STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 27, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 05OD-266
Oahu

Request to amend prior Board action of March 8, 2013, Item D-8, approval of the modification and assignment of the Development Agreement or alternatively, termination of the original Development Agreement dated November 24, 2010, and all development rights thereunder; for a portion of the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:Portion 001. The purpose of the amendment is to modify certain milestones, benchmark deadlines and other terms and conditions previously approved by the Board

BACKGROUND:

On November 8, 2009, DLNR issued a Request for Qualifications/Request for Proposals ("RFQ/RFP") to select a developer for 110-acres of industrial zoned land referenced above (the "Subject Property").[1] As a result of the RFQ/RFP process, the State of Hawaii, by its Chairperson of the Board of Land and Natural Resources ("Chairperson") entered in to a Development Agreement with West Wind Works, LLC ("3W"), made effective November 24, 2010 and terminating on December 31, 2013 or sooner (the "Development Agreement").[2]

At its meeting of May 25, 2012, under agenda item D-16, staff provided BLNR with summaries of the Development Agreement, all notices of default issued to 3W, and the then current status of the Development Agreement, including monetary delinquencies and missed benchmark deadlines. Considering 3W's continuing inability to satisfy the terms of the Development Agreement, staff recommended BLNR terminate the Development Agreement. At 3W's request, however, BLNR approved to defer action for sixty days to allow 3W and its associates an opportunity to submit a proposal to cure delinquencies and amend the Development Agreement, subject to BLNR approval.

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[1] At its meeting of August 25, 2006, under agenda item D-12, the Board of Land and Natural Resources authorized the issuance of an RFQ/RFP to select a developer for the Subject Property.

[2] At its meeting of August 14, 2009, under agenda item H-5, BLNR, in part, amended the RFQ/RFP process and delegated authority to the Chairperson to select a developer for the Subject Property, negotiate the terms of any development agreement or lease, and to execute any documents that are necessary or appropriate to effectuate the intent of the disposition, subject to the provisions of Chapter 171, HRS and Department of the Attorney General's approval.

Subsequently, 3W and International Electric Power, LLC ("IEP") submitted multiple proposals to amend the Development Agreement, which are summarized in **Exhibit A**. At its meeting of March 8, 2013, under agenda item D-8, BLNR approved staff's recommendation to reject the amendments to the Development Agreement as proposed because: [3]

- The proposed amendments did not provide for existing monetary delinquencies to be cured in a timely manner, if at all;
- The requested location of the ±17-acre project site would adversely impact the remaining ±93 acres of the Subject Property;
- The proposed amendments did not provide for timely payments of future development agreement fees; and
- The proposed lease term, specifically the proposed option for renewal, was legally prohibited.

Notwithstanding the above and in lieu of a recommendation to terminate the Development Agreement, BLNR approved Land Division's alternate recommendation for the modification and assignment of the Development Agreement under the terms as proposed by IEP-ORP, LLC, subject however to IEP-ORP, LLC further agreeing to:

- Relocate the project site to an approximate 15-acre area, identified therein, to preserve access and future development potential of the remaining parcel;
- Provide a bond to provide security that all proposed installments to cure existing monetary delinquency and all proposed future development agreement fees are paid to DLNR as proposed by IEP-ORP, LLC;[4]
- Prepare a draft Environmental Assessment ("EA") and have it published in the Office of Environment Quality Control's ("OEQC") Environmental Notice by August 1, 2013;
- Subdivide the agreed upon project site at its own cost and submit a subdivision application to the City and County of Honolulu no later than January 31, 2014; and
- Surrender any and all rights to the Subject Property's remaining ±95 acres not required for IEP-ORP, LLC's modified development plan.

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[3] Prior to its meeting on March 8, 2013, BLNR deferred action on this issue at its meetings on August 10, 2012, under agenda item D-10 (requested by Land Division to allow time to review a proposal dated July 25, 2012); and January 25, 2013, under agenda item D-13 (requested by 3W and IEP).

[4] Subsequently, IEP-ORP, LLC has confirmed that they never agreed to provide a bond. The bond requirement was recommended by Land Division based on 3W's past performance and, despite any objection by IEP-ORP, LLC, was approved by BLNR as a condition for the modification and assignment of the Development Agreement.

BLNR's approval also provided that if IEP-ORP, LLC missed the August 1, 2013 or January 31, 2014 deadlines cited above, IEP-ORP, LLC would lose any and all exclusive rights to the ±15-acre project site; and DLNR/BLNR would not be obligated to issue a lease to IEP-ORP, LLC even if all other terms and conditions approved by BLNR were satisfied.[5]

UPDATE:

Following BLNR's approval of the modification and assignment of the Development Agreement, Land Division prepared a draft Amendment and Restatement of the Development Agreement (the draft "Amendment"), a copy of which was transmitted to IEP-ORP, LLC's counsel for review and comment on May 31, 2013. The draft Amendment reflected the terms approved by BLNR and was premised on the prior assignment of the Development Agreement from 3W to IEP-ORP, LLC.

By cover letter dated July 15, 2013, Land Division transmitted the Consent to Assignment of the Development Agreement (the "Consent") to IEP-ORP, LLC's counsel, requesting the Consent be executed and returned to DLNR by July 31, 2013, together with:

- A fully executed assignment document for review and approval;
- A payment in the amount of $132,031.34, representing the first quarterly installment to cure $528,125.35 in previously accrued monetary delinquencies; and
- A good and sufficient surety bond in the amount of $634,761.35, the amount equal to the monetary delinquencies plus two times the annual modified development agreement fees.

On July 21, 2013 IEP-ORP, LLC submitted proposed changes to the draft Amendment. A copy of which is attached as **Exhibit B**.

On July 25, 2013 Land Division notified IEP-ORP, LLC that their proposed changes to the Amendment were rejected because they were considered substantive in nature and inconsistent with the terms and conditions approved by BLNR. Accordingly, the Amendment pursuant to terms and conditions approved by BLNR was transmitted to IEP-ORP, LLC.

On August 7, 2013, IEP-ORP, LLC withdrew their proposed changes to the draft Amendment and submitted "clarifications" for "DLNR to consider" (hereinafter the "August Proposal"), a copy of which is attached as **Exhibit C**. Specific clarifications and changes requested in the August Proposal, together with relevant terms and conditions of the Amendment and the Development Agreement are summarized in the table attached as

[5] It is noted that the original terms of the Development Agreement also required the publication of a draft EA in OEQC's Environmental Notice by October 31, 2011, and as was previously reported to BLNR, 3W failed to meet that requirement.

Exhibit D. Moreover in the August Proposal, IEP-ORP, LLC confirmed that they never agreed to the bonding requirement in the Amendment as was approved by BLNR.

Consequently, as of the drafting of this report, IEP-ORP, LLC has not:

- Provided a copy of an assignment agreement between 3W and IEP-ORP, LLC to DLNR for review;
- Returned the Consent to Assignment document, duly executed;
- Returned the Amendment document, duly executed;
- Provide a good and sufficient surety bond, as was approved by BLNR despite any objection IEP-ORP, LLC may have raised; or
- Had a draft EA published in OEQC's Environmental Notice by August 1, 2013, as was required by BLNR's approval.

REMARKS:

Despite BLNR's approval to modify and assign the Development Agreement on March 8, 2013, IEP-ORP, LLC has not taken steps necessary to effectuate BLNR's consent to an assignment of the Development Agreement, or the Amendment. Moreover, the Amendment as approved by BLNR would no longer provide IEP-ORP, LLC with any exclusive rights because IEP-ORP, LLC failed to prepare a draft EA for publication by the August 1, 2013 deadline as the Amendment required.

