

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,)	DOCKET NOS. 06-CW-EO-05N &
STATE OF HAWAII,)	06-WW-EO-06
)	
Complainant,)	
)	
vs.)	
)	AGREEMENT FOR
CITY AND COUNTY OF HONOLULU,)	RESOLUTION OF ORDER
)	
)	
Respondent.)	
_____)	

AGREEMENT FOR RESOLUTION OF ORDER

This Agreement for Resolution of Order (“Agreement”) is made and entered into by and between the Complainant Department of Health, State of Hawaii (“Department”) and Respondent City and County of Honolulu, by its Department of Parks and Recreation (“Respondent”). The Department and Respondent are collectively referred to herein as the “Parties.”

The Parties enter into this Agreement pursuant to Hawaii Revised Statutes (“HRS”) Chapters 321, 322 and 342D and Hawaii Administrative Rules (“HAR”) Chapters 11-54 (Water Quality Standards), 11-55 (Water Pollution Control), and 11-62 (Wastewater Systems), intending to resolve disputes connected with the alleged discharge of wastewater onto the ground and into State waters at the Respondent’s Kualoa Regional Park.

A. HISTORY

1. Respondent operates a sanitary sewage collection system at the Kualoa Regional Park in windward Oahu, Hawaii, that collects sanitary sewage from four (4) comfort stations and a kitchen (“Facility”).

2. On or about December 3, 2005, the Department’s Clean Water Branch inspectors conducted a compliance evaluation inspection at the Facility. They posted warning signs along

the beach areas near the comfort stations after finding bacteria counts that exceeded State Water Quality Standards in the ocean water. Department inspectors subsequently found that the bacteria counts for enterococcus levels in marine recreational waters off shore of the Facility exceeded the regulatory standard (a geometric mean of seven per one hundred milliliters, HAR §11-54-08(b)(1)) in twenty-one (21) samples that were spaced to cover a period of ninety-three (93) days in eight (8) months (December 2005-March 2006 and October 2006-January 2007).

3. As a result of the December 3, 2005 inspection and information gathered thereafter, the Department filed a Notice and Finding of Violation (“NFV”) and Order, dated January 26, 2007. Respondent timely appealed the NFV and Order, leading to the establishment of the above-captioned administrative action.

4. The original findings of the Department and the nature of the alleged violations are more fully detailed in the NFV and Order and are incorporated herein by reference.

B. AUTHORITY OF THE DEPARTMENT

5. The Department is authorized to abate nuisances and to take enforcement actions and assess penalties of up to \$25,000.00 for each day of each violation of HRS chapter 342D, or HAR chapters 11-54, Water Quality Standards, 11-55, Water Pollution Control, and 11-62, Wastewater Systems (collectively “Hawaii Clean Water Law”). HRS §§ 321-11, 322-1, 322-8, 342D-4, 342D-9, 342D-30, 342D-31, and 342D-50.

C. REPLACEMENT OF FACILITY’S SANITARY SEWAGE COLLECTION SYSTEM

6. Respondent agrees to replace the current temporary holding tank wastewater systems with a wastewater system or systems that eliminate and prevent wastewater discharges onto the ground or into State waters according to the schedule, attached hereto and incorporated herein as Exhibit A, showing anticipated completion dates, consistent with environmental review and permitting requirements, and to report in writing to the Department within thirty (30) days after it becomes aware that it will not be able to meet any items in the schedule.

7. Respondent agrees to use best efforts to complete as soon as feasible all required environmental review and permitting processes (e.g., Environmental Assessment, Environmental Impact Statement, State Historic Preservation Division review, and/or Oahu Island Burial Council review) and installation of a replacement wastewater system or systems that eliminate and prevent wastewater discharges onto the ground or into State waters, consistent with environmental review and permitting requirements.

8. Until the completion of the new wastewater system(s), Respondent agrees to monitor all holding tank levels at least twice per week and, as necessary, pump the wastewater levels in the holding tanks sufficiently frequently to prevent backups and spills. The Parties expressly agree that if Respondent is unable to obtain an acceptable determination from the State Historic Preservation Division and/or the Oahu Island Burial Council concerning the management, treatment and protection of the native Hawaiian burial sites affected by the proposed replacement wastewater system or systems that eliminate and prevent wastewater

discharges onto the ground or into State Waters, then Respondent's obligation to replace the Facility's existing sanitary sewage collection system shall terminate. Should that event occur, Respondent agrees to monitor all holding tank levels at least twice per week and, as necessary, pump the wastewater levels in the holding tanks sufficiently frequently to prevent backups and spills.

