



DEPARTMENT OF  
**HOUSING AND HUMAN CONCERNS**  
COUNTY OF MAUI

ALAN M. ARAKAWA  
Mayor

CAROL K. REIMANN  
Director

JAN SHISHIDO  
Deputy Director

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December 14, 2017

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Chair Stacy Crivello  
Housing, Human Services,  
and Transportation Committee  
Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL  
  
Mayor 12/15/17  
Date

Dear Chair Crivello:

**SUBJECT: COUNTY-OWNED PARCEL ON NORTH PAPA AVENUE (KAHULUI)**  
(HHT-14)

Thank you for your correspondence of December 5, 2017 requesting information pertaining to the above subject. The information requested in your letter is listed below in bold and is followed by the Department's responses.

**1. A status update on the structural assessment analysis for the property.**

Via the County's procurement process, the Housing Division worked with Department of Management to develop a scope of work for the structural analysis study. Engineering companies were identified from the County-approved vendor list and requests for bids were issued for the project. One bid was received from SSFM – please see attached.

Based on the risk and liability of doing such a study, other entities who do such work declined to bid on the project. We were informed that because the units have been vacant for such an extended period of time (over 10 years), that they didn't want to incur the liability. These types of statements underscore the importance of conducting this study for the safety and health of potential inhabitants. The amount of the bid exceeds the funding allocated; therefore, the department will be submitting a budget amendment in order to move forward.

**2. A final scope of work for the structural assessment.**

Scope of work is detailed on the attached bid.

**3. An updated timeline for the project.**

An updated timeline for the project will be developed if we are able to secure the additional funding required to complete the project. Note that SSFM indicated an 18-month review period.

**4. An update on the strategic zoning plan developed, in collaboration with the Department of Planning, to support affordable housing uses for the property.**

In working with the Department of Planning, it was determined that a change in zoning, community plan amendment and a special management area permit would be required. In addition, there may be sand mining issues.

Thank you for the opportunity to provide this information. Should you have any questions, please feel free to contact me at Ext. 7805.

Sincerely,



CAROL K. REIMANN  
Director of Housing and Human Concerns

Attachment

xc: Buddy Almeida, DHHC Housing Division  
Keith Regan, Department of Management  
Will Spence, Department of Planning



November 21, 2017

Contract 2017\_139.000

CLIENT: County of Maui  
Department of Housing and Human Concerns - Housing Division  
32 Lunalilo Street #102  
Wailuku, HI 96793

Attention: Mr. Clyde "Buddy" Almeida

PROJECT: Inspection of Dormitories - Univ. of Hawaii Maui Campus  
Corner of Kaahumanu Avenue and Wahinepio Avenue

REFERENCES: 1) 171030 – Meeting with Eric Matsuda and Buddy Almeida to discuss scope of work.  
2) 170928 – Telecon with Eric Matsuda and Buddy Almeida requesting for proposal.

#### **AGREEMENT FOR PROFESSIONAL SERVICES**

We are pleased to submit the following agreement between **Department of Housing and Human Concerns - Housing Division** (hereinafter referred to as CLIENT) and **SSFM INTERNATIONAL, INC.** (hereinafter referred to as SSFM) to provide **STRUCTURAL AND CIVIL ENGINEERING** services for this project as described herein.

#### **ATTACHMENTS**

This AGREEMENT together with the following attachments constitute the entire agreement between the parties herein:

1. EXHIBIT "A": Scope of Services
  - a. Description of Services
  - b. Basic Scope of Work
  - c. Work Not Included in This Agreement
  - d. Information Required From Client
  - e. Assumptions Made
2. EXHIBIT "B": *Terms and Conditions* (Version 22 December 2016).

#### **GENERAL DESCRIPTION OF THE PROJECT**

The project is described as the investigation to assess design issues associated with the conversion by the County of Maui of 4 existing buildings, originally constructed as dormitories by the University of Hawaii Maui Campus, to affordable housing units. The investigations will use As-Built drawings and visual observations as the primary resources. The inspection team will consist of Structural Engineers, Civil Engineers, Architects, Mechanical Engineers, Electrical Engineers, Fire Protection Engineers, Environmental Consultants, and Termite Inspectors. The inspections will focus on the extent that visually observed damages that could affect future occupancy of the buildings, and provide construction cost estimates of the renovation efforts and costs to repair the observed damages.