Consequently the Development Agreement remains in effect and continues to encumber the entire 110-acre Subject Property. Pursuant to the terms therein, 3W was recently assessed a delinquency of more than $787,000 in Development Agreement fees, late fees and other penalties.[6]

Based on the foregoing and in response to IEP-ORP, LLC's July 21, 2013 request, Land Division informed IEP-ORP, LLC that the time for negotiations ended at BLNR's meeting on March 8, 2013; and despite any objections IEP-ORP, LLC may have expressed regarding the bonding requirement, BLNR approval required IEP-ORP, LLC to bond all monetary payments.

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[6] As approved by BLNR, the monetary delinquency amount that 3W or IEP-ORP, LLC would attempt to cure was based on 3W's proposal dated November 8, 2012. Therein 3W cites DLNR's invoice dated October 11, 2012, which reported the total amount of Development Fees due, including fees, as of November 24, 2012 to be $528,125.35. Under the Development Agreement, DLNR's invoice dated July 12, 2013 indicates a past due amount of $787,350.35, as of August 24, 2013; and that past due amounts may be subject to a 1% per month finance charge and a late fee.

Notwithstanding the above, IEP-ORP, LLC's August Proposal now provides (1) date-certain deadlines for all milestones, (2) requests new benchmark deadlines for a draft EA and subdivision application, and (3) provides an alternative to the bonding requirement previously approved by BLNR. All three components of the August Proposal are summarized in the table attached as Exhibit D and are discussed below:

- Milestones. BLNR approved certain milestone events that if achieved by IEP-ORP, LLC would require IEP-ORP, LLC to pay DLNR an installment toward curing existing monetary delinquencies and/or future development agreement fees. The first milestone was the assignment of the Development Agreement, which is the only milestone that requires any action by DLNR. All subsequent milestones are subject to discretionary approvals or events outside of DLNR's purview and were not tied to date-certain deadlines. Accordingly, Land Division consistently raised concerns that proposed amendments did not provide for existing monetary delinquencies to be cured in a timely manner, if at all.[7]

  It is noted that the August Proposal changes the first installment toward curing monetary delinquencies from the assignment of the Development Agreement to BLNR's approval and execution of an amended Development Agreement. Although the remaining three milestone events remain unchanged, the August Proposal addresses Land Division's concerns by providing date certain deadlines for all milestone events; and indicates that IEP-ORP, LLC intends to meet all milestone events, make all payments to cure monetary delinquencies and future development agreement fees, secure all necessary approvals for the proposed development, and execute a lease no later than September 1, 2014.

  Notwithstanding the above, IEP-ORP, LLC's obligation to cure existing monetary delinquencies ultimately remains contingent on IEP-ORP, LLC's success.

- Benchmark deadlines. BLNR previously approved specific deadlines for IEP-ORP, LLC to prepare and have a draft EA published in OEQC's Environmental Notice by August 1, 2013. IEP-ORP, LLC was also required to submit an application for subdivision to the City and County of Honolulu no later than January 31, 2014.[8]

  Whereas IEP-ORP, LLC has missed the benchmark deadline to have a draft EA published, the August Proposal indicates that IEP-ORP, LLC will submit a draft EA forty five (45) days after being formally shortlisted by HECO to negotiate a PPA, but in any case not later than November 27, 2013.

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[7] Although the milestones were not tied to date-certain deadlines, IEP-ORP, LLC's project schedule at the time indicated that the last two milestone events were not expected to occur until 2015, if at all.

[8] The purpose of these specific benchmark deadlines was to allow Land Division to monitor progress of IEP-ORP, LLC. Moreover, BLNR approved that if IEP-ORP, LLC failed to meet either benchmark deadline, DLNR/BLNR would no longer be obligated to issue a lease to IEP-ORP, LLC even if they satisfied all other terms of the Amendment; and DLNR/BLNR would be allowed to accept unsolicited or solicited proposals from other private entities.

If BLNR is include to further approve amending the previously approved Amendment, for clarification purposes Land Division recommends that BLNR require IEP-ORP, LLC to have a draft EA published in OEQC's Environmental Notice by November 27, 2013. Moreover, consistent with the terms of the Development Agreement, any amendment shall not obligate DLNR to be the government agency responsible for determining if a FONSI is appropriate.[9]

- Bonding/Security. Despite IEP-ORP, LLC objections, BLNR approved requiring IEP-ORP, LLC to provide a surety bond to ensure all monetary payments are made to DLNR as otherwise proposed by IEP-ORP, LLC.

  It is noted that in lieu of providing a surety bond, the August Proposal states that IEP-ORP, LLC will "consider" placing in escrow $528,125.35. If BLNR is inclined further approve amending the previously approved Amendment, as an alternative to a full surety bond IEP-ORP, LLC should be required to deposit the full $528,125.35 into an escrow account pursuant to irrevocable escrow instructions that would trigger payments upon the specific milestones being met as stated in the August Proposal.

RECOMMENDATION:

1. That the Board of Land and Natural Resources amend its action on March 8, 2013, under agenda item D-8, approving the modification and assignment of the Development Agreement for a portion of the former Ewa Feedlot Site at Campbell Industrial Park, pursuant to the terms and conditions cited above, which by this reference is incorporated herein, and further subject to:

   a. All other terms and conditions described in that Board action of March 8, 2013, under agenda item D-8, which by this reference is incorporated herein unless otherwise specifically amended above; and

   b. Such other terms or conditions as may be prescribed by the Chairperson to best serve the interest of the State;

Or

2. Terminate the Development Agreement effective September 27, 2013, the date of this meeting, pursuant to Paragraph 13 of the Development Agreement, and without waiving any other remedies to which the State may be entitled:

   a. Authorize the retention of any advance payment of Development Agreement Fees or other payments or charges made by 3W;

[9] In its August Proposal IEP-ORP, LLC states "DLNR has indicated that sixty (60) days will be required to review the draft EA and for the issuance of a FONSI (assuming that a FONSI is determined to be appropriate)". Land Division, however, is cognizant that DLNR may not be the appropriate government agency to review the draft EA for the determination if a FONSI is appropriate.

b. Authorize the prosecution of any claim against 3W for Development Agreement Fees or other payments or charges that accrued prior to the effective date of termination, including interest thereon;

c. Authorize the assertion of any claim that the State may have against 3W for any damages, costs, or expenses, suffered or incurred by the State;

d. Require 3W to remove, at 3W's sole cost and expense, immediately and with due diligence, all improvements made on or to the Subject Property by 3W, if any, and return the Subject Property to a good and even grade; and

e. Provided that the termination of the Development Agreement shall not revoke the Board's prior approvals of August 25, 2006, under agenda item D-12, and August 14, 2009, under agenda item H-5.

