

COUNTY OF HAWAII  
GRANT AGREEMENT

THIS GRANT AGREEMENT (hereinafter referred to as “Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF HAWAII, a municipal corporation of the State of Hawai`i, with its principal place of business at 25 Aupuni Street, Hilo, Hawai`i 96720 (hereinafter referred to as the “County”) and **Malama O Puna**, a 501(c)(3) non-profit organization, with its principal place of business at **P.O. Box 1467, Pahoa, HI 96778** (hereinafter referred to as “Grantee”).

WITNESSETH:

WHEREAS, pursuant to Ordinance No. 20-28 adopted in accordance with Section 2-252 of the Hawai`i County Code, a grant in the amount of **three hundred seventy-five thousand dollars** was authorized to be made to the Grantee; and

WHEREAS, said funds shall be utilized as a grant made pursuant to Chapter 2, Article 47, Section 2-252, Hawai`i County Code 1983 (2016 Edition, as amended) and is subject to Chapter 2, Article 25, Section 2 -135 through 2-141, Hawai`i County Code (“HCC”) 1983 (2016 Edition, as amended).

NOW, THEREFORE, the County and Grantee, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

1. **PROGRAM.** The County will provide Grantee the amount of **\$375,000.00** hereinafter “Grant Funds”) for use by Grantee, for their **Leilani Estates Kilauea Recovery Project** program, to fulfill the purpose and provide the services as more specifically described in the grant Application Scope and Budget attached hereto as Exhibit “B” as amended, and as awarded by the Hawai`i County Council in the Payment Schedule attached hereto as Exhibit “C,” which Exhibits are attached hereto and incorporated herein by reference.

a. The Grant Funds will be used by Grantee consistent with and pursuant to all program, fiscal, and audit reporting requirements contained in the Grant Application attached hereto as Exhibit “A” as amended, and as awarded in Council Resolution 743-20.

2. **FUNDING.** The Grantee hereby acknowledges and agrees that the County's total contribution to Grantee shall not exceed the amount indicated in section 1 above, which will be held in a restricted fund account by the Grantee.

3. **METHOD OF PAYMENT.** Payment shall be made available to the Grantee in the stipulated installments upon execution of this Agreement by all parties as specifically described in the Payment Schedule, Exhibit "C." Prior to receiving any payment, Grantee must provide the County with a certificate showing satisfactory compliance from Hawai'i Compliance Express.

4. **TERM.** The term of this Agreement shall commence as of the effective date of this Agreement and continue until the completion of the project or the date specified and agreed upon in Exhibit "C."

5. **GRANTEE REPRESENTATIONS AND WARRANTIES.** Grantee represents and warrants to the County as follows:

a. Grantee is chartered or otherwise authorized to do business in the State of Hawai'i for charitable purposes and exempted from the Federal income tax by the Internal Revenue Service.

b. The purposes for which Grantee is organized provide benefits to the people of the County.

c. The project or service to be provided by Grantee, and funded by the County, shall address the purposes of providing relief, recovery, mitigation, and remediation assistance for disaster damage, losses, and suffering caused by the 2018 Kīlauea eruption.

d. Grantee has a governing board whose members serve without compensation and have no conflict of interest between their regular occupations and the services provided by Grantee.

e. Grantee has bylaws or policies which describe the manner in which business is conducted, including management, audit and fiscal policies and procedures, policies on nepotism, and policies on management of potential conflict of interest.

f. Grantee has at least one year's experience with the service or activity for which the appropriation is sought or can otherwise demonstrate to the satisfaction of the County sufficient expertise to successfully carry out the service or activity.

g. Grantee must be licensed and accredited in accordance with applicable requirements of Federal, State and County laws.

h. Grantee employs and appoints persons on the basis of merit and ability.

i. Grantee complies with applicable Federal and State laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or handicap.

j. Grantee agrees to allow the County's designate, which may include the finance director, committees of the council and their staffs, and the legislative auditor access to records, reports, files, and other related documents in order that the program, management, and fiscal practices of the nonprofit organization may be monitored and evaluated to assure the proper and effective expenditure of public funds for this program. [Ref. HCC §§2-137; 2-138]

6. **REPORTS.** Grantee shall prepare and submit to the Director of Finance three and six month written progress reports due to the director of finance and/or their designee within thirty (30) days after the close of that quarter. The progress report shall contain the project status and all invoiced expenditures to date. Grantee shall also prepare a final written report as outlined in paragraph 10 below. The director may request periodic written reports on the use of the disaster relief funds. [Ref. HCC §2-142]

7. **MODIFICATIONS OF AGREEMENT.** Any modifications must be made in writing, agreed upon by both parties, and must have the approval of the Director of Finance. All modifications requested by Grantee shall be in writing.