#### **SERVICES TO BE PROVIDED**

1. Building Inspection Assessment

21 November 2017

Contract 2017\_139.000

**CHARGES FOR PROFESSIONAL SERVICES**

For the services to be provided shown hereinbefore, compensation for our services shall be lump sum including the State of Hawaii General Excise Tax as follows:

LUMP SUM FEE = **\$118,400.00**

(NOTE: Reimbursable expenses are not included in the lump sum fee. Additional Services are covered in the *Terms and Conditions*.)

SSFM will submit an invoice for services provided under this Agreement on a monthly basis.

If our services covered by this Agreement have not been completed within 18 months of the date hereof, through no fault of SSFM, the remaining fees shall be escalated at the rate of 5% per year.

Should this AGREEMENT meet with your approval, please sign and return one copy; if not, please call for further discussions and/or clarifications.

We will begin services upon receipt of a signed copy of this AGREEMENT.

Thank you very much for this opportunity to provide professional services for this PROJECT.

SSFM INTERNATIONAL, INC.



Eric M. Matsuda, P.E.  
Vice President, Maui Office  
Email: [ematsuda@ssfm.com](mailto:ematsuda@ssfm.com)

Reviewed and Approved By:



Michael P. Matsumoto, P.E., FACEC  
President/CEO  
Email: [mmatsumoto@ssfm.com](mailto:mmatsumoto@ssfm.com)

Enclosures: Exhibit "A" – Scope of Services  
Exhibit "B" - Terms & Conditions (Version 22 December 2016)

Accepted for Department of Housing and Human Concerns - Housing Division by:  
*To be signed by individual authorized to legally bind the CLIENT to this Agreement.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
date

\_\_\_\_\_  
print name/title

**FACSIMILE (FAX) and OTHER ELECTRONIC TRANSMISSIONS:** Executed copies of this Agreement sent via FAX or other electronic means (e.g., PDF or TIF attachments to email) shall be fully binding and effective for all purposes whether or not originally executed documents are transmitted to SSFM International, Inc. Signatures on this document sent via fax or other electronic means will be treated the same as fully executed original copies.

21 November 2017

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**DESCRIPTION OF SERVICES**

1. Our services as outlined under "Basic Scope of Work" will be limited to the following physical limits:  
The existing 4 dormitory units at the corner of Kaahumanu Avenue and Wahinepio Avenue.

**BASIC SCOPE OF WORK**

1. Review "as-built" drawings of the dormitories to determine design characteristics and materials used.
2. Conduct visual inspections to compare the existing construction with the As-Built drawings and to observe damages requiring repairs for the different building systems and construction to include the following:
  - (1) Site grading, drainage, and infrastructure;
  - (2) Building structural systems and elements;
  - (3) Architectural features and elements, and general compliance with accessibility requirement;
  - (4) Electrical distribution and lighting systems;
  - (5) Fire control system;
  - (6) Plumbing and air conditioning systems;
  - (7) Hazardous materials.
3. At selected locations not to exceed 4 locations per building, remove existing wall covering to observe framing details, utilities, termite damage, and other items to better assess the condition of the buildings. Patching of the wall coverings is not included and shall be performed by the Owner. It should be noted that the full extent of damaged areas might not be determined by these inspections.
4. Observe the condition of the roof using a man lift.
5. Based on the damages observed, determine permit requirements to repair or reconstruct the damaged areas.
6. Document the visual observations and prepare a draft assessment report to describe issues, concerns, risks and opportunities as it relates to the repurposing of the buildings to affordable housing use.
  - (1) The draft assessment report shall include recommendations for remediation as well as estimates of probable costs to complete said remediation.
  - (2) The draft assessment report shall identify alternatives to renovation should it be determined that the probable costs of remediation is likely to be offset by the cost and benefits of new construction.
7. Present findings of the draft assessment report to the County of Maui.
8. Upon receipt of comments from the County of Maui, revise and submit Final Submission.
9. Conduct ongoing coordination meetings with the County of Maui to ensure that progress and critical milestones are communicated in an effective and efficient manner.

21 November 2017

**WORK NOT INCLUDED IN THIS AGREEMENT**

Other than the services described in paragraphs hereinbefore, the following work are not included in this Agreement, however, SSFM can provide these services either through in-house staff or by subconsultants as additional services:

1. Work NOT INCLUDED.
  - a. Design services or construction documents.
  - b. Performing of calculations to determine adequacy of the buildings.
  - c. Patching of observation holes made during the inspections.

**INFORMATION REQUIRED FROM CLIENT**

1. Record drawings and applicable reports for the existing buildings.

**ASSUMPTIONS MADE**

1. It is assumed that design and construction of the existing buildings conformed to the various Building Codes in effect at the time the buildings were constructed.
2. Findings will be based only on **visual observations** with no material testing.