Respectfully Submitted,

Russell Y. Tsuji
Administrator

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

Exhibit A
SUMMARY OF PROPOSALS

	Proposal[1]/Development Agreement ("DA")	IEP Initial Proposal (July 25, 2012)	3W September Proposal (September 27, 2012)	3W October Proposal (October 1, 2012)	Final Proposal (November 8, 2012)
Developer/ Proposed Assignee (State of Regist./HQ)	West Wind Works, LLC (HI)	IEP-ORP LLC (DE) • IEP, LLC (PA)-70% • ORP, LLC (HI)-30%	ORP, LLC (HI)	IEP-ORP, LLC (HI) *pending* • IEP, LLC • ORP, LLC	IEP-ORP, LLC (HI) *pending* • IEP, LLC subsidiary-60% • ORP, LLC-35% • Abacus Financial Group-5%
Development Proposal	110 ac. for renewable energy park • 5 ac. Wind to Hydro. • 10 ac Biomass • 28 ac Tracking Solar • 57 ac future solar expan.	110 ac. for renewable energy • 5MW Photovoltaic • 5MW Concentrated Solar • 5MW Biomass	17 ac. for up to two 5MW Biomass plants Development of the remaining 93 ac. subject to DLNR negotiations w/a company identified by 3W	17 ac. for up to two 5MW Biomass plants Balance of the property (approx. 93 ac.) to be released for development by others on a non-exclusive basis	17 ac. located along Olai Street for up to two 5MW Biomass plants Balance of the property (approx. 93 ac.) to be released for development by others on a non-exclusive basis
Fees	$345,000 per year paid in quarterly installments	$820,400 (DA Fees and Interest through December 2014) paid w/in 60 days of closing project financing	Pro rata share of current fees, payable as agreed to in a negotiated modified DA	Total of $98,675 paid in quarterly installments from October 1, 2012 to December 2014, or completion of long term lease	$53,318 annually. Payments to accrue quarterly and paid upon issuance of the PPA and financing
Benchmarks	• NUG determine/appr. • SMA Permit • Conditional Use Permit • PPA execution • PUC Approval	• Execution of PPA w/HECO • Closing of project financing	• Execution of PPA with HECO • Closing of project financing	• Execution of PPA with HECO • Closing of project financing no later than December 31, 2014	• Execution of PPA with HECO, est. completion January 7, 2015 • Closing of project financing, est. completion April 30, 2015
Monetary Delinquencies/Proposed Cure					
	$528,200.35[2] as of 11/24/12	• $244,528 w/in 60 days of PPA (September 2013) • $259,199 w/in 60 days of Fin. (September 2014)	100% of the DA payments accrued prior to September 30, 2012 paid in one lump sum amount after assignment of the modified DA	• $136,719 upon execution of a modified DA • $136,719 upon FONSI from DLNR • $136,719 upon lease issuance • $136,719 upon receipt of PPA	Total of $528,125.35[3], paid: • 25% at assignment of the DA • 25% at IEP-ORP being short listed on HECO RFP • 25% at signing of PPA • 25% at financing & lease execution
Proposed Lease Terms					
Lease Term	25 yrs. & 25-yr opt to renew	N/A	N/A	N/A	Max 65 years w/option to renew
Annual Base Rent	$5,520,000	To be determined based on market rent for the type of use proposed	$30,000/ac. (17 ac.), or $510,000/yr.	$30,000/ac. (17 ac.), or $510,000/yr.	$30,000/ac. to be adjusted subj to an appraisal
Other		• Offer to sell power in exchange for lease rent • Payment of $1M as add'l one-time rent IF the project qualifies for certain federal tax credits	N/A	• No annual rent escalations • Offer to sell power in exchange for or addition to lease rent.	• Rent fixed for 25 yrs or term of PPA whichever is longer • Rent re-opening each 20 year period thereafter

[1] Oahu Renewable Energy Park, Oahu, Hawaii; Development Proposal for the Former Ewa Feedlot, dated March 30, 2010, submitted by 3W in response to the RFQ/RFP.
[2] Pursuant to Tenant Statement (Document Number 05od266) dated November 13, 2012, which does not include a 1% monthly assessment on unpaid Development Agreement Fees.
[3] Pursuant to Tenant Statement (Document Number 05od266) dated October 11, 2012, which does not include a 1% monthly assessment on unpaid Development Agreement Fees.

Insert 1:

L. On or about March 22, 2013, Developer submitted to the Hawaiian Electric Company ("**HECO**") an application for a Non-Utility Generation provider ("**NUG Application**") pursuant to an invitation for waivered projects by HECO. However, subsequent to the submission of Developer's NUG Application, HECO announced that HECO would not be considering further NUG Applications and that renewable energy projects only would be considered pursuant to Requests for Proposals ("**RFP**") issued by HECO.

M. Developer has submitted to HECO a proposal in response to an as-available energy RFP issued by HECO. In the event that Developer's as-available energy proposal is not accepted by HECO, Developer intends to submit to HECO a proposal responding to a firm energy RFP issued by HECO, or, if HECO elects to reinstate consideration of NUG Applications, to submit a further NUG Application.

N. As a result of the change in policy by HECO, revision to the time frame for the development Developer's proposed renewable energy project based upon the new procedures being required by HECO is required.

Insert 2:

at approval by the State of Hawaii Public Utilities Commission ("**PUC**") of an executed Power Purchase Agreement between Developer and HECO, including approval of any related interconnection study or other requirements;

Insert 3:

at issuance of all land use entitlements, permits, and regulatory approvals as described in Section 1.k hereof, including, without limitation, a conditional use permit if required by applicable law;

Insert 4:

in accordance with a reasonable timeline established between HECO and Developer for the development of Developer's Modified Development Plan.

Insert 5:

in accordance with a reasonable timeline established between HECO and Developer for the development of Developer's Modified Development Plan.

EXHIBIT "B"

MARK-UP - 7/21/2013

AMENDMENT AND RESTATEMENT
of
DEVELOPMENT AGREEMENT

for

FORMER EWA FEEDLOT SITE

Department of Land and Natural Resources
Land Division
State of Hawaii

AMENDMENT AND RESTATEMENT
of
DEVELOPMENT AGREEMENT

THIS AMENDMENT AND RESTATEMENT OF DEVELOPMENT AGREEMENT is made and effective this_____ day of _____, 20___ (**"Effective Date"**), by and between the **STATE OF HAWAII**, by its Chairperson of the Board of Land and Natural Resources (**"Chairperson"**) by the authority granted by the Board of Land and Natural Resources (**"Board"**) at its meeting held on March 8, 2013, for the Department of Land and Natural Resources, Land Division, whose principal place of business and post office address is 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96813, (**"State"**); and **IEP ORP, LLC**, a Hawaii ~~registered~~ limited liability company with respective ownership percentages as follows: (i) a subsidiary of International Electric Power, LLC, a privately-held firm incorporated in Delaware and headquartered in Pittsburg, PA—60%; (ii) Oahu Renewable Energy Park, LLC, a Hawaii limited liability company,—35%; and (iii) Abacus Financial Group—5%, and whose principal place of business and post office address is _____, (**"Developer"**).

RECITALS:

A. State owns in fee simple that certain parcel of land situated at Honouliuli, Ewa, Oahu, Hawaii. The parcel consists of approximately 110.106 acres and is identified by Tax Map Key No. (1) 9-1-031:001 (**"Subject Parcel"**). The Subject Parcel is also known as Land Court Lot 12022, as shown on Land Court Map 888 of Land Court Application 1069 and described on Land Court Certificate of Title No. 498,504.

B. The Board made a finding on August 25, 2006, that the public interest demanded that the Subject Parcel be approved for disposition by lease through a direct negotiation process. On November 8, 2009, the State issued a Request for Qualifications/Request for Proposals (**"RFQ/RFP"**) for the Former Ewa Feedlot to select a developer to develop the Subject Parcel.

