

CONSULTANT AGREEMENT

CONTRACT No. 212832

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, Hawai'i 96766 and Smith Dawson & Andrews, Inc., a District of Columbia corporation, 1150 Connecticut Avenue, Suite 730, 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 (H.A.R.) Section 3-120, has satisfied the public posting requirements of H.A.R. Section 3-120-5, and is assigned Exemption #2020-EX-71; 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 legislative;
- 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 departments, 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, Kauaʻi 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 Scope of Services 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.
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 **SEVENTY THOUSAND AND NO/100 Dollars (\$70,000.00)**, which shall include all federal, state and local taxes. Consultant shall be paid on a monthly basis the amount of **FIVE THOUSAND EIGHT HUNDRED THIRTY-THREE AND 33/100 Dollars (\$5,833.33)** upon submission of a monthly invoice to the County. The Consultant’s monthly invoice to the County shall include: 1) a description

of all activities provided to, or on behalf of the County and 2) a monthly report of active federal legislation and grants relevant to the County.

- b. The 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 730, Washington, D.C. 20036.

5. Relationship of Parties; Independent Contractor Status and Responsibilities.

- a. In the performance of the Contract, the Consultant is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the requirements of this Contract; however, the County shall have a general right, from time to time, to monitor the progress of contract performance, and to determine whether, in the County’s opinion, the Consultant is in compliance with the provisions of this Contract. It is understood that the County does not agree to use the Consultant exclusively, and that the Consultant is free to contract with other individuals or entities while under contract with the County.
- b. The Consultant and the Consultant’s employees and agents are not by reason of this Contract, agents or employees of the County for any purpose, and the Consultant and the Consultant’s employees and agents shall not be entitled to claim or receive from the County any vacation, sick leave,

retirement, workers' compensation, unemployment insurance, or other benefits provided to County employees.

- c. The Consultant shall be responsible for the accuracy, completeness, and adequacy of the Consultant's performance under this Contract. Furthermore, the Consultant intentionally, voluntarily, and knowingly assumes the sole and entire liability to the Consultant's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the Consultant, or the Consultant's employees or agents in the course of their employment.
- d. The Consultant shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the Consultant by reason of this Contract, including but not limited to (i) income taxes, (ii) employment-related fees, assessments, and taxes, and (iii) general excise taxes. The Consultant also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform the Contract.
- e. The Consultant shall obtain a general excise tax license from the Director of Taxation, State of Hawai'i, in accordance with Chapter 237, HRS, or exemption there from and shall comply with all requirements thereof.
- f. The Consultant shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required by Hawai'i Revised Statutes (H.R.S.) Section 103-53.

6. Officer-In-Charge. The Managing Director or designee shall be in charge of this Contract, shall represent the County on all matters relating to this Contract, and shall have the authority and responsibility to act on behalf of County to resolve any disputes with Consultant relating to this Contract.
7. General Terms and Conditions. The Consultant agrees to the terms and conditions contained in the General Terms and Conditions for Goods and Services Contracts, dated July 2016 (“General Terms”), which is attached and hereby incorporated into and made a part of this Contract.
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 insurance coverages, limits, including endorsements, described in the attached Insurance Requirements (“Exhibit A”).
9. Complete Agreement. This Contract, Exhibit A, and the County’s General Terms (collectively, “Contract Documents”), constitutes the final and complete Agreement between the Parties with respect to the subject matter of this Contract. Contractor acknowledges receipt of all Contract Documents. This Agreement supersedes all prior understandings, agreements, and documentation relating to such subject matter.
10. Counterparts/Facsimiles. This Contract 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 part 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.

11. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract shall be governed by the laws of the State of Hawai‘i. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Līhu‘e, Hawai‘i.
12. No Waiver. Any failure by the County to exercise its discretion in the event of a breach by the Contractor of any provision contained herein shall not be deemed a waiver of the County’s right to exercise later its discretion to terminate this Contract or otherwise act upon the breach.
13. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Contract.

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IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
the ____ day of _____, 2020.

RECOMMENDED APPROVAL:

CONSULTANT:

SMITH DAWSON & ANDREWS, INC.

Derek Kawakami

Derek Kawakami (Jul 8, 2020 10:24 HST)

Derek S. K. Kawakami
Mayor

By *James Smith*

James Smith
President

APPROVED AS TO

FORM AND LEGALITY:

COUNTY OF KAUA'I

Mahealani M. Krassfi

Deputy County Attorney

By *Reiko Matsuyama*

Reiko Matsuyama (Jul 8, 2020 10:59 HST)

Reiko Matsuyama
Director of Finance

EXHIBIT A

INSURANCE REQUIREMENTS

County of Kaua'i

Contractor shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the contract insurance coverages, limits, including endorsements described herein against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor.