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## **TERMS AND CONDITIONS**

### **Section 1. - General**

#### **1.1. Scope of SSFM's Services**

- 1.1.1. SSFM has based its compensation and assumption of risk upon providing all such services on this PROJECT. As a result, the CLIENT shall not be permitted to make any unilateral reduction in the scope of SSFM's services and all such modifications to the scope of services shall require SSFM's express written consent.

#### **1.2. General Obligations of the CLIENT and SSFM**

- 1.2.1. SSFM shall perform those professional services as specified in the AGREEMENT and detailed herein. In providing services under this AGREEMENT, SSFM will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. SSFM makes no warranty, expressed or implied, as to its professional services rendered under this AGREEMENT.
- 1.2.2. The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT for the PROJECT. SSFM may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. By furnishing such information, the CLIENT warrants that it has secured all necessary intellectual property rights, including but not limited to copyright and patent rights, and to the fullest extent permitted by law, agrees to indemnify, defend and hold SSFM, its officers, directors, employees and subconsultants harmless against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising in connection with any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the information furnished.
- 1.2.3. Access to Site: Unless otherwise agreed and as required, CLIENT will furnish right-of-entry on the land and into facilities for SSFM to carry out tasks consistent with the scope of work. SSFM will take reasonable precautions to minimize any damage from use of any equipment but have not included in the fee the cost for restoration of any damage which may result from project operations.
- 1.2.4. Hazardous Materials: Both parties acknowledge that SSFM's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event SSFM or any other party encounters any hazardous or toxic materials, or should it become known to SSFM that such materials may be present on or about the PROJECT or any adjacent areas that may affect the performance of SSFM's services, SSFM may, at its option and without liability for consequential or any other damages, suspend performance of its services under this AGREEMENT until the CLIENT retains appropriate consultants or contractors to identify or abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.
- 1.2.5. It is intended by the CLIENT and SSFM that SSFM's services in connection with the AGREEMENT shall not subject SSFM's individual employees, officers or directors to any personal legal exposure for the risks associated with the work performed under the AGREEMENT. Therefore, and

notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against SSFM International, Inc., a Hawaii corporation, and not against any of SSFM's individual employees, officers or directors.

### **Section 2. - Fees and Payments**

#### **2.1. Fees and Other Compensation**

- 2.1.1. Fees for basic services, additional services, and compensation for reimbursable expenses are set forth in the AGREEMENT.
- 2.1.2. If SSFM's services covered by this AGREEMENT have not been completed within the scheduled time through no fault of SSFM, the remaining fees shall be escalated at the rate of 5% per year.
- 2.1.3. Additional Services: Services beyond the scope of work indicated in the AGREEMENT shall be either on a negotiated lump-sum basis or a cost-plus basis using billing rates in effect at the time these services are performed, plus any applicable taxes on this compensation. However, before any additional services are provided, SSFM must receive the CLIENT's consent to these services.
- 2.1.4. Contract Change Order: For Additional Services, SSFM will provide CLIENT with a Contract Change Order document.
- 2.1.5. Early Identification of Disputed Issues: CLIENT shall promptly review SSFM's invoice upon receipt and shall notify SSFM of any dispute or any portion of such invoice within ten (10) days of receipt. Any dispute identified thereafter shall not be a basis to withhold any payment except as agreed by both of the Parties or as determined pursuant to the dispute resolution procedures provided for at the end of the PROJECT.
- 2.1.6. Payment of Undisputed Portions: In the event CLIENT disputes any portion of an invoice, CLIENT shall pay all undisputed portions of such invoice as required by this AGREEMENT.
- 2.1.7. No Set-Off: Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by SSFM. Payment to SSFM for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this AGREEMENT by either party

#### **2.2. Payments on Account**

- 2.2.1. Invoices for SSFM's services shall be submitted, at SSFM's option, either on a monthly basis or upon completion of any phase of service. Invoices shall be payable when rendered and shall be considered PAST DUE if not paid within 30 days after the invoice date.
- 2.2.2. Retainers, if applicable to this PROJECT, shall be credited to the final invoice(s).
- 2.2.3. Any inquiry or questions concerning the substance or content of an invoice shall be made to SSFM in writing within 30 days of receipt of the invoice. A failure to notify SSFM within this period shall constitute an acknowledgement that the service has been provided.

