

CONSULTANT AGREEMENT
CONTRACT No. C9149

THIS CONTRACT ("Contract") is entered into by and between the County of Kaua'i, a political subdivision of the State of Hawai'i (hereinafter "County"), whose place of business and mailing address is 4444 Rice Street, Suite 235, Līhu'e, Kauai, Hawai'i 96766 and Smith Dawson & Andrews, Inc., a District of Columbia corporation, 1150 Connecticut Avenue, Suite 1025, Washington, D.C. 20036 (hereinafter "Consultant").

W I T N E S S E T H:

WHEREAS, the County desires to engage the services of a Washington D.C. representative with legislative lobbying expertise to identify and provide analysis and strategic input on financial resources and grants available to the County and to assure appropriate processing of available funds; and

WHEREAS, this procurement is permissible as an exempt procurement pursuant to Hawai'i Administrative Rules (HAR) Section 3-120, has satisfied the public posting requirements of HAR Section 3-120-5, and is assigned Exemption #2015-EX-13; and

WHEREAS, the Consultant is competent, qualified, ready, willing and able to render such services;

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties agree as follows:

1. Employment of Consultant. County hereby retains the Consultant to perform, and the Consultant agrees to perform the services set forth in this Agreement.
2. Scope of Services. In order to advocate and promote the County's positions, the Consultant shall:

- a. Conduct a collaborative review with County to match County's programs, activities, and strategic plans with potential sources of federal funds, from regular agency grant programs to new legislative authorizations and reauthorizations of existing legislation;
- b. In collaboration with County, determine priorities and optimal methods of obtaining County's objectives;
- c. Identify, monitor and report monthly on federal funding opportunities, including grants and other types of federal funding that may be available to assist County's department, agencies, programs and activities;
- d. Identify non-traditional sources and partnerships to benefit the County and replace some of the federal programs that are no longer viable;
- e. Draft appropriation and grant requests and facilitate the timely submission of applications, submittals and documentation required by, or in connection with, the funding source from initial submittal through allocation of funds to the County;
- f. Respond to inquiries from federal or state agencies related to funding requests by the County;
- g. Provide monthly reports on submittals to funding sources and the status of the funding requests, major accomplishments and activities;
- h. Advise County on how to deal with federal rules and regulations, and Congressional riders, such as federal penalties, that could negatively impact the County;

- i. As requested, collaborate with the Mayor, Kaua'i County Council, department heads and/or designated staff on a proactive federal agenda and advocacy strategy to advance and protect the interests of the County;
 - j. As requested, assist County in planning, evaluating and executing strategies and actions relating to the legislative and public review process;
 - k. As requested, attend periodic meetings with the Administration and Council to provide status reports as may be requested;
 - l. Other related duties as determined by County to be in the best interest of County.
3. Time of Performance. The Consultant shall perform all services set forth in Section 2 of this Contract within three hundred sixty five (365) calendar days from the Notice to Proceed issued by the County, excluding the time which the Officer-In-Charge suspends Consultant's work for review, or any reason as determined necessary by the Officer-in-Charge, unless extended by written agreement of County and Consultant.
4. Compensation. County agrees to pay Consultant in accordance with the following:
- a. Total compensation for Consultant pursuant to this Contract and any extension of this Contract shall not exceed Fifty- Five Thousand Dollars (\$55,000.00), which shall include all federal, state and local taxes. Consultant shall be paid on a monthly basis the amount of Four Thousand Five Hundred Eighty-Three Dollars and Thirty-Three Cents (\$4,583.33).

- b. County will not pay for any out of pocket expenses that may be incurred by the Consultant while performing his duties. The Consultant shall be responsible for any fines, sanctions, or violations of law incurred during the performance of this Agreement.
 - c. Payments shall be made to Smith Dawson & Andrews, Inc., 1150 Connecticut Avenue, Suite 1025, Washington, D.C. 20036
5. Early Termination. This Agreement may be terminated by the Consultant prior to the date set forth in Paragraph No. 3, upon giving thirty (30) days advance written notice to County. If County does not compensate the Consultant for services rendered, County may also terminate this Agreement prior to the date set forth above for good cause.
6. Officer-in-Charge. The Managing Director or designee shall be the Officer-in-Charge.
7. Modification. This Agreement may be modified only by a written agreement signed by County and Consultant. Such modifications, including any increase or decrease in the amount of compensation due Consultant, shall be made by written amendments to this contract.
8. Counterparts/Facsimiles. This Agreement may be signed in counterparts with the same effect as if the signatures to each such counterpart were upon a single instrument and all such counterparts shall constitute the same agreement. The signatures of each of the parties need not appear on the same counterpart, and in the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding

obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof, provided that the original signature shall be provided within Ten (10) calendar days of submission of the facsimile signature.

9. General Terms and Conditions: Consultant shall also abide by the terms and conditions contained in the General Terms and Conditions for Professional Services Contracts, dated June 2014, (“General Terms”), which are not attached hereto but are incorporated by reference and made part of this Contract.

10. Amendment to the General Terms:

a. Paragraph 8 of the General Terms is deleted in its entirety and replaced with the following:

8. Insurance. Consultant agrees to maintain, on a primary basis and at its sole expense, at all times during the life of the Contract, the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the County’s review or acceptance of insurance maintained by the Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Consultant under this Contract. Further, unless otherwise approved by the Director of Finance, the policy or policies of insurance maintained by the Consultant shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance

carrier authorized to do business in the State of Hawaii and rated A-VII by A.M. Best.

The Consultant's failure to procure and or maintain insurance required under this Contract shall constitute a material breach of the Contract.

a. Commercial General Liability. Consultant agrees to maintain Commercial General Liability written on occurrence form to protect the County against claims for bodily injury or death, or for damage to property, which may arise out of any products, all operations, all use, all maintenance, and all contractual liability by the Consultant or by any Subcontractor(s) or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, the minimum coverage or limits of liability specified hereunder, or if greater, any coverages or limit of liability required by law.

(1) Bodily Injury and Property Damage Combined
Single Limit: \$1,000,000 per
occurrence/\$2,000,000 aggregate;

(2) Personal Injury: \$1,000,000 per
occurrence/\$2,000,000 aggregate;

(3) Products and Completed Operations: \$1,000,000 per occurrence/\$2,000,000 aggregate. Products and Completed Operations coverage protecting the Consultant and Sub-Contractors must be carried for one (1) year after substantial completion of the project. Evidence of this insurance will continue to be provided on an annual basis to the County.

b. Professional Liability (Errors and Omissions). The Consultant and its subcontractors shall obtain and keep in force Professional Liability Insurance (Errors and Omissions Insurance) that covers all such activities under the Agreement. Such insurance shall have these minimum limits and coverage(s):

(1) \$1,000,000 per claim,

(2) \$2,000,000 annual aggregate.

When a self-insured retention (SIR) or deductible exceeds \$25,000, the County reserves the right, but not the obligation, to review and request a copy of the Consultant's most recent annual report or audited financial statement. The Consultant will continue to maintain and provide evidence of this coverage to the County for a period of three years after substantial

completion of this Contract. For policies written on a "Claims-Made" basis, Consultant warrants the Retroactive Date equals or precedes the effective date of the Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the Agreement, Contractor or Consultant shall agree to purchase Supplement Extended Reporting Period (SERP) with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Contractor or Consultant of the obligation to provide replacement coverage.

- c. Waiver of Subrogation. Consultant shall agree by entering into a Contract or Agreement with the County to a Waiver of Subrogation for each required policy herein. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Consultant enter into such an agreement on a pre-loss basis.

- d. Additional Insured: Consultant shall agree to endorse the County of Kauai, as additional insured, to the Commercial General Liability insurance.
- e. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County and remain the responsibility of the Consultant. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its elected and appointed officials, officers, employees and volunteers; or the Consultant shall provide a financial guarantee (audited financial statement) satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- f. Certificate of Insurance. Prior to the issuance of a Notice to Proceed for the proposed contract, Consultant shall provide the County a certificate of insurance completed by a duly authorized representative of their insurer and shall provide updated certificates of insurance upon revision or renewal of insurance policies during the term of the contract. Consultant shall also have a duly authorized representative of their insurer provide

immediate written notice to the County of cancellation, material change or non-renewal by the insurer, and any appropriate endorsements. All coverage required of the Consultant will be primary and non-contributory with any insurance or self-insurance program maintained by the County

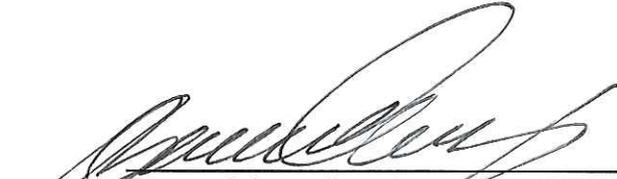
The Certificate Holder address shall read:

**County of Kaua'i
Office of the Mayor's
4444 Rice Street, Suite 235, Līhu'e, HI 96766
Attention: Cyndi Ayonon Contract #9149**

The County reserves the right to require complete certified copies of all required insurance policies, including endorsements effecting the coverage required at any time.

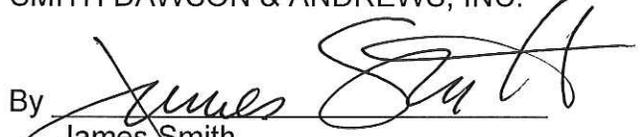
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 11th day of September, 2014.

RECOMMENDED APPROVAL:



Bernard Carvalho, Jr.
Mayor

CONSULTANT:
SMITH DAWSON & ANDREWS, INC.

By 

James Smith
President

APPROVED AS TO FORM
AND LEGALITY:

for 

County Attorney

COUNTY OF KAUAI

By 

Steven A. Hunt
Director of Finance

STATE OF HAWAII)
) ss.
COUNTY OF KAUA'I)

On this 11th day of September, 2014, before me appeared **STEVEN A. HUNT**, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i; that said instrument was signed on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said **STEVEN A. HUNT**, acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Doc. Date: Not Dated # Pages: 16
Notary Name: Lani Agoot 5th Circuit
Doc. Description: Consultant Agreement
Contract No 20149
Lani L Agoot 9.11.14
Notary Signature Date

Lani L. Agoot

Notary Public, State of Hawai'i

My commission expires:



WASHINGTON)

) ss.

DISTRICT OF COLUMBIA)

On this 8th day of September, 2014, before me appeared James Smith, to me personally known, who, being by me duly sworn, did say that he is the President of SMITH DAWSON & ANDREWS, INC., that the foregoing instrument was signed in the name of and on behalf of said corporation, and said James P. Smith acknowledged that he executed the same as his free act and deed and as the free act and deed of said corporation.



Patricia B. [unclear] 9-8-2014
Notary Signature Date

Notary Public, District of Columbia

My commission expires: 3-31-2019

ORIGINAL CERTIFICATION CON NO: 9149

 **ORIGINAL**

I hereby certify that on the date of the filing of this contract or agreement in the Department of Finance, there remains unexpended and unpaid, a balance in appropriation:

001-0101-512.35-00 SPECIAL PROJECTS \$ 54,999.96

sufficient to cover the obligation of the County of Kauai under this contract.

September 2, 2014



Director of Finance *KO*