To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

A. General Conditions

Waiver of Subrogation. Contractor shall agree by entering into a contract with the County to provide a Waiver of Subrogation for the Commercial General Liability, Automobile Liability, and Workers Compensation policies. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Subrogation in favor of the County. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

Additional Insured. Contractor shall agree to endorse the **County of Kaua'i as an Additional Insured** with a CG026 Additional Insured – Designated Person or Organization endorsement, a copy of the applicable policy language, or similar endorsement to all required insurance policy(ies), except for Workers Compensation and Professional Liability.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County; or the Contractor shall provide a financial guarantee (audited financial statement) satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

When a self-insured retention (SIR) or deductible exceeds \$50,000, the

County reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statement.

Contractor's Responsibility. The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible, co- insurance clause or self-insured retention applicable to the insurance required herein. If the County is damaged by the failure of the Contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

Primary and Non-contributory. All policies required of the Contractor will be endorsed as primary and any insurance or self-insurance program maintained by the County shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the County a certificate of insurance completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form. Immediately upon becoming aware that its insurance will be cancelled, non-renewed, or materially changed, Contractor will notify County by providing written notice.

The Certificate Holder address shall read:

County of Kaua'i
Office of the Mayor

4444 Rice Street, Suite 235

Lihue, HI 96766
Attention: Lani Agoot

Contract No. _____
Project Title: Smith Dawson & Andrews, Inc._____

Concurrent with the execution the contract the Contractor shall furnish the County with original certificates and endorsements effecting required coverage(s). The County reserves the right to require complete copies of all required insurance policies, including the policy declarations and endorsements affecting the coverage at any time.

Failure to secure and maintain the required insurance shall be considered as a material breach of the contract. Should the County be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse County for such funds. In the event the County determines, in its sole and absolute discretion, that it is necessary to purchase the coverages herein required of the Contractor, and which the Contractor has failed to secure, the Contractor shall reimburse the County for the expenditure of such funds.

Right to Revise or Reject. County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work or specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

B. Minimum Insurance Coverage Requirements

Unless otherwise approved by the Director of Finance, the policy or policies of insurance maintained by the Contractor 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 Hawai'i and rated A-VII by A.M. Best:



Commercial General Liability. The Contractor shall procure and maintain Commercial General Liability, with dedicated required limits, as set forth herein, written on occurrence form providing:



Designated premises basis

OR



Per Project basis

The coverages shall include the following:

- Premises Operations
- Independent Contractors
- Products and Completed Operations
 - Broad Form Property Damage including completed operations
 - Blanket Contractual Liability
 - Personal Injury
 - Employees named as Additional Insured
 - Severability of Interest
- Explosion, Collapse and Underground Property Damage

The minimum limits of liability may be satisfied by providing either:

<p>Bodily Injury and Property Damage Combined Single Limit:</p> <ul style="list-style-type: none"> ▪ \$2,000,000 per occurrence ▪ \$2,000,000 annual aggregate 	<p>OR</p>	<p>Personal Injury:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate <p>AND</p> <p>Products and Completed Operations:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence the County is an Additional Insured for Products/Completed Operations coverage for both ongoing operations and after substantial completion of the work. This coverage may be provided by the ISO form CG 2010 (11 85) or an equivalent policy form. Coverage provided by a non equivalent CGL form shall be specifically endorsed providing both the course of construction and products/completed operations. ISO CG 2010 (04 13) and ISO form CG 2037 (04 13) or an equivalent form is required from the Contractor. The Contractor and subcontractor(s), if any, shall provide evidence to the County on an annual basis the products/completed operation coverage is in effect for two (2) years after substantial completion of the project.

- Business Automobile Liability.** The Contractor shall procure and maintain Business Automobile Liability written on occurrence form for all Owned, Non-owned, and Hired automobiles. If the Contractor does not own automobiles, Contractor shall agree to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Automobile Liability. Coverage shall be for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault, and personal injury protection, as required by Hawai'i law with the following limits:

Bodily Injury

\$1,000,000 per person
\$1,000,000 per occurrence

Property Damage

\$1,000,000 per accident

- Workers' Compensation and Employer's Liability.** The Contractor shall procure and maintain at all times during the term of the contract the following insurance liability coverage: Workers' Compensation, Temporary Disability Insurance (TDI), and similar insurance that is required by the State of Hawai'i or federal laws. Self-insurance is permitted subject to submission of a copy of the appropriate governmental authorization and qualification by the Contractor and subcontractor(s).