#### **2.3. Late Payments**

- 2.3.1. A service fee of 1.5% (18% annual rate) per month or the maximum allowable by law will be charged on the outstanding balance of "past due" accounts.



2.3.2. In the event that any portion of an account remains unpaid 90 days after billing, SSFM may, without waiving any claim or right against the CLIENT, and without liability whatsoever to the CLIENT, suspend the performance of the service.

2.3.3. Interest on Retainage: For any retainage that is held by the CLIENT longer than a period of 12 months, the CLIENT agrees to additionally compensate SSFM 1% per month on this retainage amount.

**2.4. Reimbursable Expenses**

2.4.1. Reimbursable expenses shall mean expenses incurred directly or indirectly in connection with the project such as, but not limited to, cost of converting from AutoCAD files to CLIENT's CAD system, off-island transportation, lodging, meals, long distance telephone calls and facsimile transmissions, overnight deliveries, and the cost of reproductions beyond those normally required for coordination and information purposes.

2.4.2. If a project specific website is required to be provided by SSFM for this project, the costs for an internet service provider (ISP) setup (1 time) and monthly internet connection per user shall be included as reimbursable expenses.

2.4.3. Reimbursable expenses shall be billed at a multiple of 1.15 times the cost incurred plus any applicable taxes on this compensation.

**Section 3. - Insurance and Limitation of Liability**

**3.1. Insurance**

3.1.1. SSFM agrees to attempt to maintain professional liability coverage for the period of the design and construction of the PROJECT.

3.1.2. SSFM maintains commercial general liability insurance, automobile liability insurance and workers' compensation insurance. SSFM shall, if requested in writing, obtain certificates confirming such insurance to the CLIENT.

**3.2. Limitation of Liability**

3.2.1. SSFM makes no warranty, express or implied, that its services or work products are free of errors

3.2.2. In recognition of the relative risks and benefits of the PROJECT to both the CLIENT and SSFM, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of SSFM on this PROJECT for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and cost and expert witness fees and costs, and any and all claims for indemnity, so that the total aggregate liability of SSFM on this PROJECT shall not exceed the total amount of \$500,000 or a multiple of 10 times the fee in the AGREEMENT, whichever is lesser. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law, including actions or claims by 3<sup>rd</sup> parties.

3.2.3. The CLIENT agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless SSFM, its officers, directors, employees and subconsultants (collectively, SSFM) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs in excess of the total available policy limits of SSFM at the time of judgment, award, decree or finding against SSFM which is applicable to this PROJECT.

3.2.4. If the CLIENT prefers not to limit SSFM's liability to the sum indicated, SSFM will waive this limitation, provided the CLIENT agrees to pay an additional 3% of SSFM's total fee or \$1,500.00, whichever is greater. The CLIENT's request must be made at the time the CLIENT accepts this AGREEMENT and can be so noted by initialing here. Initial for agreement to waive limitation:

SSFM \_\_\_\_\_ CLIENT \_\_\_\_\_

**3.3. Construction Phase**

3.3.1. Neither the professional activities of SSFM, nor the presence of SSFM or SSFM's employees and/or subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. SSFM and SSFM's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT herewith agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the construction contract. The CLIENT also agrees that the General Contractor shall defend and indemnify the CLIENT and SSFM and SSFM's employees and/or subconsultants. The CLIENT also agrees that a reasonable attempt will be made to include the CLIENT and SSFM as indemnitees and additional insureds under the General Contractor's general liability insurance policy.

**Section 4. - Miscellaneous Provisions**

**4.1. As-Built Drawings**

4.1.1. As-built drawings supplied by the CLIENT and SSFM's visual observations of exposed portions of the facility and/or site will serve as the basis of the engineering designs and details for the basic scope of work described in the AGREEMENT. Engineering services required due to unforeseen conditions exposed during the Construction Administration Phase will be considered as changed conditions and may result in "additional services."

**4.2. Existing Conditions**

4.2.1. Inasmuch as the inspection, altering, and/or rehabilitation of an existing facility and/or site requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the facility and/or site, or from any deficiencies or inaccuracies in any information or documentation furnished to SSFM by or through the CLIENT, the CLIENT agrees to bear all costs, losses and expenses, including the cost of SSFM's Additional Services, arising from the discovery of concealed or unknown conditions in the existing structure.

**4.3. Hazardous Materials**

4.3.1. As used in this AGREEMENT, the term hazardous materials shall mean any substances, including but not limited to mold, asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as



each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the PROJECT site. The CLIENT agrees, notwithstanding any other provision of this AGREEMENT, to the fullest extent permitted by law, to indemnify and hold harmless SSFM, its officers, partners, employees and subconsultants (collectively, SSFM) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or will misconduct of SSFM.