C. Pursuant to the RFQ/RFP process, West Wind Works, LLC, a Hawaii limited liability company (**"3W"**) submitted a development proposal entitled "OAHU RENEWABLE ENERGY PARK OAHU, HAWAII: Development Proposal For The Former Ewa Feedlot," dated March 30, 2010 (**"Development Plan"**), which provided for the development of different renewable energy facilities by various providers, including wind, solar, and biomass facilities, under a ground lease arrangement between 3W and the State.

D. Pursuant to the RFQ/RFP process, the State selected 3W to enter into exclusive negotiations of a development agreement and lease for the Subject Parcel.

E. A Development Agreement for Former Ewa Feedlot Site, was executed and effective November 24, 2010, by and between the State of Hawaii, by its Board, and 3W (**"Development Agreement"**).

F. Under the Development Agreement 3W was provided ninety (90) days to conduct a due diligence investigation (the "**Due Diligence Period**"), and the right to request, in writing, an extension of the Due Diligence Period. However, the 3W did not exercise its right to request an extension of the Due Diligence Period.

G. On March 2, 2012, the Chairperson issued a Notice of Default to 3W for failure to keep Development Agreement fee payments current and failure to comply with other terms of the Development Agreement.

H. 3W and Developer requested the Development Agreement be assigned to Developer and amended.

I. Developer has completed all necessary due diligence.

J. At its meeting held on March 8, 2013, under agenda item D-8, a copy of which is attached as Exhibit A, the Board approved the modification and assignment of the Development Agreement under the terms and conditions cited therein, and as recommended on January 25, 2013, under agenda item D-13, which by the reference of at the March 8, 2013 meeting, was incorporated therein.

K. By instrument dated _____, 2013, 3W assigned the Development Agreement to Developer with the consent of the Chairperson.

Insert 1

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, obligations and conditions set forth in this agreement, the State and Developer hereby mutually agree as follows:

1. **Amendment and Restatement of the Development Agreement**. Pursuant to Paragraph 27 of the Development Agreement and as approved by the Board at its meeting on March 8, 2013, under agenda item D-13, the Chairperson approves the amendment and restatement of the Development Agreement under the terms and conditions below, hereinafter the "**Amended Agreement**":

one (1) day after execution of a lease agreement between the State and Developer

a. Term. The term of this Amended Agreement shall commence on the effective date stated above, and terminate ~~on December 31, 2018~~ (the "**Expiration Date**"), unless terminated sooner pursuant to the terms of this Amended Agreement.

b. Curing of Existing Monetary Delinquencies. Developer shall cure monetary delinquencies, previously accrued by 3W under the Development Agreement, in the amount of FIVE HUNDRED TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE AND 35/100 DOLLARS ($528,125.35), to be paid in the following installments, within 30 days of the following milestones:

i. Payment 1: 25%, or ONE HUNDRED THIRTY-TWO THOUSAND THIRTY-ONE AND 34/100 DOLLARS ($132,031.34), at the effective date of this Amendment Agreement;

ii. Payment 2: 25%, or ONE HUNDRED THIRTY-TWO THOUSAND THIRTY-ONE AND 34/100 DOLLARS ($132,031.34), ~~at Developer becoming shortlisted on Hawaiian Electric Company's ("HECO") Request for Proposal~~; Insert 2

iii. Payment 3: 25%, or ONE HUNDRED THIRTY-TWO THOUSAND THIRTY-ONE AND 34/100 DOLLARS ($132,031.34), ~~at the signing of a Power Purchase Agreement ("PPA") between HECO and Developer~~; Insert 3

iv. Payment 4: 25%, or ONE HUNDRED THIRTY-TWO THOUSAND THIRTY-ONE AND 33/100 DOLLARS ($132,031.33), at financial close and execution of a lease agreement between the State and Developer.

All payments shall be in the form of either a cashier's or certified check made payable to the Department of Land and Natural Resources (**"DLNR"**). This amount shall represent all monetary delinquencies previously accrued under the Development Agreement by the 3W.

FORTY-SEVEN

c. Modified Development Agreement Fees. Commencing as of the effective date of this Amended Agreement, Developer shall pay to DLNR modified development agreement fees in the amount of ~~FIFTY-THREE~~ THOUSAND ~~THREE HUNDRED EIGHTEEN~~ DOLLARS ($~~53,318~~) annually, accruing quarterly, and payable upon:

$47,000

~~*i.* Execution of PPA with HECO; and~~

~~*ii.*~~ Closing of project financing.

~~d. Bonding of Monetary Payments. Developer shall, at its own cost and~~ expense, within fifteen (15) days from the effective date of this Amended Agreement, procure and deposit with the State and thereafter keep in full force and effect during the term of this agreement a good and sufficient surety bond to provide security that all installments to cure existing monetary delinquencies and all modified development agreement fees are paid to DLNR as described in paragraphs 2.a. and 2.b., above, in an amount equal the monetary delinquencies previously accrued plus two times the annual modified development agreement fees, or SIX HUNDRED THIRTY-FOUR THOUSAND SEVEN HUNDRED SIXTY-ONE AND 35/100 ~~DOLLARS ($634,761.35)~~.

~~e. Taxes and Assessments. Developer shall be responsible for all taxes and~~ assessments applicable to or arising from the Subject Property. Developer will pay or cause to be paid all taxes, assessments or other governmental charges levied upon any of Developer's property or Developer's income derived from the Subject Property or under this Amended ~~Agreement before the same become delinquent.~~

f. Modified Site. The modified site shall be limited to an approximately 15 acre portion of the Subject Parcel as generally shown highlighted in red on Exhibit B, attached, hereinafter the **"Project Site"**, provided however:

i. The final configuration of the Project Site, including any interior roads, shall be subject to the prior approval of the Chairperson;

ii. The Developer shall be responsible for processing and obtaining all necessary approvals for the legal subdivision of the Project Site, all at Developer's expense; and

iii. Except for the Project Site, the Board, Chairperson, and DLNR shall be allowed to receive, review or accept unsolicited or solicited proposals for the Subject Parcel without any further consent by the Developer.

The State makes no representations regarding the condition of the Project Site or the suitability of the Project Site for Developer's proposed development. Any approval by the State of the Project Site, including any interior roads, shall not be deemed a warranty or other representation on the part of the State or DLNR that the Developer will be able to obtain all necessary federal, state and county subdivision, entitlements, permits or other approvals required to enable the Developer to develop its proposed project.

g. Modified Development Plan. The Developer has prepared and submitted to the Board a modified development plan that is limited to one or two 5MW biomass plants, hereinafter the **"Modified Development Plan"**. Planned improvements for the Project Site include a multi-building energy generation facility, a substation, and a feedstock processing/holding area. The building footprint will fully encompass the equipment necessary and will have an estimated maximum building height of 60 feet. The smokestack is anticipated to be up to 100 feet, which may be adjusted to meet Hawaii state regulations and will depend on the environmental controls for the system.

The Board's approval to amend and assign the Development Agreement, including but not limited to the approval of the Modified Development Plan as proposed by the Developer, shall not be deemed a warranty or other representation on the part of the State that Developer will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Developer to develop its proposed project or planned improvements.

The Developer assumes all risks of development. Developer agrees and admits that Developer is solely at risk with respect to the profitability or financial success of the proposed Modified Development Plan.

h. Condition of the Project Site. The Project Site shall be leased in an "as is" condition, and the State makes no representations regarding the condition of the Project Site or the Subject Parcel; or the suitability of the Project Site or the Subject Parcel for the proposed Modified Development Plan. Developer, at its sole expense, has conducted its own investigations and due diligence regarding the Project Site and the Subject Parcel to determine any site work necessary to develop the Modified Development Plan, including but not limited to demolishing existing improvements and removing hazardous materials, if any.

i. Right of Entry. After execution of this Amended Agreement, and subject

to the Developer providing a certificate of liability insurance naming the State as additional insured, the State will grant Developer a right of entry to the Project Site. The right of entry may be revoked at any time, with prior written notice from the State, if the Developer fails to meet either of the two modified benchmarks described in subsection 1.j below.

