CONTRACT NO. 9864 SERVICE CONTRACT

THIS CONTRACT, effective as of the date of the last signatory, is made and entered into by and between the County of Kaua'i, whose mailing address is 4444 Rice Street, Suite 235, Līhu'e, Hawai'i 96766 (hereinafter the "County") and Smith Dawson & Andrews, Inc, a District of Columbia corporation under the laws of the District of Columbia, whose principle mailing address is 1150 Connecticut Avenue, Suite 730, Washington, D.C. 20036 (hereinafter the "Contractor").

RECITALS

THIS CONTRACT for services has been procured under:	
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THIS CONTRACT for services has been produced under.
Hawai'i Revised Statutes ("HRS") §103D-102 <u>Click here to enter text.</u> ; §3-120-4, Exhibit A exemption <u>Click here to enter text.</u> , Hawai'i Administrative Rules ("HAR") (Exempt Procurement No. <u>Click here to enter text.</u>)
C HRS §103D-302 (Competitive Sealed Bidding)
HRS §103D-303 (Competitive Sealed Proposals)
HRS §103D-305 (Small Purchase)
HRS §103D-306; HAR 3-122-81(c) (approved for Sole Source procurement Click here to enter text., Sole Source Procurement No. Click here to enter text.)
C HRS §103D-307 (Emergency Procurement No. Click here to enter text.)
WHEREAS, the County desires to engage the services of a Washington, D.C. representative with legislative lobbying expertise to identify and provide analysis and strategic input on financial resources and grants available to the County and to ensure appropriate processing of available funds; and
WHEREAS, the Contractor is able and qualified to provide such service as required in this Contract (hereinafter the "Services").
NOW THEREFORE, the County and Contractor, in consideration of the mutual promises, consideration, and understandings hereinafter set forth, hereby agree as follows:
1. Scope of Work. The Contractor agrees to sell, furnish, deliver, and/or install the Services, as more specifically described in Exhibit A, attached hereto and incorporated herein, complete and in new condition, free of all liens, claims, and any encumbrances whatsoever, in accordance and in strict compliance with the following documents:
 a. □ Specifications; b. □ Invitation for Bids Document No. <u>Click here to enter text.</u> and all Addenda thereto; c. ⊠ Request for Proposals Project No. P0228 and all Addenda thereto; d. □ Bid (including pricing inputs)/Proposal/Best and Final Offer;

e.	☐ Questionnaire;
f.	☐ Special Provisions;
g.	☐ General Terms and Conditions for Goods and Services of the County of Kaua'i
	dated July 2016 (hereinafter "General Terms"),
h.	☐ Other: Click here to enter text.,

and those other documents attached or referred to therein, relating to the Services (hereinafter collectively referred to as "Contract Documents"). The Contractor understands and agrees that the Contract Documents including, but not limited to, those referenced in but not attached to this Contract and those referenced in but not attached to the Contract Documents, are hereby incorporated by reference into this Contract. The Contractor acknowledges and admits receipt of all Contract Documents, and acknowledges that it has reviewed, understands, and agrees with all terms and conditions in the Contract Documents and those other documents, terms and conditions referenced therein.

2. <u>Time of Performance.</u>

- a. The Contractor agrees to provide the Services as specified in Exhibit A. The total term of this Contract shall begin from and including the date as specified in the written Notice to Proceed and for a period of two (2) years, with two (2) 12 month options to extend.
- b. Multi-Term Contract: Funds are available and appropriated only for the first fiscal year of the contract. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds. The contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the initial fiscal year. In this event, the contract shall automatically terminate at the end of the fiscal year for which funds have between appropriated. In the event the contract is cancelled because funds are not appropriated or otherwise made available to support the continuation of the contract after the first fiscal year, no breach of contract shall be deemed to have occurred as a result of this termination, which shall be considered as a normal termination of the contract, provided that the contractor shall be reimbursed for its unamortized, reasonably incurred, nonrecurring costs. The County will notify the Contractor on a timely basis regarding the availability of funds for the continuation of the contract for each succeeding year.
- c.

 Extension of Time: Any extensions of this Contract must be by written amendment to this Contract and may occur on a month to month basis, or by terms thereof, not to exceed a total of Click here to enter text. months. Any extension of this Contract is subject to the availability of funds and will be at the same contract unit prices and under the same terms and conditions as specified in the Contract Documents.
- 3. <u>Compensation.</u> For and in consideration of the Contractor's full and faithful performance of this Contract required to be performed under the Contract Documents, the County hereby agrees to pay the Contractor the total maximum sum of ONE HUNDRED FIFTY THOUSAND SIX HUNDRED SEVENTY FIVE AND NO/100 DOLLARS (\$150,675.00), federal, state, and local taxes included, in lawful money of the United States

of America. The Contractor understands and agrees that payment shall be made in the manner and at the times specified in the Contract Documents, and shall also be subject to and conditioned upon such additions to or deductions from the preceding sum as may herein be made, according to the Contract Documents.

