



RESOLUTION

AUTHORIZING THE DIRECTOR OF BUDGET AND FISCAL SERVICES TO ENTER INTO AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNIVERSITY OF HAWAII FOR AN EDUCATIONAL AND INTERPRETATIVE PROGRAM FOR THE HANAUMA BAY NATURE PRESERVE.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu, 1990, as amended, requires that any intergovernmental agreement or amendment thereof which places an obligation on the City or any department or agency thereof receive the prior consent and approval of the Council of the City and County of Honolulu; and

WHEREAS, Section 103D-102(b)(3) of the Hawaii Revised Statutes, exempts contracts for the procurement of services from a governmental body of the State of Hawaii from the requirements of Hawaii Revised Statutes Chapter 103D, the Hawaii Public Procurement Code; and

WHEREAS, Resolution 15-234, adopted September 2, 2015, authorized the execution of an intergovernmental agreement (the "Agreement") between the City and the University of Hawaii ("UH") for an education and interpretative program at Hanauma Bay Nature Preserve for a period of twelve (12) months beginning July 1, 2015 through June 30, 2016; and

WHEREAS, the Agreement provides that the City may extend the Agreement for up to three additional years with compensation, provided funds have been authorized and appropriated for such purposes; and

WHEREAS, the City wishes to extend the Agreement with the UH for an additional one year term beginning July 1, 2016 through June 30, 2017 in the amount of \$572,544.00; and

WHEREAS, the proposed Amendment No. 1 to the Agreement is attached hereto as Exhibit A and by reference incorporated herein; and

WHEREAS, the UH has agreed to the terms of the Amendment No. 1 and is prepared to provide the services in accordance with Amendment No. 1; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council consent to and approve the proposed Amendment No. 1 attached hereto as Exhibit A and by reference made a part of this Resolution; and

“EXHIBIT A”

**AMENDMENT NO. 1
TO
CONTRACT NO. CT-DPR-1600098
BETWEEN
THE CITY AND COUNTY OF HONOLULU
AND
UNIVERSITY OF HAWAII**

THIS AMENDMENT NO. 1 dated _____, (this “Amendment No. 1”) is entered into by and between the **City and County of Honolulu**, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 (the “CITY”), and the **University of Hawaii**, a public body corporate and agency of the State of Hawaii, whose principal place of business and mailing address is the Office of Research Services, 2440 Campus Road, Box 368, Honolulu, Hawaii 96822 (the “CONTRACTOR”).

WITNESSETH THAT:

WHEREAS, the CONTRACTOR and the CITY entered into a Contract identified as Contract No. CT-DPR-1600098 dated October 23, 2015, (the “Agreement”) to render certain technical service to manage, upgrade and implement an educational and interpretative program for the Hanauma Bay Nature Preserve (the “Project”); and

WHEREAS, the parties desire to extend the Agreement for an additional 12 month term; and

WHEREAS, Section 3.3 of the General Terms and Conditions for the City and County of Honolulu dated 2/1/15 incorporated by reference into the Agreement, authorizes the CITY, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of the contract; and

WHEREAS, APPENDIX B: TERM/SCHEDULE OF WORK, to the Agreement, authorizes the CITY in its sole discretion may extend the project up to three (3) additional years with compensation to be negotiated, subject to appropriation and the availability of funds; and

WHEREAS, Resolution _____, adopted _____, authorized the execution of this Amendment No. 1 to extend the term of the Agreement for an additional one-year term from July 1, 2016 through June 30, 2017 in the amount of \$572,544.00; and

WHEREAS, the CONTRACTOR is willing and able to perform the services under the amended conditions;

NOW, THEREFORE, the parties, in consideration mutual agreement set forth herein, agree to amend the AGREEMENT as follows:

1. MODIFICATION OF TERMS

A. Agreement

Delete paragraph 3 in its entirety, and in lieu thereof, insert the following:

3. The City agrees to pay the CONTRACTOR for the satisfactory performance and completion of the Work in accordance with the payments schedule and provisions, all as set forth in the Agreement. The total amount of this Agreement shall not exceed ONE MILLION ONE HUNDRED TWENTY EIGHT THOUSAND TWELVE AND NO/100 DOLLARS (\$1,128,012.00), which is the maximum payable under this Agreement and inclusive of all taxes. CONTRACTOR shall not pass through any increases in taxes to the CITY. The aggregate amount of these payments shall not exceed the following limits:

Term	
July 1, 2015 to June 30, 2016	555,468.00
July 1, 2016 to June 30, 2017	<u>572,544.00</u>
<u>Total amount</u>	<u>\$1,128,012.00</u>

B. Appendix B: Terms/Schedule of Work

Delete paragraph II in its entirety, in lieu thereof, insert the following:

II. This Agreement shall be effective for a period of twenty-four (24) months beginning July 1, 2015 through June 30, 2017. The CITY in its sole discretion may extend the project up to two (2) additional years with compensation to be negotiated subject to appropriation and the availability of funds. Any extension will be accomplished by a written amendment.