The right of entry will authorize Developer, including its employees, agents, consultants, counsel, advisors, equity owners, contractors and subcontractors, to enter the Project Site, with prior notice and, while thereon, make surveys and appraisals; take measurements, geotechnical investigation, test borings, other tests of surface and subsurface conditions and soil tests and sampling; make structural and engineering studies, and inspect the Project Site, all at Developer's sole cost and expense. The right of entry shall not grant Developer any right to develop, construct or install any improvements on the Project Site or the Subject Parcel, and Developer will not have any such right to develop, construct or install any improvements on the Project Site or Subject Parcel until the lease has been executed and delivered. Under such right of entry, Developer shall indemnify, defend and hold and save the State harmless from and against all claims, demands or liability for loss or damage, including property damage, personal injury and wrongful death, mechanic's and material men's claims, design or construction defects, and third party claims, arising out of or in connection with any such entry upon the Project Site or the Subject Parcel by Developer or its employees, agents, consultants, contractors and subcontractors. The foregoing covenants of Developer shall survive any termination of this Amended Agreement.

j. Modified Benchmarks. Should the Developer fail to meet either of the two benchmark deadlines cited below, any and all exclusive rights to the Project Site granted to the Developer shall terminate, and State shall be allowed to accept unsolicited or solicited proposals from other private entities for the Project Site, or enter into an exclusive agreement or lease covering the Project Site, without any further consent from the Developer.

i. Environmental Assessments/Environmental Impact Statements. At its sole cost and expense, Developer shall prepare and process any and all required environmental assessments, environmental impact statement preparation notices, and environmental impact statements (**"EA/EIS"**) required under Chapter 343 of the Hawaii Revised Statutes (**"HRS"**) and for Developer to implement the Modified Development Plan.

Without limiting the foregoing, Developer shall prepare a draft environmental assessment (**"EA"**) for the Modified Development Plan and have a draft EA published in the Office of Environmental Quality Control's Environmental Notice ~~no later than August 1, 2013.~~ Insert 4

It is understood and agreed that if a FONSI is not issued and a full environmental impact statement or statements (**"EIS"**) is required, Developer shall be required to obtain the State's "final approval" of the Modified Development Plan; and that the State's final review and final approval or disapproval of the Modified Development Plan shall not occur until after Developer has received final non-appealable acceptances of all required final EIS covering the Modified Development Plan and until after all such final EIS are presented at a public meeting of the Board. It is understood and agreed that the State shall have the right to withhold final approval of the Modified Development Plan and to terminate this Amended

Agreement if, based on the final EIS or matters raised in connection therewith, the State decides that implementing the Modified Development Plan is not acceptable or desirable. In making this decision, the State shall not be limited to considering the factors involved in determining whether the final EIS is or are legally acceptable under HRS Chapter 343. Rather, the State shall have the right to consider fully all the environmental factors involved in the Modified Development Plan and to weigh the benefits against the adverse impacts of the Modified Development Plan and may withhold final approval of the Modified Development Plan and terminate this Amended Agreement for reasons including, but not limited to: (1) the adverse environmental impacts resulting from implementing the Modified Development Plan, including environmental, economic, social, and cultural impacts; (2) the inadequacy of measures proposed by Developer to mitigate the adverse environmental impacts of the Modified Development Plan identified in the final EIS; (3) the nature of any adverse environmental impacts of the Modified Development Plan as identified in the final EIS which cannot be avoided or mitigated; or (4) alternatives described in or raised in connection with the final EIS.

Within sixty (60) days after all final EIS have been presented at a public meeting of the Board, the State shall notify Developer whether the State has: (x) granted final approval of the Modified Development Plan; (y) granted final approval of the Modified Development Plan subject to Developer's acceptance of certain specified conditions; or (z) denied final approval of the Modified Development Plan and will terminate this Amended Agreement. Within thirty (30) days of Developer's receipt of notice of any specified conditions to State's final approval, Developer shall notify State in writing whether it accepts such conditions. If Developer fails to accept such conditions within the thirty-day period, the State shall be deemed to have denied final approval of the Modified Development Plan and to have elected to terminate this Amended Agreement. No such final approval of the Modified Development Plan by the State shall be deemed a warranty or other representation on its part that Developer will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Developer to develop the Project Site in accordance with the Modified Development Plan; and

ii. Survey/Subdivision. At its sole cost and expense, Developer shall provide to DLNR survey maps and description for the Project Site, according to State Department of Accounting and General Services standards, for DLNR review and approval.

Subject to DLNR approval of the survey for the Project Site and at the sole cost and expense of the Developer, Developer shall submit a subdivision application to the City and County of Honolulu ~~no later than January 31, 2014~~; and shall further process and obtain all necessary subdivision approvals for the Project Site.

Insert 5

k. Developer to Obtain All Necessary Land Use Entitlements, Regulatory/ Utilities Approvals, and Power Purchase Agreements. Developer shall at Developer's sole cost and expense, expeditiously and diligently seek to obtain all necessary and appropriate land use entitlements, permits, and regulatory approvals, including, but not limited to, public utilities, and other approvals, permits and entitlements from the United States of America, State of Hawaii (including the State Legislature if applicable and Public Utilities Commission), City and County of Honolulu (**"City"**), and HECO so as to enable Developer to develop and use the Project Site in accordance with the Modified Development Plan.

Developer shall, within 30 days of the State's request, provide the State with a written report and shall meet with the State and/or the State's staff regarding the status of and material issues relating to Developer's efforts to obtain the required entitlements and approvals.

l. Modifications to the Modified Development Plan. Developer shall be entitled to make such changes and modifications thereto as may be required to address and satisfy any comments made or issues raised by the appropriate agencies of the United States of America, State of Hawaii, City and County of Honolulu, or Hawaiian Electric Company without the further consent or approval of the State, so long as: (a) Developer provides advance written notice to the State of the changes or modifications, including a reasonably specific explanation of why the changes and modifications are being undertaken and their anticipated effect; and (b) such changes or modifications do not: (i) materially alter or change the development of the Modified Development Plan, including without limitation, the nature, size, and quality of the renewable energy component; (ii) reduce the rents to be paid under the lease; or (iii) do not provide for uses that are not permitted by applicable laws or ordinances.