- a. Cost and/or Pricing: If this Contract required Cost and/or Pricing data, the Contractor understands and agrees that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that the price was increased because the Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
- 4. <u>Liquidated Damages.</u> Liquidated Damages shall be assessed in the amount of N/A **DOLLARS** (\$N/A), for each and every calendar day of delay or nonperformance, in accordance with the General Terms.

5. Insurance.

a. Contractor shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the Contract insurance coverages, limits, including endorsements as described in Exhibit B, incorporated herein, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

b. ONOT APPLICABLE

6.	Bonds. The Contractor is not required to provide the following bonds in an amount equal
	to N/A % of the amount of the contract price in the form(s) set forth in the respective
	Exhibits: \square Performance Bond, \square Payment Bond, \square Performance and Payment Bond,
	□ Other Click here to enter text

7. Officer in Charge. The Officer in Charge and contact for the delivery of the Services is:

Michael A. Dahilig Managing Director 4444 Rice Street, Suite 235, Līhu'e, Hawai'i 96766 mdahilig@kauai.gov Smith Dawson & Andrews, Inc. Contract No. 9864

This agreement will become effective when all signatories below have signed it. The

date of this agreement will be the date this agreement is signed by the last signatory to sign it (as indicated by the date associated with that signatory's signature).

Smith Dawson & Andrews, Inc.	
James P. Smith	
By: James Smith Its: President	Date
RECOMMENDED FOR APPROVAL	
Derek Kawakami	
Derek S. K. Kawakami	Date
APPROVED AS TO FORM AND LEGALITY	
Mahealani M Krafft	
Deputy County Attorney	Date
COUNTY OF KAUA`I	
Reiko Matsuyama Reiko Matsuyama (Sep 20, 2021 09:17 HST)	
Director of Finance	Date

EXHIBIT A SERVICES DETAILS

- a) Conduct a collaborative review with the County to match the County's programs, activities, and strategic plans with potential sources of federal funds, from regular agency grant programs, to new legislative authorizations and reauthorizations of existing legislature;
- b) In collaboration with the County, determine priorities and optimal methods of obtaining the County's objectives;
- c) Identify, monitor, and report monthly on federal funding that may be available to assist County departments, agencies, programs, and activities;
- d) Identify non-traditional sources and partnerships to benefit the County and replace some of the federal programs that are no longer viable;
- e) Draft appropriation and grant requests and facilitate the timely submission of applications, submittals, and documentation required by, or in connection with, the funding source from initial submittal through allocation of funds to the County;
- f) Respond to inquiries from federal or state agencies related to funding requests by the County;
- g) Provide monthly reports on submittals to funding sources and the status of the funding requests, major accomplishments, and activities;
- h) Advise the County on how to deal with federal rules and regulations and congressional riders such as federal penalties that could negatively impact the County;
- As requested, collaborate with the Mayor, County Council, department heads, and/or designated staff on a proactive federal agenda and advocacy strategy to advance and protect the interests of the County;
- j) As requested, assist the County in planning, evaluating, and executing strategies and actions relating to the legislative and public review process;
- k) As requested, attend periodic meetings with the Administration and County Council to provide status reports as may be requested;
- 1) Other related duties as determined by the County to be in the best interest of the County.



INSURANCE REQUIREMENTS

County of Kaua'i

Contractor shall procure and maintain, on a primary basis and at its sole expense, at all times during the life of the contract insurance coverages and limits, including endorsements, described herein against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor.

To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

A. General Conditions

Waiver of Subrogation. Contractor shall agree by entering into a contract with the County to provide a Waiver of Subrogation for the Commercial General Liability, Automobile Liability, and Workers Compensation policies. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Subrogation in favor of the County. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

<u>Additional Insured.</u> Contractor shall agree to endorse the County of Kaua'i as an Additional Insured with a <u>CG026 Additional Insured – Designated Person or Organization endorsement</u>, a copy of the applicable policy language, or similar endorsement to all required insurance policy(ies), except for Workers Compensation and Professional Liability.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the discretion of the County, the County may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the County, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the County guaranteeing payment of any losses and related investigations, claim administration, or defense expenses. Any deductibles or self-insured retentions are the sole responsibility of Contractor and its subcontractor(s) if any. The County reserves the right to deduct from the final payment to Contractor any unsatisfied deductibles or self-insured retentions which would result in a lien against the project.

When any deductibles or self-insured retention exceeds \$50,000, the County reserves the Page 1 of 7

right, but not the obligation, to request and review a copy of Contractor's most recent annual report or audited financial statement.