8. **DELAY IN PERFORMANCE OF CONTRACT.** If any delay in the performance under this Agreement occurs as a result of unforeseeable causes beyond the control and without the fault or negligence of Grantee, including but not limited to acts of God, acts of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both Grantee and such subcontractors or suppliers, then Grantee may be granted an extension of the time for performance corresponding to the delay. No extension of time, however, shall be granted unless a written application therefore stating in detail the cause or causes of delay is filed by Grantee with the Director of Finance within ten (10) calendar days after the commencement of the delay. No extension of time shall be deemed a waiver of the right of the County to require the completion of the services under this Agreement within the time required herein as so extended by the specific terms of such extension, nor a waiver of right to terminate this Agreement for any other or additional delay not covered by the specific terms of such extension.

9. **RIGHT TO AUDIT RECORDS [Ref. HCC §2-142].** The County at reasonable times and places may audit the books and records of a Grantee relating to Grantee's use of the funds granted pursuant to this Agreement. The books and records shall be maintained by Grantee.

10. **RECORDS, REPORTING, AND FISCAL ACCOUNTABILITY REQUIREMENTS AND PENALTIES [Ref. HCC §2-142].**

a. Grantee shall follow generally accepted accounting procedures and practices and shall maintain books, record, documents, and other evidence which sufficiently and properly account of the expenditure of County funds. The Hawai'i County Council, director of finance or Legislative Auditor may request periodic written reports on the use of County funds.

b. The County expending agency, director of finance, or Hawai'i County Council may request periodic written reports on the use of County funds.

c. Grantee, shall submit a final report to the director of finance within sixty (60) days after the final expenditure of funds. The report shall include an explanation of the public benefits derived from the awarding of the grant, a complete accounting statement of all expenditures supported by the grant funds and listing of other funding sources and amounts obtained during the award period.

d. The Legislative Auditor of the County of Hawai'i, and any of their authorized representatives, shall have the right of access to any of Grantee's officers or employees and facilities or place of business, and any book, document, paper, file, and financial, performance and compliance records or any other record, whether electronically or physically kept, that is related to the performance of services or operations under this Agreement in order to conduct an audit or other examination and/or to observe processes, and/or make copies, excerpts, or transcripts for the purposes of monitoring and evaluating Grantee's compliance with the terms of the grant agreement, and to verify all costs associated with any claims made under this Agreement.

e. In addition to any other remedy provided by law, if the nonprofit organization fails to submit the written report due within sixty (60) days after the final expenditure of funds, the County shall require the nonprofit organization to return all grant funds awarded and deem the nonprofit ineligible to receive future grant awards for at least the following fiscal year, and for all subsequent fiscal years until such time as that written report is submitted to, and accepted by the Director of Finance.

f. Should the written report due within sixty (60) days after the final expenditure of funds be deemed by the County to contain insufficient information, the nonprofit

organization shall be notified of the deficiencies and shall provide the additional information within thirty (30) days of notice or the nonprofit organization will be deemed to be in violation of HCC §2-142.

11. **RIGHT OF THE COUNTY TO TERMINATE.** The County shall have the right to suspend performance under this Agreement or terminate this Agreement in whole or in part at any time by written notice to Grantee.

12. **TERMINATION DUE TO ORGANIZATION'S DEFAULT.** The County shall have the right to terminate this Agreement if Grantee:

- a. Fails to begin work under this Agreement at the required times;
- b. Unnecessarily delays the performance of this Agreement or any part thereof;
- c. Fails to perform this Agreement in accordance with specified times;
- d. Fails to perform this Agreement in accordance with directions from the Hawai'i County Council;
- e. Discontinues performance of this Agreement;
- f. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency;
- g. Fails to pay for all labor, tools, material and/or equipment; or
- h. Violates or fails to comply with any of the terms, covenants and conditions of this Agreement.

13. **AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE.** The County may withhold such amounts from the money due or to become payable under this Agreement to Grantee as may be necessary to protect the County against liability or to satisfy the obligations of Grantee to the County.

14. **RETURN OF GRANT BALANCE.** In the event Grantee is unable or unwilling to provide the public service for which the grant is appropriated, the Finance Director may direct the return of the full grant amount or balance of the unexpended funds. [Ref. HCC §2-139(b)(3)].

15. **DEFENSE AND INDEMNITY.** Grantee shall perform this Agreement as an independent contractor and shall defend, indemnify and save the County and its officers and employees harmless from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefore, caused by error, omissions or negligence in the performance of this Agreement by Grantee, agents and/or employees.

16. **AUTHORITY OF THE COUNTY.** The County shall decide any question or dispute concerning any provision of this Agreement, which may arise during its performance. The County's decision shall be final and binding upon all parties unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessary to imply bad faith or is not supported by substantial evidence, provided that nothing herein shall be construed as making final and binding any decision of the County on a question of law. Pending final decision of any dispute or question, Grantee shall proceed diligently with the performance under this Agreement in accordance with the decision of the County.

17. **LAWS AND REGULATIONS.** Grantee shall be responsible for being fully informed of all state and federal laws, ordinances, codes, rules and regulations, which in any manner may affect this Agreement and the performance thereof, including but not limited to:

- a. All sections of the Hawai'i County Charter and Hawai'i County Code;
- b. Chapter 378, Hawai'i Revised Statutes, as amended, relating to fair employment practices;
- c. Chapter 489, Hawai'i Revised Statutes, as amended, relating to discrimination in public accommodations;
- d. Chapter 396, Hawai'i Revised Statutes, as amended, relating to occupational safety and health;
- e. Chapter 386, Hawai'i Revised Statutes, as amended, relating to workers' compensation law; and
- f. Nondiscrimination Clause: Pursuant to Executive Order No. 142, County of Hawai'i, dated February 11, 2005, and amended on April 13, 2007, during the performance of this contract, Grantee agrees as follows:
  - i. Grantee shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in federally assisted programs.
  - ii. Grantee shall not discriminate against any employee or applicant for employment because of sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Grantee shall assure that applicants are employed and that employees are treated during employment without regard to sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital

status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Grantee agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

iii. Grantee shall, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants shall receive consideration for employment without regard to sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.

iv. In the event of Grantee's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and Grantee may be declared ineligible for further County contracts until such time that Grantee by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.

v. If Grantee subcontracts any portion of the contract it shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to Section iv. above.

vi. The County may direct any bidder, prospective contractor or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and Organization shall comply with all such present state and federal laws, ordinances, codes, rules and regulations, and all amendments thereto. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, code, rule or regulation, the Contractor shall forthwith report the same in writing to the County's Director of Human Resources.

18. **REMEDIES NOT EXCLUSIVE.** The express provision herein of certain measures that may be exercised by the County for its protection shall not be construed to preclude the County from exercising any other or further legal or equitable right to protect its interests.

19. **FORUM SELECTION.** No action or proceeding involving this Agreement shall be commenced by either party except in the Circuit or District Courts of the Third Circuit, County of Hawai'i, State of Hawai'i, and no action commenced in such court shall be removed or transferred to any other state or federal court without prior approval by the County.

20. **CONTROLLING LAW.** This Agreement is to be governed by the laws of the State of Hawai'i and Hawai'i County Code 1983 (2016 Edition, as amended).

21. **HEADINGS.** Article and paragraph headings are inserted for convenience only and do not constitute parts of this Agreement.

22. **CODE OF ETHICS.** It is mutually agreed that as a condition of this Agreement, Grantee shall not employ either on a part-time or on a full-time basis, an employee of the County of Hawai'i in the performance of any of the work required or contemplated by this Agreement, without receiving an opinion by the Board of Ethics that such employment does not violate the County's Code of Ethics.

a. No officer, member or employee of the County who exercises any function or responsibilities in connection with this project, shall:

i. Participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; or

ii. Have any interest, direct or indirect, in this Agreement or the proceeds thereof.

iii. Grantee agrees that as a condition of this Agreement, it shall report any possible ethical violation by any employee in connection with this Agreement or the administration thereof.

23. **ORGANIZATION'S FAILURE TO COMPLY WITH ALL REQUIREMENTS OF SOLICITATION AND CONTRACTUAL CONDITIONS.** Grantee's failure to comply with any and all of the conditions of this Agreement may result in the denial or rejection of future funding to Grantee from the County.

24. **CONSTRUCTION OF CONTRACT.** The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural whenever required in the context of this Agreement.

25. **EXEMPTION.** This Grant Agreement is exempt from Chapter 103D, Hawai'i Revised Statutes pursuant to 103D-102(b)(2)(A).

26. **PROOF OF LIABILITY INSURANCE.** Grantee must provide a Certificate of Liability Insurance (General Liability coverage of \$1 million and \$50,000 for each occurrence) to the County which expressly states that the County of Hawai'i is an additional insured prior to receiving payment(s).

27. **UNUSED FUNDS.** Grantee shall return any funds not used for their designated program to the director of finance within sixty (60) days of the final expenditure and in conjunction with the submission of a final report.

28. **SEVERABILITY.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

COUNTY OF HAWAII

\_\_\_\_\_

By

GRANTEE:

**Malama O Puna**

By: \_\_\_\_\_ (signature)

Print Name: \_\_\_\_\_

Its \_\_\_\_\_ (Print Title)  
(Must be authorized signature)

Please verify/correct email address:  
**malamaopuna@yahoo.com**

RECOMMEND APPROVAL:

\_\_\_\_\_

Planning Director

Date: \_\_\_\_\_

APPROVE AS TO FORM  
AND LEGALITY:

\_\_\_\_\_

\_\_\_\_\_ Corporation Counsel