In addition, the State recognizes that from time to time the Modified Development Plan may require changes or modifications initiated by Developer. Developer may make any such changes or modifications to said Modified Development Plan with the prior written consent of the State, which consent may be withheld by the State if such changes or modifications: (x) require the preparation of a new or supplemental EA or EIS; (y) materially alter or change the development of the renewable energy component as set forth in the Modified Development Plan, including without limitation, the nature, size, and quality of said component; or (z) reduce the rents to be paid under the lease.

m. Agreement to Issue Lease. The terms of the lease to be issued by the State to the Developer for the Project Site shall be negotiated between the State and the Developer; provided, however, that (a) the term of the lease shall be no more than sixty-five (65) years; (b) the annual lease rents shall be the ~~greater~~ lesser of (i) fair market rent as determined by independent appraisal pursuant to Section 171-17(b), HRS, as amended, and (ii) Thirty Thousand Dollars ($30,000) per acre as provided in the Developer's proposal; (c) the annual rent will be fixed for the first 25 years with rent reopenings each 20 year period thereafter; and (d) the lease shall encompass the entire Project Site and payment of the lease rent for the Project Site shall commence upon issuance of the lease. Notwithstanding the foregoing, it is understood and agreed that the State shall issue the lease only if Developer has fully complied with all the terms and conditions of this Amended Agreement and satisfactorily complied with each of the following conditions:

i. Publication of Draft EA. Developer shall have prepared a draft EA for the Modified Development Plan and shall have had that draft EA published in the Office of Environmental Quality Control's Environmental Notice ~~no later than August 1, 2013~~ as provided in Section 1.j.i herof.

ii. Subdivision Application. Developer shall have submitted a subdivision application to the City and County of Honolulu ~~no later than January 31, 2014~~ as provided in Section 1.j.ii herof.

iii. Final EA and FONSI / Final Approval of Modified Development Plan. Developer shall have (a) caused to be published in the OEQC *The Environmental Notice* a final EA and FONSI covering the Modified Development Plan; or (b) obtained the State's final approval of the Modified Development Plan if required pursuant to Section 1.j.*i.* hereof.

iv. Subdivision of Land. Developer shall have obtained all final subdivision approvals for the Project Site.

v. Land Use Entitlements and Approvals. Developer shall have obtained from the United States of America, State of Hawaii (including the State Legislature if applicable, and Public Utilities Commission), City and County of Honolulu, and Hawaiian Electric Company final non-appealable approvals and determinations for all necessary land use, utilities, and other approvals, permits, agreements, and entitlements to enable Developer to develop the Project Site in accordance with its Modified Development Plan.

vi. Lease Agreement. Developer and the State shall have agreed on all lease terms and conditions, subject to the review and approval by the Department of the Attorney General.

vii. Financing. Developer shall have submitted evidence reasonably satisfactory to the Chairperson that Developer has adequate funding and/or financing to fully develop the Project Site in accordance with its Modified Development Plan, including without limitation, proforma financial statements for the project, financing and/or equity commitment letters, and confirmations/evidence of tax credit eligibility.

viii. Registration. Developer is registered and is in good standing with the State of Hawaii Department of Commerce & Consumer Affairs.

n. Developer's Right to Terminate Amended Agreement. Developer may at any time at its option and in its sole and absolute discretion by giving written notice thereof to the State, terminate this Amended Agreement, for any of the following reasons:

i. If Developer is unable to obtain at any time and for any reason: (1) the necessary United States of America, State of Hawaii (including the State Legislature if applicable, and Public Utilities Commission), City and County of Honolulu, and Hawaiian Electric Company land use or zoning approvals and power purchase agreements to allow for the development of the Project Site in accordance with the Modified Development Plan, (2) the State's final approval the Modified Development Plan if required under Section 1.j.*i.* or (3) the State's consent to Developer's proposed modifications to the Modified Development Plan;

ii. Determination by Developer based on its environmental assessment and review of the Project Site that the Project Site is subject to environmental contamination, remediation and/or clean up issues which are deemed unacceptable to Developer; and

iii. Imposition by the United States of America, the State of Hawaii, and/or City and County of Honolulu of onerous requirements or conditions on Developer's receipt of the land use or zoning approvals; or Public Utilities Commission entitlements or approvals necessary to implement the Modified Development Plan, which requirements or conditions are unacceptable to Developer.

If Developer exercises its option to terminate this Amended Agreement for any of the reasons above, Developer (1) shall not be entitled to any compensation or other payment whatsoever by the State on account of such termination or for any improvements constructed by Developer on the Project Site or Subject Parcel (if any), and (2) shall deliver to the State, without cost or charge, copies of all plans, specifications, permits and studies prepared for or germane to the Subject Parcel or part thereof.

o. State's Right to Terminate Agreement. The State may at its option and in its sole and absolute discretion by giving written notice thereof to Developer, terminate this Agreement for any of the following reasons:

i. If Developer fails to have prepared a draft EA published in the Office of Environmental Quality Control's Environmental Notice ~~no later than August 1, 2013~~ as provided in Section 1.j.i herof;

ii. If Developer fails to submit a subdivision application to the City and County of Honolulu ~~no later than January 31, 2014~~, as provided in Section 1.j.ii hereof

iii. If a FONSI is not issued and the State withholds or denies "final approval" to the Modified Development Plan as required in Section 1.j.*i.* hereof, including Developer's failure to accept within the specified time period the conditions to the State's final approval;

iv. If the State withholds or denies consent to Developer's proposed modifications to the Modified Development Plan as provided in Section 1.l. hereof and Developer will not or cannot implement the Modified Development Plan without the proposed modifications;

v. If Developer fails to obtain all United States of America, State of Hawaii (including the State Legislature if applicable, and Public Utilities Commission), City and County of Honolulu, and Hawaiian Electric Company entitlements, permits, approvals and power purchase agreements necessary for implementation of the Modified Development Plan;

vi. If Developer fails to make full payment of any installment to cure existing monetary delinquencies as provided in Section 1.b hereof;

vii. If Developer fails to make full payment of any installment of the Modified Development Agreement Fees as provided in Section 1.c. hereof, or full payment of any other payments or charges due hereunder at the times and in the manner provided in this Agreement, and this failure continues for a period of more than thirty (30) days after delivery by the State of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to Developer;

viii. If Developer becomes bankrupt or insolvent, or seeks protection under any provision of any bankruptcy or insolvency law or any similar law providing for the relief of debtors, or abandons the project contemplated under the Modified Development Plan, or if any assignment is made of Assignor's rights hereunder for the benefit of creditors;

ix. If Developer fails to observe and perform any of the material covenants, terms, and conditions contained in this Amended Agreement and on its part to be observed and performed, and such failure continues for a period of more than sixty (60) days

after delivery by the State of a written notice of breach or default and demand for cure (set forth in reasonable detail), by personal service, registered mail or certified mail to Developer;

x. If the Project Site or any part of the Project Site, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime;

xi. If the Developer is not in compliance with HRS section 171-36(4).

Upon any termination under this Section, this Amended Agreement shall become null and void except as to any provisions which expressly survive its termination, Developer will not be entitled to issuance of a lease for the Subject Parcel, Project Site or any part thereof, Developer shall have no rights to develop the Subject Parcel, Project Site or any part thereof, and Developer shall have no rights or interest whatsoever in or to the Subject parcel, Project Site or any part thereof. Upon termination and without waiving any other remedies to which it may be entitled, the State shall be entitled to: (1) retain any advance payment of Development Agreement Fees, Modified Development Agreement Fees, or other payments or charges made by 3W or the Developer, (2) prosecute any claim against 3W and/or the Developer for Development Agreement Fees, Modified Development Agreement Fees or other payments or charges that accrued prior to the effective date of termination of the Amended Agreement, including interest thereon; (3) assert any claim that it may have against 3W and/or Developer for any damages, costs, or expenses, suffered or incurred by the State, and (4) require Developer to remove, at Developer's sole cost and expense, immediately and with due diligence, any improvements made on or to the Project Site or the Subject Parcel by Developer and return the Subject Parcel to a good and even grade, which obligation shall survive termination of this Agreement.

