEFORE: VENDOR TERMS:  
 DELIVER PREPAID VIA: Best Way  
 QUOTE DATE/REFERENCE: DOC CROSS REF: R771544

DIRECT QUESTIONS ON ORDER TO THE REQUISITIONER  
 VENDOR:  
 V0000845060  
 CADES SCHUTTE LLP  
 PO BOX 939  
 HONOLULU, HI 96808

BILL TO - SEND ONE ORIGINAL AND TWO COPIES OF INVOICE TO:  
 Athletic Business Office  
 University of Hawaii  
 1337 Lower Campus Rd  
 Honolulu, HI 96822  
 DIRECT QUESTIONS ON PAYMENTS/INVOICES TO  
 808-956-6505

ITEM NO.	QUANTITY		DESCRIPTION	UNIT PRICE	EXTENSION								
	ORDER/RECD	UNIT											
1			Legal services to assist in fact-finding concerning possible violations by a staff member	30,000.00	30,000.00								
<table border="1"> <tr> <th>ACCOUNT NO.</th> <th>AMOUNT</th> <th>ACCOUNTING</th> <th>AMOUNT</th> </tr> <tr> <td>MA-326831-7115</td> <td>\$30,000.00</td> <td></td> <td></td> </tr> </table>				ACCOUNT NO.	AMOUNT	ACCOUNTING	AMOUNT	MA-326831-7115	\$30,000.00			TOTAL	30,000.00
ACCOUNT NO.	AMOUNT	ACCOUNTING	AMOUNT										
MA-326831-7115	\$30,000.00												
					MA-P536597-00067								
EQUIP LOCATION: (BLDG. & ROOM)				OR INCORPORATE W/ DECAL OR P.O. NO.:	EQUIP OWNED BY: <input type="checkbox"/> FEDERAL <input type="checkbox"/> AGENCY: <input type="checkbox"/> UH								

I AUTHORIZE ISSUANCE OF THIS ORDER AND CERTIFY THAT THIS PURCHASE IS IN ACCORDANCE WITH APPLICABLE LAW AND UNIVERSITY POLICY.

  
 PURCHASING OFFICER SIGNATURE  
 TIFFANY KURAOKA

Page 1 of 1 DATE: 6/20/11

00067 FY 2011  
 F.O. CODE

VENDOR COPY

FMIS-32 UNIVERSITY OF HAWAII DATE 10-14-2011 AT 10:57:02 AM

No. MA-P536597-00067

**PURCHASE ORDER CHANGE**

DATE OF CHANGE  
10-14-2011

CHANGE ORDER NO.  
0

THIS CHANGES THE  
PURCHASE ORDER  
REFERENCED ABOVE

DELIVER TO: (ALL TRANSPORTATION CHARGES MUST BE PREPAID F.O.B. DESTINATION)

University of Hawaii Athletics  
Athletic Business Office  
1337 Lower Campus Rd  
Honolulu, HI 96822

REQUISITIONER  
Paula Nishimoto

PHONE NO.  
808-956-6505

DELIVER ON/BEFORE

VENDOR TERMS

DELIVER PREPAID VIA

Best Way

QUOTE DATE/REFERENCE

DOC CROSS REF.

R771544

DIRECT QUESTIONS ON ORDER TO THE REQUISITIONER

VENDOR

V0000845060  
CADES SCHUTTE LLP  
PO BOX 939  
HONOLULU, HI 96808

BILL TO - SEND ONE ORIGINAL AND TWO COPIES OF INVOICE TO:

Athletic Business Office  
University of Hawaii  
1337 Lower Campus Rd  
Honolulu, HI 96822

DIRECT QUESTIONS ON PAYMENTS/INVOICES TO  
808-956-6505

Internal Use Only  
Need to increase enbursement

ITEM NO.	QUANTITY		DESCRIPTION	SUB CODE	UNIT PRICE	EXTENSION
	ORDER/RECD	UNIT				
1			Legal services to assist in fact-finding concerning possible violations by a staff member	7115	50,000.00	50,000.00

ACCOUNT NO.	AMOUNT	ACCOUNT NO.	AMOUNT	TOTAL	
MA-326831-7115	\$30,000.00				50,000.00
MA-326832-7115	\$20,000.00				
				MA-P536597-00067	

EQUIP LOCATION: (BLDG. & ROOM) \_\_\_\_\_ OR INCORPORATE W/ DECAL OR P.O. NO.: \_\_\_\_\_ EQUIP OWNED BY:  FEDERAL  AGENCY:  UH

I CERTIFY THAT THIS PURCHASE SUPPORTS THE UNIVERSITY PROGRAM INDICATED IN THE ACCOUNT CODE BLOCK.