9. Until the completion of the new wastewater system(s), or in the event that Respondent is unable to obtain an acceptable determination from the State Historic Preservation Division and/or the Oahu Island Burial Council concerning the management, treatment and protection of the native Hawaiian burial sites affected by the proposed replacement wastewater system or systems that eliminate and prevent wastewater discharges onto the ground or into State Waters, Respondent shall maintain and make available to the Department on request: 1) a monthly record or log indicating the dates each holding tank was monitored and what was observed; and 2) a monthly record or log indicating the dates each holding tank was pumped and the volumes of septage removed each time. Respondent shall certify by sworn statement that such logs and records are true and accurate.

10. Until the completion of the new wastewater system(s), Respondent agrees to submit to the Department on January 15, April 15, July 15 and October 15 (or the next regular working day if any of the days indicated are not regular working days) of each year reports detailing progress achieved on environmental reviews, construction and other replacement activities during the previous three calendar months and plans for the next three calendar months.

D. PAYMENTS AND CONSIDERATION FOR RESOLUTION

11. Supplemental Project. Respondent agrees to perform at its expense the Supplemental Environmental Project ("SEP") described in Exhibit B, attached hereto and incorporated herein, in lieu of payment of a penalty, valued at ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00). The Parties agree that the SEP is intended to secure significant environmental benefits. The SEP may be replaced by an alternative SEP with the written agreement of both of the Parties. The total cost of an alternative SEP or SEPs, including any amounts expended by Respondent on the original SEP, shall not be less than, and shall be no more than, the original SEP that it is replacing. If the Respondent spends on the SEP a total that is less than ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), it shall pay the Department by cashier's check within forty-five (45) days of demand the amount needed to bring the total value up to \$150,000.00.

12. Cash Payment for Kualoa SEP Fund. Respondent shall deliver a one-time payment to the Department in the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), for establishment of a Kualoa SEP Fund in lieu of payment of a penalty, as described below.

- a. Following the Effective Date of this Agreement, Respondent shall deliver a one-time payment of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) within thirty (30) days of the request for payment by the Department, to the Department's address listed in Section "N. Notices," below,

and in the following manner:

- (1) The one-time cash payment of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) to the Department shall be deposited into a fund established by order of the Hearings Officer in DOCKET NOS. 06-CW-EO-05N & 06-WW-EO-06 in an account established within the State of Hawaii Department of Accounting and General Services. This fund shall be known as the Kualoa SEP Fund.
 - (2) The amounts in the Kualoa SEP Fund shall be used to fund environmentally beneficial projects as selected by the Department.
- b. Any SEP selected by the Department to be funded by the amounts in the Kualoa SEP Fund shall satisfy the Department's criteria pursuant to the Environmental Protection Agency's SEP Policy, effective May 1, 1998.

13. The ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) paid by Respondent for the SEP described in Exhibit B, together with the one-time cash payment of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), as described above in paragraph 12, for a total of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), shall satisfy the full amount of the penalty contained in the NFV and Order, dated January 26, 2007, that led to the above-captioned administrative action.

E. STIPULATED PENALTIES

14. The Parties agree that for any violation listed in Exhibit C, attached hereto and incorporated herein, occurring within five (5) years after the Effective Date of this Agreement, or until completion of the new wastewater system(s), whichever occurs first, Respondent shall pay the stipulated penalty within forty-five (45) days of the violation. For any alleged violation over which Respondent and the Department disagree, allegedly resulting from Respondent's acts or omissions, such disagreement shall be subject to Section "F. Retention of Jurisdiction and Dispute Resolution" below.

F. RETENTION OF JURISDICTION AND DISPUTE RESOLUTION

15. The Hearings Officer shall retain jurisdiction of this matter for purpose of adjudicating and resolving any and all of Respondent's disputes arising out of a stipulated penalty assessed under Section "E. Stipulated Penalties" and Exhibit C, or a Force Majeure event claimed under Section "G. Force Majeure." The dispute resolution procedure shall be invoked upon the giving of written notice by Respondent to the Department and to the Hearings Officer, advising them of a dispute. The written notice shall describe the nature of the dispute, and shall state the Respondent's position with regard to such dispute. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Respondent and the Department. Such period of informal negotiations shall not extend beyond ninety (90) calendar days of the receipt of the written notice by the Department.

16. In the event that the Respondent and the Department are unable to reach agreement during the informal negotiations, the Department shall provide Respondent with a written summary of its position regarding the dispute. The position of the Department shall be binding unless, within forty-five (45) calendar days of Respondent's receipt of the Department's written summary, Respondent files with the Hearings Officer a petition which describes the nature of the dispute. The Respondent shall serve a filed copy of the petition on the Department within five (5) calendar days of its filing date. The Department shall file with the Hearings Officer a response to the petition within forty-five (45) calendar days of the Department's receipt of the filed copy of the petition. The Department shall serve a filed copy of the response to the petition on the Respondent within five (5) calendar days of its filing date. In resolving the dispute between the Respondent and the Department, the position of the Department shall be upheld if supported by substantial evidence in the administrative record.

G. FORCE MAJEURE

17. A "force majeure event" is any event beyond the control of Respondent, its contractors, or any entity contracted by Respondent that delays the performance of any obligation or anticipated deadline under this Agreement despite Respondent's best efforts to fulfill the obligation or meet the anticipated deadline. "Best efforts" includes anticipating reasonably foreseeable force majeure events and taking appropriate preventive actions before a force majeure event occurs. "Best efforts" also includes addressing the effects of any force majeure event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the extent reasonably practicable. "Force Majeure" does not include Respondent's financial inability to perform any obligation or meet any anticipated schedule under this Agreement. Increased costs associated with the obligations or anticipated schedules called for under this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time.

18. Respondent shall provide written notice, as provided in the Section of this Agreement entitled "N. Notices," within 30 days of the time Respondent first knew of, or by the exercise of due diligence should have known of, a claimed force majeure event. The notice shall state the anticipated duration of any delay, its cause(s), Respondent's past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and Respondent's rationale for attributing any delay to a force majeure event. Failure to provide written notice as required by this Paragraph shall preclude Respondent from asserting any claim of force majeure.

19. If the Department agrees that a force majeure event has occurred, it shall agree to extend the time for a period no longer than the delay resulting from such circumstances for Respondent to perform the affected requirements. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. When the Department agrees to an extension of time, the appropriate modification shall be made pursuant to the Section of this Agreement entitled "L. Modification; Entire Agreement."

20. If the Department does not agree that a Force Majeure event has occurred, or does not agree to the extension of time sought by Respondent, the Department's position shall be binding, unless Respondent invokes the dispute resolution provisions under Section "F. Retention of Jurisdiction and Dispute Resolution" of this Agreement. In any such dispute, Respondent bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a Force Majeure event, that Respondent gave the notice required by this Section, that the Force Majeure event caused any delay Respondent claims was attributable to that event, and that Respondent exercised best efforts to prevent or minimize any delay caused by the event. If the Hearings Officer agrees that the event was a Force Majeure event, the dates for performance shall be adjusted to reflect the time the Hearings Officer determines to be appropriate pursuant to the dispute resolution process, and the modified dates shall be the basis for determining compliance with this Agreement, including for purposes of Section "E. Stipulated Penalties" and Exhibit C.

H. INTENT, PUBLIC INTEREST, NO ADMISSION OF LIABILITY

21. The Parties intend that this Agreement resolve all penalty and other disputes relating to the NFV and Order. They enter into this Agreement as the most appropriate means of resolving the above-captioned administrative action and to avoid the risks and costs of a contested case hearing, adverse findings and conclusions, or a final order or judgment after litigation. The Parties enter into this Agreement freely and voluntarily, under no coercion or duress, and they are fully aware that in so doing, they are subject to the requirements of this Agreement. Pursuant to HRS § 91-9(d), Respondent voluntarily waives its right to a hearing by entering into this Agreement.

22. The Parties acknowledge that neither this Agreement, nor the fact of resolution, nor any payment or other performance under this Agreement, may be construed as, deemed as evidence of, or used at any time as an admission, concession, presumption, or inference as to liability of any party. This Agreement is to be construed strictly as a compromise and resolution of all the alleged past and present claims relating to the NFV and Order, dated January 26, 2007, that led to the above-captioned administrative action, for the purpose of resolving past and present controversies, litigation, and expenses.

I. EFFECTIVE DATE

23. The effective date ("Effective Date") of this Agreement shall be upon execution by both the Respondent and the Department and, subject to the provisions of Section "V. PUBLIC NOTICE AND PUBLIC COMMENT," the passage of ten (10) days after completion of a public comment period.

J. ALTERNATIVE REMEDIES

24. The provisions of this Agreement shall not be construed to limit any other remedies, including but not limited to institution of proceedings for civil or criminal liability, available to the Department for non-compliance with any provision of law, other than the non-compliance events alleged in the NFV and Order referred to in Section "A. History."

K. OTHER REPRESENTATIONS AND WARRANTIES

25. Other than the matters specifically stated in this Agreement, neither of the Parties, nor anyone acting on their behalf, has made any representations of fact, opinion or promise to induce their compromise or the execution of this Agreement.

26. The Parties do not intend to use ambiguous language, but if any ambiguities exist, the ambiguities should be construed in the manner that most completely protects the interests of the public welfare.

27. This Agreement and all terms, provisions and covenants contained herein may be executed in counterparts and/or by facsimile, each of which shall be deemed an original and all of which taken together will be deemed but one and the same Agreement. The counterparts may be made into one document by omitting duplicate pages. Fax signatures on this document shall be respected as originals.

28. The Parties each agree to execute any additional document(s) that the other party may reasonably request in order to carry out the provisions of this Agreement.

L. MODIFICATION; ENTIRE AGREEMENT

29. This Agreement shall not be altered, amended, modified or otherwise changed, in any respect or particular whatsoever, except by a writing duly executed by each of the Parties, or their respective authorized representatives. The Parties hereby acknowledge and agree that they will make no claim at any time that this Agreement has been orally altered or modified in any respect whatsoever. This Agreement contains the entire agreement among and between the Parties and supersedes all prior oral or written agreements, representations, negotiations and correspondence with respect to the covered claims. The Parties hereto have made no agreement or promise to do any act or thing not mentioned in this Agreement.

M. PUBLIC INFORMATION

30. All information and documents submitted by Respondent to the Department under this Agreement are subject to public inspection and copying unless identified as confidential by Respondent at the time of submittal. The information and documents so identified will be disclosed only in accordance with the provisions of HRS chapter 92F and HRS § 342D-14.

N. NOTICES

31. Whenever, under the terms of this Agreement, a plan, notice, report, or payment is required to be given to the Department or Respondent, such plan, notice, report or payment shall be directed to the individuals specified below, at the addresses or telephone numbers given, unless the Department gives written notice to Respondent, or Respondent gives written notice to the Department, that another individual has been designated to receive such communications, or another or additional method of communication is to be used:

a. Department:

Alec Wong, P.E.
Chief, Clean Water Branch
Hawaii State Department of Health
919 Ala Moana Boulevard, Room 301
Honolulu, Hawaii 96814
Telephone: (808) 586-4309
Fax: (808) 586-4352

b. Respondent:

Lester K.C. Chang
Director
Department of Parks & Recreation
1000 Uluohia Street, Suite 309
Kapolei, Hawaii 96707
Telephone: (808) 768-3001
Fax: (808) 768-3053

c. Copy all communications with Respondent relating to the SEP to:

Timothy E. Steinberger, P.E.
Director
Department of Environmental Services
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96707
Telephone: (808) 768-3486
Fax: (808) 768-3487

O. DUTY TO COMPLY WITH APPLICABLE LAW

32. This Agreement in no way affects or relieves Respondent's or any subsequent owner's responsibility to comply with all applicable state, federal or local laws or regulations.

P. EMERGENCY AUTHORITY

33. This Agreement in no way affects the authority of the Department or the Respondent to respond to an emergency as provided by law.

Q. ACTIONS AGAINST OTHER PARTIES

34. This Agreement does not limit or affect the rights of Respondent or the Department against any third parties.

R. AUTHORITY OF SIGNATORIES

35. Each undersigned representative of a party to this Agreement certifies that he or she has full authority to enter into the terms of this Agreement and legally to bind the party that he or she represents.

S. BINDING EFFECT

36. This Agreement and all terms, provisions and covenants contained herein are binding on and shall inure to the benefit of the Parties and their successors and assigns. Until such time as Respondent has fulfilled its obligations hereunder, Respondent shall give notice of this Agreement to any potential successor in interest of Kualoa Regional Park prior to transfer of ownership to such successor; at the time Respondent shall submit a copy of such notice to the Department. Prior to any such transfer of ownership which occurs before Respondent has fulfilled its obligations hereunder, Respondent shall obtain the approval, consent and joinder of the prospective successor including, without limitation, the assumption of any unfulfilled obligations of Respondent; at the time, Respondent shall submit a copy of such approval, consent and joinder to the Department. If, at the time of transfer of ownership, there are no such unfulfilled obligations under this Agreement, then no such notice, approval, consent and joinder shall be required. This Agreement is not meant to constitute an encumbrance and/or cloud on the title of the Kualoa Regional Park.

T. TERMINATION

37. Respondent may request termination of this Agreement upon demonstration to the Department's satisfaction that the SEP and one-time cash payment are completed and Respondent has complied with all of the terms of this Agreement. Within twenty (20) days after such a showing by Respondent, the Department shall issue a letter to Respondent certifying satisfactory compliance or completion, which letter shall terminate this Agreement. As set forth in Section C.8. of this Agreement, Respondent's obligation to replace the Facility's existing sanitary sewage collection system shall terminate if an acceptable determination cannot be obtained from the State Historic Preservation Division and/or the Oahu Island Burial Council concerning the management, treatment and protection of the native Hawaiian burial sites affected by the proposed replacement wastewater system or systems that eliminate and prevent wastewater discharges onto the ground or into State Waters. Should that event occur, Respondent agrees to monitor all holding tank levels at least twice per week and, as necessary, pump the wastewater levels in the holding tanks sufficiently frequently to prevent backups and spills.

U. COSTS

38. Each party shall bear its own costs and attorneys' fees.

V. PUBLIC NOTICE AND PUBLIC COMMENT

39. As required by 40 C.F.R. § 123.27(d)(2)(iii), notice of this Agreement shall be

published in the following publication(s): The Honolulu Advertiser or Honolulu Star-Bulletin or Midweek. The public comment period shall run for 30 days from the last date of publication.

40. Respondent shall arrange and pay for publication of the notice contemplated above and shall provide affidavits of publication.

41. The Department reserves the right, in its sole discretion, to withdraw from this Agreement within ten (10) days after the end of the public comment period, and before this Agreement is executed, if comments received during the public comment period indicate that this Agreement is inappropriate, improper or inadequate. The Department also reserves the right, after withdrawing its consent, to attempt to renegotiate the Agreement, to proceed to hearing, or take other action that the Department deems appropriate. In any such event, this Agreement shall not be admissible in any further hearing on this matter and is subject to Rule 408 of the Federal Rules of Evidence and the Hawaii Rules of Evidence. Within ten (10) days after the end of the public comment period, the Department shall notify Respondent of whether the Department withdraws its consent to this Agreement.

W. EFFECT

42. This Agreement constitutes the final order in this case, and resolves all outstanding issues between the Parties relating to the NFV and Order dated January 26, 2007, that led to the above-captioned administrative action. Upon the Effective Date of this Agreement, the Respondent agrees to withdraw its administrative appeal. The Department agrees to dismiss with prejudice and otherwise fully and finally terminate the NFV and Order dated January 26, 2007 that led to the above-captioned administrative action upon completion by Respondent of all requirements set forth herein. The Parties agree to cooperate in the preparation and filing of any further documentation required to carry out the provisions of this Section "W. Effect".

X. RELEASE AND WAIVER

43. In consideration for resolution under this Agreement, and in further consideration of the Department's dismissal with prejudice of the NFV and Order dated January 26, 2007, that led to the above-captioned administrative action, as provided in Section "W. Effect," the Parties hereby release each other, and all of their corporate affiliates, departments, agents, employees, officers, directors, heirs, executors, administrators, assigns and successors from any and all liability, claims, causes of action or damages, known or unknown, arising from, to arise from, arisen from or in any way related to the NFV and Order dated January 26, 2007, that led to the above-captioned administrative action.

44. The Parties waive, and this Agreement shall serve as a complete and final bar against, any right or claim of right to assert hereafter any claims, causes of action, liability or liabilities, demands or damages of whatever name or nature, including any and all claims for general and special damages, whether at law or in equity, known or unknown, arising out of or related to the NFV and Order dated January 26, 2007, that led to the above-captioned administrative action, which through ignorance, oversight or error have been omitted from the terms of this Agreement, and further waive any right or claim of right that they may have under

the law of any jurisdiction.

Y. SEVERABILITY OF UNLAWFUL PROVISIONS

45. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

Z. NO PARTY DEEMED DRAFTER

46. This Agreement is a product of negotiation between the Parties and none of the Parties shall be deemed to be the drafter of this Agreement. This Agreement or any provision herein shall not be construed or interpreted against any of the Parties as the drafter.

AA. HEADINGS

47. The headings of sections herein are inserted only for convenience and reference, and shall in no way define, limit, or describe the scope of intent of any provision of this Agreement.

BB. GOVERNING LAW

48. This Agreement shall be subject to, governed by, construed and enforced in accordance with the laws of the State of Hawai'i.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement for Resolution of Order as of the day and year subscribed below.

DATED: Honolulu, Hawai'i, _____.

RESPONDENT:

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PARKS AND RECREATION

By: _____
LESTER K.C. CHANG, Director

RECOMMEND APPROVAL:

DATED: Honolulu, Hawai'i, _____.
CITY AND COUNTY OF HONOLULU
Department of Design and Construction

By: _____
Craig Nishimura, P.E., Director

DATED: Honolulu, Hawai'i, _____.
CITY AND COUNTY OF HONOLULU
Department of Environmental Services

By: _____
Timothy E. Steinberger, P.E., Director

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

DATED: Honolulu, Hawai'i, _____.

COMPLAINANT:

STATE OF HAWAI'I
DEPARTMENT OF HEALTH

By: _____
LAURENCE K. LAU
Deputy Director, Environmental Health

APPROVED AS TO FORM:

Edward G. Bohlen
Deputy Attorney General

EXHIBIT A
ANTICIPATED SCHEDULE OF ACTIVITIES FOR WASTEWATER SYSTEM
REPLACEMENT

1. Meet and Confer with the State Historic Preservation Division and/or the Oahu Island Burial Council Concerning the Proposed Replacement Wastewater System or Systems that Eliminate and Prevent Wastewater Discharges onto the Ground or into State Waters at Kualoa Regional Park: On or Before December 31, 2009.

2. Select, Negotiate and Award Comfort Station Building and Wastewater System Consultant Contract or Amend Existing Consultant Contract: Six (6) Months from the Date of Receipt of an Acceptable Determination by the State Historic Preservation Division and/or the Oahu Island Burial Council Concerning the Management, Treatment and Protection of the native Hawaiian Burial Sites Affected by the Proposed Replacement Wastewater System or Systems that Eliminate and Prevent Wastewater Discharges onto the Ground or into State Waters at Kualoa Regional Park.
 - a. Meet and Confer with Department following Receipt of an Acceptable Determination by the State Historic Preservation Division and/or the Oahu Island Burial Council Concerning the Management, Treatment and Protection of the native Hawaiian Burial Sites Affected by the Proposed Replacement Wastewater System or Systems that Eliminate and Prevent Wastewater Discharges onto the Ground or into State Waters at Kualoa Regional Park.

3. Revised EA, SMA and Updated Archaeological Survey: Twelve (12) months after completion of item 2

4. Complete Pre-Final Design of Comfort Station and Wastewater System: Six (6) months after completion of item 3.

5. Community Meeting and Approval: Four (4) months after completion of item 4.

6. Complete Final Design and Bid: Two (2) months after completion of item 5.

7. Award Construction Contract: Four (4) months after completion of item 6.

8. Construct Comfort Station and Wastewater System: Eight (8) months after completion of item 7.

EXHIBIT B
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Water Quality Monitoring, \$150,000:

Additional testing of the ocean water off of Kualoa Regional Park could help determine both when the ocean is safe for swimming and from where any pollutants are entering the ocean water off of Kualoa Regional Park . Under this SEP, the Respondent, by and through its Department of Environmental Services, will collect water quality samples in several locations of its choosing off of Kualoa Regional Park twice per week during the months of December through February for two years (December 2009 – February 2010 and December 2010 – February 2011). December through February are the most critical months because they usually have the most rain and run-off into the ocean. The water samples will be tested at a laboratory of Respondent's choosing to measure levels of enterococcus, clostridium, salinity, temperature, turbidity, pH, dissolved oxygen, and dissolved oxygen percentage. Following its receipt of the laboratory test data for the samples collected during the December 2010 – February 2011 sampling period, the Respondent shall submit the results of the laboratory test data for both sampling periods (December 2009 – February 2010 and December 2010 – February 2011) to the Department. Upon such submittal of the laboratory test data by the Respondent to the Department, this SEP shall be deemed complete, and no further actions will be required by either Respondent or Department with regard to this SEP.

EXHIBIT C

STIPULATED PENALTIES

<u>ITEM</u>	<u>PENALTY</u>
Wastewater spill after failure to pump holding tank	1st spill \$1,000.00
	2d spill \$2,500.00
	3rd or more \$5,000.00/spill
Failure to maintain record or log of holding tank monitoring dates or observations	1st failure \$500.00
	2d or more \$1,000.00/failure
Failure to maintain record or log of holding tank pumping dates and volumes	1st failure \$500.00
	2d or more \$1,000.00/failure