#### **4.4. Opinions of Probable Construction Cost**

- 4.4.1. In providing opinions of probable construction cost, the CLIENT understands that SSFM has no control over costs or the price of labor, materials, or equipment, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of SSFM's qualifications and experience. SSFM makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. If the CLIENT wishes greater assurance as to Project or Construction Costs, he shall employ an independent cost estimator. Services to modify the Contract Documents to bring the Construction Cost within any limitation established by the CLIENT shall be considered Additional Services and paid for as such by the CLIENT.

#### **4.5. Special Inspection Services**

- 4.5.1. These services are currently required by the governing Building Code and are usually included in a separate agreement with the Owner.
- 4.5.1.1. After the full extent of the construction effort is determined and a construction schedule is established and if special inspection services are required, SSFM can provide a separate AGREEMENT for this work.
- 4.5.2. Special Inspections shall consist of visual observations of the materials, equipment, or construction work for the purpose of ascertaining that the work designated by the Building Official to be inspected is in substantial conformance with the drawings and specifications. Special Inspections shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the contractor in any way from his obligations and responsibilities under the construction contract.

#### **4.6. Time Schedule**

- 4.6.1. Because SSFM does not control public agency review time, completion dates for agency approvals cannot be guaranteed.

#### **4.7. Approvals**

- 4.7.1. The processing of plans and specifications to the various government agencies and utility companies for their review and approval is included in our basic scope of work and a reasonable amount of effort has been estimated for this work. However, if the effort for this work exceeds our estimates due to reasons beyond our control, we will treat

the excess effort as "Additional Services" and compensation for this excess work will be on a cost-plus basis.

#### **4.8. Processing Permits**

- 4.8.1. This work is not included in our basic scope of services since it is normally the responsibility of the Owner and/or his Contractor. If requested, SSFM will assist with the permit processing as "additional services" with compensation as described hereinafter.

#### **4.9. Termination of Contract**

- 4.9.1. In the event of termination of this AGREEMENT by either party, the CLIENT shall within fifteen (15) calendar days of termination pay SSFM for all services rendered and all reimbursable costs incurred by SSFM up to the date of termination, in accordance with the payment provisions of this AGREEMENT.
- 4.9.2. The CLIENT may terminate this AGREEMENT for CLIENT's convenience and without cause upon giving SSFM not less than seven (7) calendar days' written notice.
- 4.9.3. Either party may terminate this AGREEMENT for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:
- Substantial failure by the other party to perform in accordance with the terms of this AGREEMENT and through no fault of the terminating party;
  - Assignment of this AGREEMENT or transfer of the PROJECT by either party to any other entity without the prior written consent of the other party;
  - Suspension of the PROJECT or SSFM's services by the CLIENT for more than ninety (90) calendar days, consecutive or in the aggregate;
  - Material changes in the conditions under which this AGREEMENT was entered into, the Scope of Services or the nature of the PROJECT, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

- 4.9.4. In the event of any termination that is not the fault of SSFM, the CLIENT shall pay SSFM, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by SSFM in connection with the orderly termination of this AGREEMENT, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

#### **4.10. Ownership of Instruments of Service**

- 4.10.1. It is acknowledged and agreed that all reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by SSFM as instruments of service shall remain the property of SSFM. SSFM shall retain all common law, statutory and other reserved rights, including without limitation, the copyrights thereto. The CLIENT agrees to hold harmless, indemnify, and defend SSFM from and against any and all claims, liabilities, losses, damages, and costs, including but not limited to costs of defense, arising from or in any way connected with the unauthorized reuse or modification of the plans and specifications by the CLIENT or any person or entity that acquires or obtains the plans and/or specifications from or through the CLIENT without the written authorization of SSFM.

4.10.2. Non-Payment Precludes Right to Use Documents: Any and all of CLIENT's rights in SSFM's work product including reports, plans and specifications shall be contingent upon full, complete and timely payment of all fees, costs and expenses due SSFM under this AGREEMENT. In the event of any non-payment or delayed payment, SSFM shall be entitled to immediate return of all of its instruments of service.