Contractor must declare any exception to the requirements of this provision as a question to the solicitation prior to submission of their offer, and must declare their ability to provide a bond or other satisfactory guarantee in lieu of any deductibles or self-insured retention. The County will make a determination as to any exception(s) via an addendum to the solicitation prior to final submission of offers.

<u>Contractor's Responsibility.</u> The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible, co- insurance clause or self-insured retention applicable to the insurance required herein. If the County is damaged by the failure of the Contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

<u>Primary and Non-contributory.</u> All policies required of the Contractor will be endorsed as primary and any insurance or self-insurance program maintained by the County shall be non-contributory.

<u>Certificate of Insurance.</u> Concurrent with the execution of the contract, Contractor shall provide the County a certificate of insurance completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form. Immediately upon becoming aware that its insurance will be cancelled, non-renewed, or materially changed, Contractor will notify County by providing written notice.

The Certificate Holder address shall read:

County of Kaua'i
Office of the Mayor

Līhu'e, HI 96766

Attention: Michael A. Dahilig

Contract No. C9864

Project Title: Legislative Lobbying Services

Concurrent with the execution the contract the Contractor shall furnish the County with original certificates and endorsements effecting required coverage(s). The County reserves the right to require complete copies of all required insurance policies, including the policy declarations and endorsements affecting the coverage at any time.

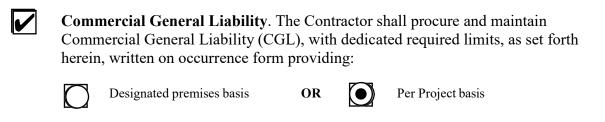
Failure to secure and maintain the required insurance shall be considered as a material breach of the contract. Should the County be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse County for such funds. In the event the County determines, in its sole and absolute discretion, that it is necessary to purchase the coverages herein required of the Contractor, and which the Contractor has failed to secure, the Contractor shall reimburse the County for the expenditure of such funds.

<u>Right to Revise or Reject.</u> County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based

on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work or specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

B. Minimum Insurance Coverage Requirements

Unless otherwise approved by the Director of Finance, the policy or policies of insurance maintained by the Contractor shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawai'i and rated A-VII by A.M. Best:



(Per Project Basis. The Commercial General Liability policy aggregate limits shall apply to both the general and products/completed operations limits. The term "project basis" should not be construed to mean the County is requiring the Contractor to purchase a separate project specific general liability and products completed operations policy for the project.)

The coverages shall include the following:

Premises Operations
 Independent Contractors
 Products and Completed Operations
 Broad Form Property Damage including completed operations
 Blanket Contractual Liability
 Personal Injury
 Employees named as Additional Insured
 Severability of Interest

Explosion, Collapse and Underground Property Damage

The minimum limits of liability may be satisfied by providing either:

Bodily Injury and Property Damage Combined Single Limit: \$2,000,000 per occurrence \$2,000,000 annual aggregate OR	Personal Injury: \$1,000,000 per occurrence \$2,000,000 annual aggregate AND Products and Completed Operations: \$1,000,000 per occurrence \$2,000,000 annual aggregate
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Contractor must provide evidence that the County is an Additional Insured for Products/Completed Operations coverage for both ongoing operations and after substantial completion of the work. ISO Form CG 20 10 04 13 and ISO Form CG 20 39 12 19, or equivalent forms are required from the Contractor. Coverage provided by a non-equivalent CGL form shall be specifically endorsed providing both the course of construction and products/completed operations. ISO Form CG 20 10 04 13 and ISO Form CG 20 39 12 19, or equivalent forms are required from the Contractor. The Contractor and subcontractor(s), if any, shall provide evidence to the County on an annual basis the products/completed operation coverage is in effect for two (2) years after substantial completion of the project.



Business Automobile Liability. The Contractor shall procure and maintain Business Automobile Liability written on occurrence form for all Owned, Non-owned, and Hired automobiles. If the Contractor does not own automobiles, Contractor shall agree to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Automobile Liability. Coverage shall be for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault, and personal injury protection, as required by Hawai'i law with the following limits:

Bodily Injury

\$1,000,000 per person

\$1,000,000 per occurrence

Property Damage

\$1,000,000 per accident



Workers' Compensation and Employer's Liability. The Contractor shall procure and maintain at all times during the term of the contract the following insurance liability coverage: Workers' Compensation, Temporary Disability Insurance (TDI), and similar insurance that is required by the State of Hawai'i or federal laws. Self-insurance is permitted subject to submission of a copy of the appropriate governmental authorization and qualification by the Contractor and subcontractor(s).

