



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

May 17, 2022
Honolulu, Hawai'i

Delegation of Authority to the Deputy Director to Enter into a Memorandum of Agreement with the University of Hawai'i for the Services of Graduate Research Assistants to Assist the Commission in Research of Traditional and Customary Practices and Appurtenant Rights

SUMMARY OF REQUEST

That the Commission on Water Resource Management (Commission) delegate authority to the Deputy Director to enter into a memorandum of agreement (MOA) with the University of Hawai'i for the services of Graduate Research Assistants (GRA). This includes the proposed MOA (Exhibit 1) with the University of Hawai'i on behalf of the Dana Naone Hall Chair in Hawai'inuiākea School of Hawaiian Knowledge for the services of researching Native Hawaiian and traditional and customary practices and appurtenant rights in Hawai'i.

The State Water Code was adopted in 1987 followed by the adoption of its administrative rules 1988. Since this time, there have been several amendments to these rules for the purposes of amending instream flow standards, making water reservations, updating permit application fees, and clarifying policies for imposing penalties and fines. As the water management landscape in Hawai'i evolves there continues to be a need for additional data and information which are not fully understood or discovered. Evolving issues – such as climate change, enumeration of public trust purposes, improved understanding of groundwater dependent ecosystems, and the closure of plantations – have demonstrated the need for additional research and study.

While the Commission uses the best available data when making decisions, there are some crucial knowledge gaps that should be addressed in order for the Commission to improve its decision and policy making. Two key areas for further investigation include: (1) Native Hawaiian and traditional and customary rights, and (2) appurtenant rights. The University of Hawai'i Dana Naone Hall Chair in Hawai'inuiākea School of Hawaiian Knowledge has the experience, expertise and research capacity to complete a Project that will help the Commission gain a better understanding of these important public trust purposes.

DESCRIPTION OF SERVICES

The proposed Project MOA is attached as Exhibit 1. Commission staff will provide input to Dana Naone Hall Chair in Hawai'i inuiākea School of Hawaiian Knowledge with the selection of the GRA. The GRA will assist the Commission with research and technical support on Native Hawaiian traditional and customary practices and appurtenant right claims in areas where there is the greatest need for this information. Some potential Project areas include Keauhou, Hawai'i Island, Lahaina, Maui, and the Island of Moloka'i. Administration and hiring process of the GRA will be handled by a Principal Investigator within the University of Hawai'i Dana Naone Hall Chair in Hawai'i inuiākea School of Hawaiian Knowledge through the University of Hawai'i Office of Research Services. Office space and other administration will be shared between the Commission and the University of Hawai'i Dana Naone Hall Chair in Hawai'i inuiākea School of Hawaiian Knowledge.

The Principal Investigator and GRA will have regular project update meetings and will brief the Commission on the Project findings at the conclusion of the Project and provide a summary report to the Commission.

TIME OF PERFORMANCE

The proposed MOA period begins on the date of execution and continues for 12 months.

COST OF SERVICES

The total cost for these services is expected to be \$40,000. Funds will be provided through the Commission's general fund.

CONSISTENCY WITH THE HAWAII WATER PLAN

Goal 2 of the Water Resource Protection Plan (WRPP), states that water resources, public trust uses, and water rights are protected and balanced against reasonable beneficial uses. To meet this goal, the WRPP identified Task 2.3.1, which directs the Commission to "Develop a process and policy for regulatory and planning purposes, for identifying the presence of traditional and customary practices in a particular area and the water needs associated with those practices" (<https://dlnr.hawaii.gov/cwrp/planning/hiwaterplan/wrpp/>).

The proposed MOA will assist the Commission in accomplishing this task to meet the goal identified in the WRPP.

LEGAL AUTHORITY

The authority for this MOA/collaboration is established in the Hawai'i Water Code 174C-5(4), HRS:

(The commission) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons.

ENVIRONMENTAL REVIEW

This action falls under Environmental Impact Statement Rules §11-200.1-16(a)(1), HAR, and an exemption notice is not necessary.

INSTRUMENT TO SECURE SERVICES

The proposed MOA (Exhibit 1) between the University of Hawai'i Office of Research Services and the Commission on Water Resource Management listing the terms and conditions of the agreement will be executed. Staff will use a contract or purchase order to secure the services of the graduate research assistant and encumber the funding.

RECOMMENDATIONS

Staff recommends that the Commission delegate authority to the Deputy Director to:

1. Enter into a memorandum of agreement and contract with the University of Hawai'i on behalf of the Dana Naone Hall Chair in Hawai'inuiākea School of Hawaiian Knowledge for the services of a Graduate Research Assistant to assist Commission staff in researching Native Hawaiian traditional and customary practices and appurtenant rights claims; and
2. Enter into future MOA with the University of Hawai'i for the services of Graduate Research Assistants to assist the Commission staff provided that funding is available.

The terms of this and any future MOA will be subject to the availability of funding and any contracts would require the approval of the Attorney General's Office.