C. Appendix D: Special Provisions

3. Amendments to the General Terms and Conditions

G. Delete Sections 2.10 in its entirety and in lieu thereof, insert the following:

2.10 Indemnity.

The CONTRACTOR shall indemnify, defend, and hold harmless the City and County of Honolulu, its officers, employees and agents, from any and all claims of liability for any damage to real or personal property or injury to or death of any persons when such damage, injury or death arises out of the action or omission of the CONTRACTOR, its officers, employees, agents, consultants, contractors, volunteers or invitees in conjunction with the use of the Hanauma Bay Nature Preserve or this Contract, provided that the CONTRACTOR shall not be required to indemnify, defend, or hold harmless the City and County of Honolulu, its officers, employees, agents, from any claims of liability for any damages to real or personal property or injury to or death of any persons, when such damage, injury or death arises out of the action or omission of the City and County of Honolulu, and/or its officers, employees, agents, consultants, contractors, or invitees, regarding the maintenance and repair of the above mentioned facility/property. This provision shall not be read or interpreted to create any liability of the state of any person or entity to any person or entity, except for the duties to indemnify, defend, and hold harmless set forth herein. This provision is not intended to and shall not be interpreted to benefit any third person, or to benefit or create any third-party beneficiary.

- H. Delete Sections 2.11 in its entirety and in lieu thereof, insert the following:

2.11 Infringement Indemnification.

If the Contractor uses or licenses any design, device, material process, technology or any other intellectual property ("Intellectual Property") covered by patent, copyright, trademark or other intellectual property protection, the right for use shall be procured by the Contractor from the appropriate owner. The Contractor shall indemnify and hold the City and all its officers, agents, servants and employees harmless against all claims arising from the use of any claims for infringement by reason of the use of any such Intellectual Property in connection with providing services under this Contract.

2. ALL OTHER TERMS

All terms and conditions of the AGREEMENT, not inconsistent with the terms and conditions of this AMENDMENT NO. 1, are herein incorporated and shall remain in full force and effect.

In the event of any conflict or inconsistency between the provisions of this AMENDMENT NO. 1 and any provisions of the AGREEMENT, the provisions of this AMENDMENT NO. 1 shall govern in all aspects.

By signing below, CONTRACTOR hereby certifies that, to the best of its knowledge and belief, cost of pricing data, as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment No. 1 is accurate, complete, and current as of the date of this Amendment No. 1. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONTRACTOR and the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

APPROVAL RECOMMENDED
Department of Parks and Recreation

CITY AND COUNTY OF HONOLULU

Michele K. Nekota, Director

Nelson H. Koyanagi, Jr., Director
Department of Budget and Fiscal Services

APPROVED AS TO FORM AND
LEGALITY

CONTRACTOR:
UNIVERSITY OF HAWAII

Deputy Corporation Counsel

By _____
Its _____
Federal I.D. No. 99-6000354

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 16-137

Introduced: 05/18/16 By: ERNEST MARTIN – BY REQUEST Committee: COUNCIL

Title: RESOLUTION AUTHORIZING THE DIRECTOR OF BUDGET AND FISCAL SERVICES TO ENTER INTO AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNIVERSITY OF HAWAII FOR AN EDUCATIONAL AND INTERPRETATIVE PROGRAM FOR THE HANAUMA BAY NATURE PRESERVE.

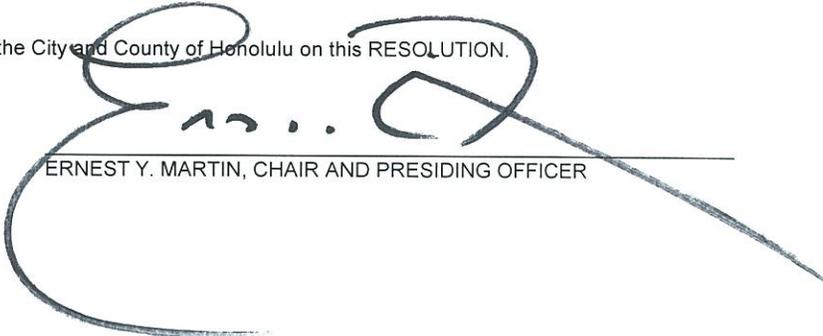
Voting Legend: * = Aye w/Reservations

06/01/16 COUNCIL RESOLUTION 16-137 WAS ADOPTED.
7 AYES: ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA.
2 ABSENT: ANDERSON, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER