

to maintain and repair the "lower" Polihale Road which is used by the general public located on the Kekaha Ag Lands.

(iv) Additions to and/or Deletions from Roadway Infrastructure. From time to time, upon written agreement between the ADC and the Coop, certain roadways, bridges, and related structures may be added to or deleted from the Roadway Infrastructure.

d. ELECTRICAL POWER INFRASTRUCTURE.

(i) Components Comprising Electrical Power Infrastructure; "Electrical Power Infrastructure" Defined. The following shall comprise the electrical power resources, facilities, equipment, and systems subject and covered by this Agreement (hereinafter, "Electrical Power Infrastructure"):

(A) The Mauka and Waiawa hydroelectric power plants and all overhead and underground transmission and distribution components, cross arms, insulators, wires, guides, poles, towers, cutouts, air switches, transformers, oils, meters, and other electrical or mechanical controls relating thereto;

(B) The Waiahulu and Koaie dams, their intake screens, gates, tunnel system, penstocks, motors, controls, and other associated apertures; and

(C) The three (3) diesel generators which the ADC is in the process of acquiring from the Department of Agriculture, which are currently located on premises operated by Syngenta Seeds, Inc., but which have yet to be connected to the other components of the Electrical Power Infrastructure.

(ii) General Location of Electrical Infrastructure. The general location of the Electrical Power Infrastructure covered by this Agreement is shown on Exhibit "D" attached hereto and by this reference incorporated herein.

(iii) Acknowledgments Relating to Electrical Power Infrastructure. The ADC acknowledges that a special 12,000V-6,900V transformer essential to the operation of the Electrical Power Infrastructure is located on an electrical facilities base yard owned, controlled, and operated by Kauai Island Utility Cooperative ("KIUC"), and that the grounding system, transformer and essential switches and controls for the Electrical Power Infrastructure are located and housed in the foundation of the former Kekaha Sugar Mill, which is owned by a third party. In connection with the execution of this

Agreement by the parties hereto, the ADC will use its best effort to obtain an easement, right of way, or other applicable interest, from any affected landowner to continue to use such affected land for the grounding and switching station as long as is necessary to effect this Agreement, and will also use its best effort to arrange for title to the three (3) diesel generators described in Section 1.d.(i)(C) above to be transferred from the Department of Agriculture to the ADC, to be included in the Electrical Power Infrastructure, and to be made subject to this Agreement, and the ADC shall allocate and make available sufficient funds for purposes of locating, installing, and connecting such generators to the electrical grid and transformers that comprise part of the Electrical Power Infrastructure.

(iv) Contemporaneous Cancellation of Revocable Permit No. S-7359. The parties acknowledge that all or a portion of the Mauka hydroelectric power plant is currently subject to that certain Revocable Permit No. S-7359, dated January 7, 2004, by and between the Board of DLNR and the ADC, as Permittee, pursuant to which the ADC has been given the right and responsibility to occupy a 0.5 acre site on which the Mauka hydroelectric power plant is located and to operate the same. In connection with the execution of this Agreement by the parties hereto, the ADC will use its best effort to arrange for and conclude the transfer of the site of the Mauka hydroelectric power plant and the Mauka hydroelectric power plant from DLNR to the ADC, Revocable Permit No. S-7359 shall thereupon be cancelled, and the Mauka hydroelectric power plant shall be made subject to this Agreement.

(v) Additions to and/or Deletions from the Electrical Power Infrastructure. From time to time, upon written agreement between the ADC and the Coop, electrical power resources, facilities, equipment, and systems may be added to or deleted from the Electrical Power Infrastructure.

e. COMMON INFRASTRUCTURE IMPROVEMENTS; COLLECTIVE DEFINITION OF SAME; ACKNOWLEDGMENT REGARDING CONDITION OF SAME.

(i) Common Infrastructure Improvements Defined. All resources, facilities, equipment, and systems comprising the Irrigation Infrastructure, the Drainage/Ravine Infrastructure, the Roadway Infrastructure, and the Electrical Power Infrastructure described and defined in Sections 1.a. through 1.d above shall hereinafter be referred to

j. RELOCATION OF KEKAHA MILL ELECTRICAL EQUIPMENT. The ADC shall contribute no more than 50% or \$150,000.00, whichever is less, of the cost to remove and relocate the grounding system, transformer and essential switches and controls located and housed in the foundation of the former Kekaha Sugar Mill (hereinafter, "Kekaha Mill Equipment") to some other location within the Kekaha Ag Lands controlled by ADC ("cost to remove"). The method of contribution shall be further agreed to between the parties by written amendment to this Agreement. The cost to remove shall be evidenced by paid invoices. The Coop shall arrange for plans to be drawn up for the removal of the Kekaha Mill Equipment as well as plans for the design of the new facility to house the Kekaha Mill Equipment or its replacement. The ADC shall have the right to approve those plans, prior to the commencement of any construction of the removal and relocation of the Kekaha Mill Equipment.

k. CAPITAL COSTS ASSOCIATED WITH IRRIGATION INFRASTRUCTURE DAMS AND RESERVOIRS. The ADC agrees to pay all costs and expenses associated with any corrective actions identified in the Dam Safety Inspection Reports prepared by the DLNR and the United States Army Corp. of Engineers. If no Dam Safety Inspection Report has been prepared for any of the dams and reservoirs included in the Irrigation Infrastructure, the ADC shall request an inspection and shall pay for any corrective actions required by the inspection report. The ADC also agrees, if required by the State of Hawaii, to prepare an Emergency Action Plan, for any of the dams and reservoirs that are part of the Irrigation Infrastructure.

l. KAWAIELE AND NOHILI PUMPS AND CANALS. The Board of Land and Natural Resources has approved the issuance of a lease to the U.S. Navy for approximately 300 acres of land which would include the Kawaiele pump station, the Nohili pump station, and some of the drainage canals along side the PMRF. The ADC agrees and acknowledges that it will be solely responsible for the operation and maintenance of the pumps at the Kawaiele and Nohili pumping stations and the associated drainage canals make (ocean side) of Kaunualii Highway running to the Kawaiele and Nohili pump stations and to the ocean, as long as the U.S. Navy continues to contract its operation and maintenance work to ADC. ADC agrees and acknowledges that it will use its best effort to insure that all pumps at the Kawaiele and



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STATE PROCUREMENT OFFICE NOTICE & REQUEST FOR SOLE SOURCE

- 1. TO: Chief Procurement Officer
- 2. FROM: Agriculture/Agribusiness Development Corporation
Department/Division/Agency

Pursuant to §103D-306, HRS, and Subchapter 9, Chapter 3-122, HAR, the Department requests sole source approval to purchase the following:

3. Description of goods, services, or construction:
 The Kekaha Agricultural Lands is agreeing to hold, manage, operate, develop, upkeep, maintain, repair, and control the common infrastructure resources, facilities, equipment, and systems comprised of the irrigation systems, drainage- and ravine-clearing, roadways, and electrical power generation, located on former Kekaha Sugar land, which serve lands that are demised, leased, license, or permitted by the ADC to the farmers in the district of Kekaha, on the Island of Kauai, and to fairly and equitably allocate the costs and expenses thereof among the members of the Coop.

4. Vendor Name: Kekaha Agriculture Association Address: P.O. Box 940 Waimea, HI 96796	5. Price: <u>\$431,250*</u> *see attached sheet
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6. Term of Contract: (mm/dd/yyyy) From: <u>8/1/2007</u> To: <u>7/31/2027*</u> *see attached sheet	7. Prior Sole Source Ref No. <u>0</u>
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8. Feature: The good, service, or construction has the following unique features, characteristics, or capabilities: The following describes the existing conditions which require services that are unique or specific to this situation:

After Amfac JMB Hawaii (Amfac) shut down Kekaha Sugar Company in 2001, the agricultural lands reverted back to ownership and management of the State Dept of Land and Natrual Resources (DLNR). Amfac's farming subtenants remained on the Kekaha lands through revocable permits issued to them from DLNR. These subtenants formed what is now the Kekaha Agriculture Association (KAA). Pursuant to Governor's Executive Order No. 4007 (GEO) in September 2003, the

* (continued on attached sheet)

9. Essential features. How the unique features, characteristics, or capabilities are essential for the agency to accomplish its work:

The Infrastructures supply electricity, water, drainage and access to the farms, which are essential for operations. Drainage by continuous discharge of water maintains a low water table in the Mana plain and allows farmers to use "marginal" fields which would be otherwise useless if the water table were at sea level. The low water table also minimizes the threat of flooding. Without KAA's 24-hour per day presence on the premises to monitor power-generation, drainage, dredging requirements, etc., a sizable portion of the tillable lands would be unuseable and contra to the directive to ADC contained in the GEO to maintain the premises for agricultural and related purposes.

11. Alternate source. The following other possible sources for the good, service, or construction were investigated but do not meet our needs because:

Alternate sources were not sought because it is highly probable that 1) the farmers can perform the services for a much more reasonable cost than a contractor, and 2) response time is minimized because the farmers are in close proximity to the Infrastructures that need servicing. (ADC does not have staff on Kauai.)

12. Direct any inquiries to:
Department: Agribusiness Development Corp
Contact Name/Title: Lynn Owan/Administrative Services Officer

13 Phone Number:
586-0187
Fax Number:
586-0189

Expenditure may be processed with a purchase order: Yes No If no, a contract must be executed and funds certified.

Agency shall ensure adherence to applicable administrative and statutory requirements.

14. I certify that the information provided above is to the best of my knowledge, true, correct and that the goods, services, or construction are available through only one source.

Lynn Owan for Alfredo Lee, Executive Director 8/8/07
Department Head Date

Reserved for SPO Use Only

15 Date Notice Posted: 8/09/07

Submit written objections to this intent to issue a sole source contract within seven calendar days or as otherwise allowed from the above posted date to: Chief Procurement Officer
State Procurement Office
P.O. Box 119
Honolulu, Hawaii 96810-0119

16. Chief Procurement Officer's comments:

17.
 APPROVED DISAPPROVED NO ACTION REQUIRED

Alfredo Lee 8/16/07
Chief Procurement Officer Date

(SPO-01 continued)

*5. Price: \$431,250 is the estimate for one year based on a cost of \$75 per acre per year. The MOA contemplates that an actual accounting will be prepared after twelve months to determine actual costs.

*6. Term of Contract: The term of the MOA is intended to run approximately concurrently with the terms of licenses issued to KAA members. The licenses will be for 20 years.

*8. Agribusiness Development Corporation (ADC) was granted responsibility for managing and operating certain lands and improvements in Kekaha formerly under DLNR's control (Kekaha Ag Lands). The KAA has been operating, maintaining and repairing infrastructures within the Kekaha Ag Lands since the closure of Kekaha Sugar Company.

The KAA is comprised of 6 farms or agricultural enterprises that occupy approximately 5,750 acres of tillable Kekaha Ag Lands. A Memorandum of Agreement (MOA), dated April 1, 2007, between the ADC and KAA, grants an exclusive license to KAA primarily for "use, management operation, maintenance, and control" of the common infrastructure improvements (Infrastructures). Further, the Infrastructures are licensed in "as is" condition; the ADC is not obligated to repair or maintain the Infrastructures during the term of the MOA.

The KAA is responsible for operating and maintaining the following common infrastructures: 1) Two hydroelectric facilities--Waimea and Waiawa--located within the subject lands. 2) Irrigation supply ditches: Kekaha Ditch and Kokee Ditch; 3) An extensive drainage canal system associated with the Kawaiele and Nohili pumping stations; and 4) Roadways. The KAA members' physical presence on the premises on a daily basis is critical to the monitoring and servicing of the infrastructures, particularly in times of catastrophic events such as power failure or flooding, so that immediate preventive measures may be undertaken to prevent loss or damage, both to the farms and the surrounding residential homes.

The following incidents during heavy rains in March 2006 illustrate why KAA members' presence on the premises is critical.

- 1) The ADC is responsible for removing specific berms along parts of the ADC drainage system in Kekaha and the Pacific Missile Range Facility (PMRF), to allow rising floodwaters to be discharged into the ocean. When Kekaha Town began to experience flooding, the ADC called its contractor to do the earthwork but they did not have the proper equipment readily available. Fortunately, the KAA was clearing some ditches within the common area and they were able to respond immediately and remove the berms in Kekaha Town, and prevent the residential homes from flooding.
- 2) Similarly, at PMRF, a contractor could not respond to the call to remove a berm on the Navy base to allow floodwaters in the ADC drainage system to discharge to the ocean. The KAA was again able to do the work and prevent the PMRF from flooding.
- 3) When ADC's Waimea hydroelectric plant malfunctioned and shut down, it would have been too troublesome to locate a new contractor and give them instructions to drive up to the plant, which is difficult to access. (The drive includes crossing the Waimea River several times on mountain roads.) The hydroelectric power plant provides the electricity to run the irrigation and drainage pumps on the Kekaha Ag Lands and at the PMRF. In this urgent situation, it was determined that asking the KAA to evaluate the problem was most logical and prudent, as they were able to respond immediately, resulting in less electrical downtime than would have resulted from hiring a contractor, and taking him into the mountains to access the power plant.

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