In the event the lease for the Project Site is issued as per this Amended Agreement, this Amended Agreement shall terminate in its entirety on the date that is one day after the date that the Lease for the Project Site is issued to Developer, and shall thereupon automatically become null and void, except as to any provisions of this Agreement which expressly survive its termination.

p. Liens. Developer will not commit or suffer any act or neglect whereby the Subject Parcel, Project Site, or any improvements thereon or the estate or interest of the State therein shall at any time during the term of this Amended Agreement become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will indemnify, defend and hold the State harmless from and against all loss, cost or expense with respect thereto (including reasonable attorney's fees). If any lien for work, labor, services or materials done for or supplied to the Subject Parcel or the Project Site by, on behalf of or through Developer is filed against the Subject Parcel or the Project Site, Developer shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit, bond or other reasonably satisfactory alternative approved by the State, as the case may be. The foregoing covenants of Developer shall survive any termination of this Amended Agreement.

q. Observance of Laws, Ordinances and Regulations. Each party hereto, and their respective officers, agents, assigns, employees, consultants and/or contractors, or persons

acting for or on its behalf, shall at all times observe and comply with all applicable laws, ordinances, rules and regulations of the Federal, State and County governments.

r. Archaeology; Historic preservation. Developer, including any agent or contractor, upon encountering any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human remains, or any historic properties or burials, on the Subject Parcel or the Project Site, will immediately stop work and contact the State DLNR Historic Preservation Division in compliance with Chapter 6E, HRS.

s. Recordation. This Amended Agreement shall not be recorded. However, upon request by either the State or Developer, a short form memorandum of this Amended Agreement shall be prepared by the State and shall be duly executed and acknowledged in proper form and may be placed of record so as to give public notice as to the existence of this Amended Agreement.

t. Notices. Any notice or demand to the State or Developer provided for or permitted by this Amended Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally within the City and County of Honolulu to the State or to any officer of Developer, or (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to the other. Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, or receipt of Fax, or at 4:00 p.m. on the third business day after being deposited with the United States mail as aforesaid, as follows:

If to the State:	Board and Department of Land and Natural Resources 1151 Punchbowl Street, Room 220 Honolulu, Hawaii 96813 Attention: Chairperson Fax no.: (808) 587-0390
And a copy to:	Department of the Attorney General Attention: Land/Transportation Division Kekuanaoa Building 465 South King Street, Suite 300 Honolulu, Hawaii 96813 Fax no.: (808) 587-2999
If to Developer:	_____ _____ _____ _____ _____ _____

u. Status Reports – Developer Cooperation. Developer acknowledges that State's staff may be required to periodically report to the Board of Land and Natural Resources during the term of this Amended Agreement on the status of Developer's progress under the Amended Agreement. Developer agrees to reasonably assist State's staff in making such reports, including without limitation, upon commercially reasonable advance written notice, having a representative available to answer questions at any meetings of the Board at which such reports are given, providing information that State's staff reasonably requests for the purposes of making such reports, and being available to meet with the State's staff prior to the time such reports are made.

v. Costs and Attorney's Fees. Developer shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and conditions of this Agreement, in recovering possession of the Project Site, or in the collection of delinquent fees, taxes, assessments, and any and all other charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State, the Developer shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State

w. Construction and Amendment. This Amended Agreement has been negotiated extensively by Developer and the State with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of this Amended Agreement or any Exhibit attached hereto shall be effective unless incorporated in a written instrument executed by the State and Developer. The State and Developer agree to execute such other documents and instruments as may be reasonably requested by the other party and as may be necessary to effectuate the terms of this Amended Agreement.

x. Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect which is not material to the transactions contemplated hereunder, such invalidity, illegality or unenforceability shall not affect any other provisions of this Amended Agreement, but this Amended Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

y. Assignment. Any and all rights hereunder granted to Developer may not be sold, assigned, conveyed or transferred in any manner by Developer to any other person or entity without the prior written consent of the State, such consent not to be unreasonably withheld, conditioned or delayed, and any such sale, assignment, conveyance or transfer in breach of this provision shall be null and void; provided, however, that the State may withhold consent if the State determines the potential purchaser, assignee, or transferee does not possess the experience, expertise or financial capacity to perform the Developer's obligations under this Amended Agreement or that the proposed sale, assignment, conveyance or transfer is inconsistent with the purpose, intent, qualification process, or selection process of the RFQ/RFP. Notwithstanding the foregoing, Developer may assign this entire Amended Agreement and the

development rights provided for herein to an institutional lender or lenders providing financing for the development of all or any portion of the Project Site as security for the repayment of such loan or loans, with the prior written consent of the State.

z. State's Right to Assign. It is specifically understood and agreed that the State (through the Board) may convey or otherwise transfer the "Project Site" subject to the terms and conditions of this Amended Agreement, and assign this entire Amended Agreement (including, but not limited to the assignment of any lease issued or to be issued under this Agreement) to any other department or agency of the State of Hawaii, subject to such department or agency affirmatively agreeing to accept such Project Site subject to the terms and conditions of this Amended Agreement and assuming all undertakings and obligations under this Amended Agreement and/or the lease issued or to be issued under this Amended Agreement. Upon any such assignment, Developer agrees to attorn to the assignee on the terms and conditions of this Amended Agreement, the lease, or any other lease that is part of this Amended Agreement.

aa. Development Rights. Upon the termination of this Amended Agreement for whatever reason (except for termination as a result of the issuance of the lease as provided for in Section 1.m. above), all development rights, permits, approvals, plans, specifications, etc. prepared by or for Developer in connection with Developer's efforts relating to or under this Amended Agreement shall, to the extent owned by and/or assignable by Developer, vest with and become the property of the State. At the request of the State, Developer shall do all things reasonably necessary to assign to the State, all such development rights, permits, approvals, plans, specifications, etc.

bb. Modification. This Amended Agreement may only be amended or modified by written agreement signed by the State and the Developer; provided however, this Amended Agreement may only be amended or modified with the prior approval of the State.

cc. DLNR. Notwithstanding anything herein to the contrary, it is specifically understood and agreed by the parties that: (a) the "State" as used herein means the Department of Land and Natural Resources, State of Hawaii, and the "Chairperson" as used herein means the Chairperson of the Board of Land and Natural Resources; (b) whenever action is taken, or required to be taken by the "State" under this agreement (e.g., approve, disapprove, consent, or otherwise), it shall be deemed to be an act of only the Board of Land and Natural Resources, and shall not be construed to be the act of any other department or agency of the State of Hawaii. Developer acknowledges and accepts the responsibility for obtaining all entitlements and governmental approvals from the other applicable governing boards, agencies and departments of the State of Hawaii, City and County of Honolulu, and the United States of America.

dd. No Third Party Beneficiaries. No third party beneficiaries are intended by this Amended Agreement, and the terms and provisions of this Amended Agreement shall not give rise to any right in third parties to enforce the provisions of this Amended Agreement.

ee. Nondiscrimination. The use of the Project Site shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or a physical handicap.

ff. Counterparts. This Amended Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

gg. Time is of the essence. Time is of the essence in all provisions of this Amended Agreement.

hh. Exhibits. The following exhibits are attached hereto and made a part of this Amended Agreement:

A. Board of Land and Natural Resources action dated March 8, 2013, under agenda item D-8

B. Map showing the proposed Project Site, subject however to survey and subdivision approvals.

IN CONSIDERATION THEREOF, the State and Developer further agree that this Amended Agreement sets forth the entire agreement between the State and Developer; and the Amended Agreement shall not be altered or modified in any particular except by a memorandum in writing signed by the State and the Developer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Approved and Executed by the Chairperson pursuant to authority granted by the Board of Land and Natural Resources at its meeting held on March 8, 2013.