I CERTIFY THAT SUFFICIENT FUNDS ARE AVAILABLE IN THIS ACCOUNT FOR THIS PURCHASE AND THAT THIS PURCHASE IS IN ACCORDANCE WITH APPLICABLE UNIVERSITY POLICIES AND PROCEDURES.

*[Signature]*  
APPROVING AUTHORITY TYPED NAME

10/17/11  
TITLE

*[Signature]*  
FISCAL OFFICER TIFFANY KURAOKA

10/14/11  
DATE

00067  
F.O. CODE

FMS-31 UNIVERSITY OF HAWAII DATE 01-25-2012 AT 8:51:35 AM PURCHASE ORDER No. MA-P557434-00067

TIME IS OF THE ESSENCE AND THIS ORDER IS CONTINGENT UPON YOUR ACCEPTANCE OF THE SPECIFIED TERMS AND CONDITIONS AND YOUR ABILITY TO MEET THE BELOW STATED DELIVERY DATE; OTHERWISE THIS PURCHASE ORDER IS VOID. DELIVERY ADDRESS, PURCHASE ORDER NUMBER, AND REQUISITIONER MUST APPEAR ON ALL PACKAGES, INVOICES AND SHIPPING NOTICES  
 FEDERAL FUNDS APPLY YES  NO   
 IF YES, THE ATTACHED FEDERAL PROVISIONS SHALL ALSO APPLY

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDE

DELIVER TO: (ALL TRANSPORTATION CHARGES MUST BE PREPAID F.O.B. DESTINATION)  University of Hawaii Athletics Athletic Business Office 1337 Lower Campus Rd Honolulu, HI 96822		REQUISITIONER Michele Inouchi		PHONE NO. 808-956-6505	
		DELIVER ON/BEFORE		VENDOR TERMS	
		DELIVER PREPAID VIA Best Way			
		QUOTE DATE/REFERENCE			DOC CROSS REF R807824
DIRECT QUESTIONS ON ORDER TO THE REQUISITIONER		BILL TO - SEND ONE ORIGINAL AND TWO COPIES OF INVOICE TO:  Athletic Business Office University of Hawaii 1337 Lower Campus Rd Honolulu, HI 96822			
VENDOR:  V0000845060 CADES SCHUTTE LLP PO BOX 939 HONOLULU, HI 96808		DIRECT QUESTIONS ON PAYMENTS/INVOICES TO 808-956-6505			

ITEM NO.	QUANTITY		DESCRIPTION	SUB CODE	UNIT PRICE	EXTENSION																
	PK/UNIT	UNIT																				
1	1	each	Legal counsel, advice and services regarding alleged misconduct by the ..	7115	25,000.00	25,000.00																
<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Proc. Date</th> <th>Document No.</th> <th>Payment Amt.</th> <th>Enc. Amt.</th> </tr> </thead> <tbody> <tr> <td>2/17</td> <td>271488</td> <td>25,000.00</td> <td>Ømta</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>							Proc. Date	Document No.	Payment Amt.	Enc. Amt.	2/17	271488	25,000.00	Ømta								
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MA-320169-7115		\$25,000.00				TOTAL 25,000.00																
						MA-P557434-00067																
EQUIP LOCATION: (BLDG. & ROOM)				OR INCORPORATE W/ DECAL OR P.O. NO.:		EQUIP OWNED BY:																
						<input type="checkbox"/> FEDERAL <input type="checkbox"/> AGENCY: <input type="checkbox"/> UH																

I AUTHORIZE ISSUANCE OF THIS ORDER AND CERTIFY THAT THIS PURCHASE IS IN ACCORDANCE WITH APPLICABLE LAW AND UNIVERSITY POLICY.

PURCHASING OFFICER SIGNATURE

TIFFANY KURAOKA

Page 1 of 1

DATE

00067

FY 2012

F.O. CODE

FO COPY

Origination Date: 2/6/95

Terms and Conditions may be accessed at our website: <http://www.fmo.hawaii.edu/fmis/pdf/terms.htm>

Revision Date: 05/25/00