The minimum limits of liability to be maintained are as follows:

		Coverage A: State of Hawai'i Workers' C	Compensation Law:
		Statutory Limits.	
		Coverage B: Employer's Liability:	
		Bodily Injury from each accident	\$1,000,000
		Bodily Injury from disease	\$1,000,000
		Bodily Injury from disease aggregate	\$1,000,000
Builder's Risk. The Contractor shall procure and maintain an Inland Marine Risk policy providing coverage to protect the interests of the County, Contractors, architects, and engineers, including property in transit and proper premises, which shall become part of the building, or Project. Coverage shall on an All Risk, Replacement Cost, and Completed Value Form basis in an least equal to 100% of the projected completed value of the Project as well as modifications of that sum, unless an agreed amount is otherwise stated betwee County and the Contractor. The policy shall insure all work, labor, and mater furnished by the Contractor and the Contractor's subcontractors against loss of by fire, lighting, windstorm, theft, vandalism, malicious mischief, flood, earth collapse.		he County, Contractor, sub- n transit and property on or off- ect. Coverage shall be written the Form basis in an amount at the Project as well as subsequent thrwise stated between the the, labor, and materials actors against loss occasioned	
		of coverage for the perils of flood and earthque p-limit shall provide coverage of at least 25%	•
	for architect's loss. The Corthe automatic part, or put to endorsement the policy exp	all also include coverage for debris removal as and engineer's services and expenses requiratractor shall endorse the policy with a manuse termination of coverage in the event the built its intended use, or partially accepted by the shall amend the automatic termination clause pires, is cancelled, the County's interest in the cepted or insured by the County.	ed as a result of an insured cript endorsement eliminating ding is occupied in whole or in County. The manuscript to only terminate coverage if
	The Contractor Risk policy.	or shall name the County of Kaua'i as a loss p	payee on the Builder's
	policy provid contractor(s),	Floater. The Contractor shall procure and maing coverage to protect the interests of the Coarchitects, and engineers, including property which shall become part of the project.	ounty, Contractor, sub-
	Coverage sha	ill be written on an All Risk, Replacement Co	st, and Completed Value Form

basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise

stated between the County and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor's subcontractors against loss occasioned by fire, lighting, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sublimit. The sub-limit shall provide coverage of at least 25% of the full replacement cost.

The policy shall also include coverage for debris removal and reasonable compensation for architect's and engineer's services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County's interest in the building ceases, or the building is accepted or insured by the County.

The Contractor shall name the County of Kaua'i as a loss payee on the Installation Floater policy.

Professional Liability (Errors and Omissions). The Contractor and its subcontractors shall procure and maintain Professional Liability Insurance (Errors and Omissions Insurance) that covers all such activities under the contract. Such insurance shall have these minimum limits and coverage(s):

\$1,000,000 per occurrence \$2,000,000 annual aggregate

For policies written on a "Claims-Made" basis, Contractor warrants the retroactive date equals or precedes the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the contract, Contractor shall agree to purchase Supplement Extended Reporting Period (SERP) with a minimum reporting period not less than **two (2)** years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.

Pollution Legal Liability. The Contractor shall procure and maintain Pollution Liability or similar Environmental Impairment Liability at a minimum limit not less than:

\$1,000,000 per occurrence \$2,000,000 annual aggregate

The policy shall provide coverage for damages against, but not limited to, third-party liability, clean-up, corrective action including assessment, remediation and defense costs.

Contractor's Pollution Liability. Contractor shall procure and maintain pollution liability insurance when the Scope of Work involves removal, abatement, encapsulation or other treatment, disposal or remediation of asbestos or other hazardous materials or an exposure to pollutants or impairment of the environment. The policy shall provide coverage for third party liability, clean-up, and corrective action including assessment remediation and defense costs. The policy may be written on either an occurrence form or claims made. The minimum limits of liability shall be:
\$1,000,000 per occurrence
\$2,000,000 annual aggregate
Crime Insurance or Commercial Fidelity Bond. Contractor shall procure and maintain Commercial Crime Insurance or Fidelity Bond providing Employee Dishonesty on a blanket basis covering all of the Contractor's employees with a minimum amount of insurance at least equal to the amount of the contract. The policy shall be endorsed to cover "Third-Party Liability" including a third-party beneficiary clause in favor of the County. The policy shall include a minimum twelve (12) month "Discovery Period" when written on a Loss Sustained basis.
Property. The Tenant or Lessee, shall agree to maintain property insurance including flood and windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the building(s) and contents, including betterments and improvements made by the Tenant or Lessee, located on the premises. Contractor shall agree to be fully responsible for any deductible or self-insured retention, and to provide this coverage on primary basis.
Umbrella or Excess Liability. Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy with \$1,000,000 per occurrence and \$2,000,000 aggregate. If Contractor is using its Umbrella or Excess Liability Insurance policy to satisfy the minimum requirements, Contractor shall agree to endorse the County of Kaua'i as "Additional Insured" on the Umbrella or Excess Liability policy, or shall confirm in writing that its Umbrella or Excess Liability policy "follows form."

C9864

Final Audit Report 2021-09-20

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By: Kristi Mahi (kmahi@kauai.gov)

Status: Signed

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