STATE OF HAWAII

By _____
WILLIAM J. AILA, JR.
Chairperson of the Board of Land and Natural Resources

State

APPROVED AS TO FORM:

_____
Colin J. Lau
Deputy Attorney General

Dated: _____

IEP-ORP, LLC
a Hawaii ~~Registered~~ Limited Liability Company ~~(to be formed)~~

By _____
Its: Manager
Name: _____

APPROVED AS TO FORM
AND LEGALITY:

_____
William C. McCorriston
McCorriston Miller Mukai MacKinnon, LLP

Dated:_____

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

August 7, 2013

Mr. Russell Tsuji
Mr. Kevin Moore
Mr. Gavin Chun
Department of Land and Natural Resources –
Land Division
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809

Re: Former Ewa Feedlot

Dear Gentlemen:

We would like to thank Russell Tsuji for taking the time to discuss the status of this matter with Enzo Zoratto via telephone on August 5, 2013. Based upon the discussion between Mr. Tsuji and Mr. Zoratto, we understand that the DLNR is not in a position to conduct further discussions regarding the terms and conditions contained in the draft Amendment and Restatement of Development Agreement with respect to the determination of the lease rent payments, payment of taxes or bonding requirements for the development fees. We therefore, withdraw our proposed revisions of July 21, 2013, to those provisions and resubmit the following clarifications, which we would like the DLNR to consider in preparing its determination to the DLNR Board (BLNR).

Issue 1 - Milestones

IEP-ORP will achieve the following milestones.

1. Board Approval and Execution of the Amendment and Restatement of Development Agreement
   IEP-ORP will make a first payment of $132,031.33 of past-due development fees upon approval by the BLNR and execution of the Amendment and Restatement of Development Agreement including the proposed IEP-ORP terms contained herein. The next scheduled meeting by the BLNR at which this can be considered is anticipated to be September 13, 2013. Upon approval by the Board and execution of the Amendment and Restatement of Development Agreement, IEP-ORP will make the first payment of $132,031.33.

2. Shortlisting by HECO to Negotiate a PPA
   IEP-ORP will pay the second installment of past-due development fees in the amount of $132,031.33 when IEP-ORP is formally shortlisted by HECO. This payment will be made thirty (30) days after execution of the Amendment and Restatement of Development Agreement, or on October 13, 2013, whichever is earlier.

P.O. Box 2800 • Honolulu, Hawaii 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813
Telephone: (808) 529-7300 • FAX: (808) 524-8293

EXHIBIT "C"

3. EIA Draft Submittal
   IEP-ORP will submit the draft EA forty five (45) days after Milestone 2, which will provide sufficient time to complete the document, but in any case by not later than November 27, 2013.

4. Approval of EA and Issuance of FONSI
   DLNR has indicated that sixty (60) days will be required to review the draft EA and for the issuance of a FONSI (assuming that a FONSI is determined to be appropriate). This is estimated to be January 26, 2014.

5. Completion of Survey and Submission of Subdivision Application
   Subject to issuance of a FONSI, IEP-ORP will complete the required appraisals and survey of the property, and submit an application for subdivision by February 26, 2014.

6. Execution of the PPA
   IEP-ORP will make the third payment of past-due development fees in the amount of $132,031.33 (plus one year of modified development fees in the amount of $53,318) upon execution of the PPA. This generally occurs six (6) weeks after PUC approval and completion of the Interconnection Study (which are not DLNR milestones); but in any case, the third payment will be made by not later than July 1, 2014.

7. Financial Close
   IEP-ORP will make the final payment of past due development fees in the amount of $132,031.33 (plus one year of modified development fees in the amount of $53,318) upon financial close, but in any case, the final payment will be made by not later than September 1, 2014.

8. Execution of Lease
   IEP-ORP will execute the lease agreement and pay lease payments during construction by not later than September 1, 2014.

Issue 2 – Bonding

With respect to bonding, IEP-ORP did not agree to provide bonding for the past due payments. However, recognizing that the DLNR is seeking comfort from IEP-ORP that it has set aside sufficient funds to cover this payment ($528,125.35 in 4 payments of $132,031.33 each), IEP-ORP will consider placing in escrow the full $528,125.35, which will be drawn upon as the milestone payments are made to the DLNR. The balance of funds will not be made available to DLNR for any other purpose, but to offset past due development fee obligations.

Issue 3 - Taxes

Retracted as a condition by IEP-ORP.

Issue 4 – Lease Payments

Retracted as a condition by IEP-ORP.

We understand that the DLNR Land Division office is not in a position to negotiate or accept the above requested modifications to the draft Amendment and Restatement Development Agreement and that the requests presented herein require BLNR approval. We seek your support to these changes and we will be present at the BLNR meeting on September 13, 2013 to articulate our position if necessary.

Thank you again for your consideration.

Very truly yours,

McCorriston Miller Mukai MacKinnon LLP

William C. McCorriston

WCM:ps

Exhibit D

Summary Relevant Changes*

Relevant Term	Development Agreement	BLNR Approved Amendment	August Proposal
Monetary Delinquencies (Accrued as of)	$787,350.35 (August 24, 2013)	$528,125.35 (November 24, 2012)	$528,125.35 (November 24, 2012)
Milestones:			
Monetary delinquencies	N/A	• 25% at the Assignment of the Development Agreement; • 25% at Developer being shortlisted on HECO's Request for Proposal • 25% at the signing of a PPA • 25% at financial close and execution of lease	• $132,031.33 upon BLNR approval and execution of an amended Development Agreement • $132,031.33 upon IEP-ORP, LLC being formally shortlisted by HECO to negotiate a PPA, 30 days after execution of the Amendment, or on October 13, 2013, whichever is earlier • $132,031.33 upon execution of a PPA with HECO, but in any case, not later than July 1, 2014 • $132,031.33 upon financial close, but in any case not later than September 1, 2014
Development Agreement Fees	$345,000 per year, paid quarterly	$53,318 per year, accruing quarterly and payable upon: • Execution of PPA with HECO; and • Closing of project financing	• $53,318 upon execution of a PPA with HECO, but in any case, not later than July 1, 2014 • $53,318 upon financial close, but in any case not later than September 1, 2014
Benchmark deadlines:			
Draft EA	Published no later than 10/31/2011	Published no later than 8/1/2013. If benchmark is not met, Developer would lose all exclusive rights provided under the Amendment	IEP-ORP, LLC will submit a draft EA 45 days after being formally shortlisted to negotiate a PPA with HECO, but in any case by not later than November 27, 2013
Application for Subdiv.	N/A	1/31/2014. If benchmark is not met, Developer would lose all exclusive rights provided under the Amendment	Subject to the issuance of a FONSI, IEP-ORP, LLC shall complete submit an application for subdivision by February 26, 2014
Bonding/Security	N/A	Bonding of all monetary payments required	IEP-ORP, LLC will consider placing in escrow the full $528,125.35, which will be drawn upon the milestone payments are made to the DLNR. The balance of funds will not be made available to DLNR for any other purpose, but to offset past due development fee obligations.

* All other terms and conditions previously approved by BLNR on March 8, 2013, under agenda item D-8 are presumed to be acceptable to IEP-ORP, LLC, including but not limited to the loss of any and all exclusive rights otherwise provided by the Amendment if IEP-ORP, LLC does not meet approved deadlines to have a draft EA published in OEQC's Environmental Notice or application for subdivision submitted to the City and County of Honolulu.