The minimum limits of liability to be maintained are as follows:

Coverage A: State of Hawai'i Workers' Compensation Law:

Statutory Limits.

Coverage B: Employer's Liability:

Bodily Injury from each accident \$1,000,000

Bodily Injury from disease \$1,000,000

Bodily Injury from disease aggregate \$1,000,000

- Builder's Risk.** The Contractor shall procure and maintain an Inland Marine Builder's Risk policy providing coverage to protect the interests of the County, Contractor, sub-contractors, architects, and engineers, including property in transit and property on or off-premises, which shall become part of the building, or Project. Coverage shall be written on an **All Risk, Replacement Cost, and Completed Value Form** basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise stated between the County and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor's subcontractors against loss occasioned by fire, lightning, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sub-limit. The sub-limit shall provide coverage of at least 25% of the full replacement cost.

The policy shall also include coverage for debris removal and reasonable compensation for architect's and engineer's services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County's interest in the building ceases, or the building is accepted or insured by the County.

The Contractor shall name the County of Kaua'i as a loss payee on the Builder's Risk policy.

- Installation Floater.** The Contractor shall procure and maintain an Installation Floater policy providing coverage to protect the interests of the County, Contractor, sub-contractor(s), architects, and engineers, including property in transit and property on or off-premises, which shall become part of the project.

Coverage shall be written on an All Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise

stated between the County and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor's subcontractors against loss occasioned by fire, lightning, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sub-limit. The sub-limit shall provide coverage of at least 25% of the full replacement cost.

The policy shall also include coverage for debris removal and reasonable compensation for architect's and engineer's services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County's interest in the building ceases, or the building is accepted or insured by the County.

The Contractor shall name the County of Kaua'i as a loss payee on the Installation Floater policy.

- Professional Liability (Errors and Omissions).** The Contractor and its subcontractors shall procure and maintain Professional Liability Insurance (Errors and Omissions Insurance) that covers all such activities under the contract. Such insurance shall have these minimum limits and coverage(s):

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

For policies written on a "Claims-Made" basis, Contractor warrants the retroactive date equals or precedes the effective date of the contract. 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 contract, Contractor 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 of the obligation to provide replacement coverage.

- Pollution Legal Liability.** The Contractor shall procure and maintain Pollution Liability or similar Environmental Impairment Liability at a minimum limit not less than:

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

The policy shall provide coverage for damages against, but not limited to, third-party liability, clean-up, corrective action including assessment, remediation and defense costs.

- Contractor's Pollution Liability.** Contractor shall procure and maintain pollution liability insurance when the Scope of Work involves removal, abatement, encapsulation or other treatment, disposal or remediation of asbestos or other hazardous materials or an exposure to pollutants or impairment of the environment. The policy shall provide coverage for third party liability, clean-up, and corrective action including assessment remediation and defense costs. The policy may be written on either an occurrence form or claims made. The minimum limits of liability shall be:

\$1,000,000 per occurrence

\$2,000,000 annual aggregate

- Crime Insurance or Commercial Fidelity Bond:** Contractor shall procure and maintain Commercial Crime Insurance or Fidelity Bond providing Employee Dishonesty on a blanket basis covering all of the Contractor's employees with a minimum amount of insurance at least equal to the amount of the contract. The policy shall be endorsed to cover "Third-Party Liability" including a third-party beneficiary clause in favor of the County. The policy shall include a minimum twelve (12) month "Discovery Period" when written on a Loss Sustained basis.

- Property.** The Tenant or Lessee, shall agree to maintain property insurance including flood and windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the building(s) and contents, including betterments and improvements made by the Tenant or Lessee, located on the premises. Contractor shall agree to be fully responsible for any deductible or self-insured retention, and to provide this coverage on primary basis.

Umbrella or Excess Liability. Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy with \$1,000,000 per occurrence and \$2,000,000 aggregate. If Contractor is using its Umbrella or Excess Liability Insurance policy to satisfy the minimum requirements, Contractor shall agree to endorse the County of Kaua'i as "Additional Insured" on the Umbrella or Excess Liability policy, or shall confirm in writing that its Umbrella or Excess Liability policy "follows form."

Contract 212832 OCA Tracking#20-0791


Final Audit Report

2020-07-08

Created:	2020-07-08
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Status:	Signed
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 Signed document emailed to Catherine Beal (catherineb@sda-inc.com), Lani Agoot (lagoot@kauai.gov), jim smith (jims@sda-inc.com), Mahealani Krafft (mkrafft@kauai.gov), and 3 more

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