Ola i ka wai,

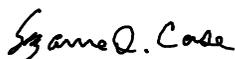


M. KALEO MANUEL
Deputy Director

Exhibits

1. Draft Memorandum of Agreement

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

MEMORANDUM OF AGREEMENT
Between the
UNIVERSITY OF HAWAI'I
on behalf of the
DANA NAONE HALL CHAIR IN
HAWAI'INUIĀKEA SCHOOL OF HAWAIIAN KNOWLEDGE
and the
DEPARTMENT OF LAND AND NATURAL RESOURCES

This Memorandum of Agreement, (hereinafter "MOA") is entered into on this _____ day of _____, 2022, by and between the UNIVERSITY OF HAWAI'I on behalf of the DANA NAONE HALL CHAIR IN HAWAI'INUIĀKEA SCHOOL OF HAWAIIAN KNOWLEDGE (hereinafter referred to as "HSHK"), a State controlled institution of higher education, whose mailing address is: 2540 Maile Way, Spalding 258, Honolulu, Hawai'i 96822, and the COMMISSION ON WATER RESOURCE MANAGEMENT (hereinafter "CWRM"), DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter "DLNR"), whose business address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813.

RECITALS

WHEREAS, DLNR is the agency charged with managing, administering, and exercising control of public lands, among other natural resources, and relevant part, to also manage and administer the state parks, historical sites, forests, forest preserves, aquatic life, wildlife, wildlife sanctuaries, game management areas, public hunting areas, and natural resources;

WHEREAS, CWRM is administratively attached to DLNR with four branches — Survey, Planning, Groundwater Regulation, and Stream Protection and Management Branches — which strive to administer the State Water Code and protect the waters of the State of Hawai'i.

WHEREAS HSHK has expertise in the State Water Code and water issues, and is poised to and capable of working with CWRM staff to support and supervise a Graduate Research Assistant;

WHEREAS, money is available to fund this MOA pursuant to DLNR Program LNR404, Appropriation No. G-22-044, in adequate amounts;

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good andvaluable consideration, the parties to this MOA hereby agree as follows:

I. RESPONSIBILITIES OF HSHK (Scope of Work & Deliverables)

1. HSHK will hire a Graduate Research Assistant (hereinafter “CWRM Graduate Research Assistant”) to provide CWRM with research and other support on a range of water resource issues including 1) Native Hawaiian and traditional and customary right, and 2) appurtenant rights.
2. HSHK will be responsible for:
 - a. Administrative and other work related to advertising for, hiring, paying, and terminating (if necessary) the CWRM Graduate Research Assistant;
 - b. Helping to supervise the CWRM Graduate Research Assistant, including, for example, weekly meetings with the CWRM Graduate Research Assistant and office space for the CWRM Graduate Research Assistant to work at least one day a week at HSHK.

II. RESPONSIBILITIES OF DLNR/CWRM

1. Provide HSHK with input on hiring of the CWRM Graduate Research Assistant.
2. Pay HSHK a fixed price not to exceed FORTY THOUSAND DOLLARS (\$40,000.00) for the satisfactory completion of the above HSHK responsibilities under this MOA. This sum shall constitute the full compensation for all professional and other services to be provided by HSHK.
3. Provide office space and other administrative support for the CWRM Graduate Research Assistant in CWRM’s office.

III. MUTUAL AGREEMENTS

1. The term of this MOA shall be for a period of eighteen (18) months, commencing upon the execution of this MOA. The Graduate Research Assistant will be employed for a period of twelve (12) months.

2. The terms of this and any future MOA will be subject to the availability of funding and any contracts would require the approval of the Attorney General's Office.
3. This MOA may be amended through a mutually acceptable written statement, signed both parties.
4. This MOA may be terminated upon thirty (30) days written notice. In the event of any termination of this MOA prior to the end date, DLNR shall reimburse HSHK for all costs and non-cancelable commitments made prior to termination. Balance of unexpended funds shall be returned to DLNR within 90 days of the early termination date.
5. HSHK shall submit a written invoice and DLNR will review work to its satisfaction and issue payment based upon the following payment schedule:
 - a. Submit an invoice or purchase order to DLNR for 100 percent of MOA agreement amount (\$40,000.00) within 30 days of the execution date of this **MOA**.
6. The validity of this MOA and any of its terms or provisions, as well as the rights and duties of the parties to this MOA, shall be governed by the laws of the State of Hawai'i.
7. This MOA represents the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior and/or contemporaneous discussions, representations, understandings or agreements, whether oral or written, of the parties regarding this matter.
8. Nothing in this MOA shall be construed as an indemnification by one party or another for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this MOA. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors, or assigns or by third persons, arising out of and during the performance of this MOA shall be determined according to applicable law.

IV. APPROVALS

The parties hereto have executed this MOA as of the date first written above.

University of Hawai'i

Signature: _____

Printed Name: _____

Its: _____

Approved as to Form:

Signature: _____

Deputy Attorney General

Commission on Water Resource Management

Signature: _____

Printed Name: M. Kaleo Manuel

Its: Deputy Director

**Dana Naone Hall Chair in Hawaiʻinuiākea School of Hawaiian
Knowledge - University of Hawaiʻi at Manoa - Department of Land
and Natural Resources - Graduate Research Assistant**

Budget

	Budget	Expenditures
Staff		
HSHK/CWRM Graduate Research Assistant		
Stipend includes salary and related administrative and other expenses, including travel, supplies, and health insurance	\$40,000.00	
Total Indirect Costs (@10%)	\$0	
Total Costs	\$40,000.00	