#### **4.11. CAD Files**

4.11.1. CAD files that are required to be submitted as part of our services will be compatible only with the following software operating on the Windows 7 (64bit) environment:

- AutoCAD 2014
- Civil 3D 2014
- Infrastructure Design Suite (IDS) 2014
- Revit Structure 2014
- Building Design Suite (BDS) 2014

4.11.2. SSFM makes no representation as to the compatibility of the CAD files beyond the specified release of the aforementioned software. The CLIENT agrees to save and hold SSFM harmless for uses of the CAD files outside of or beyond the scope of this AGREEMENT.

4.11.3. Final CAD files on electronic media will be submitted to the CLIENT for a 30-day acceptance period. During this period, the CLIENT may review and examine these files and any errors detected during this time will be corrected by SSFM as part of our basic AGREEMENT. Any changes requested after the acceptance period will be considered "additional services" subject to compensation as defined elsewhere in this AGREEMENT. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of conflict between the signed construction documents prepared by SSFM and electronic files, the signed or sealed hard-copy construction documents shall govern.

4.11.4. The information on the electronic media is considered as part of SSFM's instrument of service and shall not be used on other projects, for additions to this project, or for completion of this project by another design professional, except by agreement in writing with appropriate compensation and legal protection provided to SSFM.

4.11.5. Any use or reuse of the original or altered CAD files by the CLIENT or others, without written approval by SSFM, will be at CLIENT'S sole risk and without liability or legal exposure to SSFM. Furthermore, the CLIENT shall, to the fullest extent permitted by law, indemnify and hold SSFM harmless from any and all claims resulting therefrom.

4.11.6. CAD files requested by the Contractor shall be provided only upon execution of a written agreement between SSFM and the Contractor. The written agreement may require a processing fee to be paid to SSFM by the Contractor.

#### **4.12. Betterment**

4.12.1. If, due to SSFM's negligence, a required item or component of the PROJECT is omitted from SSFM's construction documents, SSFM shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will SSFM be responsible for any cost or expense that

provides betterment or upgrades or enhances the value of the PROJECT.

#### **4.13. Dispute Resolution**

4.13.1. In an effort to resolve any conflicts that arise during the design and construction of the PROJECT or following the completion of the PROJECT, the CLIENT and SSFM agree that all disputes between them arising out of or relating to this AGREEMENT or the PROJECT shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

4.13.2. The CLIENT and SSFM further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the PROJECT and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

#### **4.14. No Third Party Beneficiaries**

4.14.1. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or SSFM. SSFM's services under this AGREEMENT are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against SSFM because of this AGREEMENT or the performance or nonperformance of services hereunder. The CLIENT and SSFM agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this PROJECT to carry out the intent of this provision.

#### **4.15. No Assignment**

4.15.1. Neither party to this AGREEMENT shall transfer, sublet or assign any rights under or interest in this AGREEMENT (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by SSFM shall not be considered an assignment for purposes of this AGREEMENT.

#### **4.16. Waiver of Consequential Damages**

4.16.1. Notwithstanding any other provision of this AGREEMENT, and to the fullest extent permitted by law, neither the CLIENT nor SSFM, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the PROJECT or to this AGREEMENT. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the CLIENT and SSFM shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this PROJECT.

#### **4.17. Contractor Submittal Review**

4.17.1. SSFM shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor

is required to submit but only for the limited purpose of reviewing for conformance with the design concept and the information shown in the Construction Documents.

- 4.17.2. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor.
- 4.17.3. SSFM's review shall be conducted with reasonable promptness while allowing sufficient time in SSFM's judgment to permit adequate review.
- 4.17.4. Review of a specific item shall not indicate that SSFM has reviewed the entire assembly of which the item is a component. SSFM shall not be responsible for any deviations from the Construction Documents not brought to the attention of SSFM in writing by the Contractor. SSFM shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

**4.18. Right to Suspend**

- 4.18.1. If the CLIENT fails to make payments to SSFM in accordance with this AGREEMENT, such failure shall be considered substantial nonperformance and cause for termination or, at SSFM's option, cause for suspension of performance of services under this AGREEMENT. If SSFM elects to suspend services, prior to suspension of services, SSFM shall give seven (7) days' written notice to the CLIENT. In the event of a suspension of services, SSFM shall have no liability and shall be indemnified by the CLIENT for delay or damage caused by the CLIENT or others because of such suspension of services.
- 4.18.2. Before resuming services, SSFM shall be paid all sums due prior to suspension and any expenses incurred in the resumption of SSFM's services. SSFM's fees for the remaining services and the time schedules shall be equitably adjusted.

**4.19. Governing Laws**

- 4.19.1. Unless otherwise specified, this contract shall be governed by the laws of the State of Hawaii.

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