
AGREEMENT FOR REMEDIAL ACTION

FORMER KOHALA SUGAR COMPANY PESTICIDE MIXING AREA NORTH KOHALA, HAWAII

The State of Hawaii, Department of Health (“Department” or “HDOH”) Hazard Evaluation and Emergency Response Office (HEER Office), and the Hawaii Island Community Development Corporation (“HICDC”) enter into this Voluntary Agreement for Remedial Action (“Agreement”) relating to property identified in Section 5 below, and subject to the terms and conditions specified.

1. Introduction

The former Kohala Sugar Company Pesticide Mixing Area (PMA) supported historic sugarcane plantation operations in the Kohala District of Hawaii Island, and soil was contaminated due to pesticide mixing and storage activities at the site. Arsenic and dioxin are the principal chemical contaminants of concern on an area approximately ¼ acre in size, a portion of Tax Map Key parcel (3) 5-5-019:025, located in the vicinity of Hawi town in North Kohala. Contamination extends to a depth of approximately 3 feet below ground. Arsenic-based herbicides and pentachlorophenol were popular weed control chemicals for historic plantation maintenance activities. Dioxins (and furans) were present as contaminants in the manufacture of some herbicides, including pentachlorophenol.

The Department of Health HEER Office conducted initial soil sampling at the site in August 2009. Since this time, a series of additional site investigation and site characterization activities have occurred on and near the site, which provide a substantial record regarding the site contamination. These investigative and site characterization activities have been consistent with the requirements contained in the State Contingency Plan (“SCP”).

The HDOH HEER Office and HICDC will enter into a voluntary remedial action agreement (Agreement) which reflects past investigation and delineation activities at the site as well as HICDC’s Final Removal Action Report (preferred remedial option) which included a public process to help select a final remedial action alternative to address the PMA. Under this Agreement, the selected remedial action alternative will be carried out in compliance with the SCP. The HDOH HEER Office and HICDC have prepared this Agreement to define the framework for continuing the site remedial actions.

2. Authority

- a. This Agreement is entered into pursuant to the authority vested in the Director of the Department by Chapter 128D, Hawai'i Revised Statutes, the Environmental Response Law ("ERL"), and Hawaii Administrative Rules (HAR) 11-451, also known as the Hawaii State Contingency Plan (SCP). Under these Statutes and Rules, the HDOH HEER Office has the authority to arrange, provide oversight, or take response with known responsible parties for the removal of any release or threatened release of a hazardous substance, pollutant, or contaminant at any time, provided such arrangements are consistent with the SCP.
- b. HICDC recognizes and agrees not to contest the Department's jurisdiction to enter into and enforce this Agreement.
- c. This Agreement will apply to and be binding upon the Department and HICDC, as well as upon their agents, successors, assigns, officers, directors and principals. The Department and the HICDC signatories to this Agreement certify severally that they are each authorized to execute and legally bind the parties they represent to this Agreement. No change in ownership, corporate status, or partnership status of any of the parties will alter that party's responsibilities under this Agreement without written consent of the Department, which consent will not unreasonably be withheld. Notwithstanding anything herein to the contrary, the Department agrees that a signatory to this Agreement may, with prior written approval of the Department, which will not be unreasonably withheld, assign its rights and obligations under this Agreement to another corporation, person or entity (see Section 18).

3. Statement of Purpose

In entering into this Agreement, the mutual objectives of the Department and HICDC are:

- a. To conduct the remedial action described in the Work to be Performed (See Section 8 and the Scope of Work, Attachment A) and the Final Removal Action Report dated April 23, 2014 (Attachment B) and by this reference made a part of this Agreement. The Work to be Performed section outlines the contemplated work process and includes a list of reports, documents, and other deliverables that have been required or may be required for Departmental review, comment, and/or approval.
- b. To undertake all actions required by the terms and conditions of this Agreement in accordance with the provisions of the Environmental Response Law (ERL) and of the SCP, Hawai'i Administrative Rules, Title 11, Chapter 451. Completion of the cleanup action will entitle HICDC to a

no further action letter from the HDOH, HEER Office. This Agreement constitutes final approval of the HDOH HEER Office for HICDC to conduct a cleanup action.

4. Definitions

- a. "Agreement" means this written Agreement describing the cleanup action and all associated conditions in order for HDOH to issue a no further action letter for the contaminants, media, and property specified within.
- b. "HICDC" means Hawaii Island Community Development Corporation, the person or persons who are conducting the cleanup action under this Agreement.
- c. "Integral" means Integral Consulting, Inc, the consultant currently under contract with HICDC to remediate the site.
- d. "Parties" means the HDOH HEER Office and HICDC (collectively).
- e. "Property" means the property described in Section 5 that is subject to the cleanup action specified in this Agreement.
- f. "Final Removal Action Report (Final RAR)" is included as Attachment B.
- g. "No Further Action Letter" means the letter to be issued by HDOH, in accordance with HRS 128D-10, subsequent to satisfactory completion of cleanup activities, and site conditions are protective of unrestricted land use. A "No Further Action Letter with Institutional Controls" may be provided by HDOH in the case some contamination remains on site, but site conditions are protective with the implementation and maintenance of specified engineering or administrative controls.
- h. "Site" means the contaminated Property that is generally delineated on the contaminant map provided by Integral Consulting in Figures 7 and 8 of the Final Removal Action Report (Attachment B).
- i. "Site Closure" means concurrence of site cleanup by HDOH through the issuance of a No Further Action Letter.
- j. "Work" or "Cleanup Action" means the response action to be conducted voluntarily by HICDC pursuant to the provisions of Chapter 128D, HRS, and Chapter 11-451, Hawai'i Administrative Rules, this Agreement, and the *Scope of Work* (Attachment A).

5. Property Description

- a. The HICDC Property is located approximately 600 feet north of Akoni Pule Highway (Highway 270), about a quarter mile west of the intersection of Honomakahu Road (Latitude 20°14'22.5" North, Longitude 155° 49' 16.5" West). The site consists of the western portion of approximately 7 acres of largely undeveloped agricultural land, and is a portion of the larger TMK parcel 03-5-5-019:025. The site has no assigned street address, and is currently owned by HICDC. The property is located 1.5 miles mauka of the Pacific Ocean coastline in the vicinity of Hawi town, North Kohala District, Hawaii. The zip code for the town of Hawi is 96719. Also, see Figures 1-4 in the Final Removal Action Report (Attachment B).
- b. The site where the former pesticide mixing area resided consists of approximately 0.5 acre of land, of which approximately 0.25 acres contain the elevated arsenic and dioxin concentrations to a depth of approximately 3 feet below ground. Some structures from the former pesticide mixing operation remain, including empty steel storage tanks and rock/concrete retaining walls. A very large banyan tree is also present above the rock retaining wall, and its roots spread over the entire area. A fence has been erected around the primary contaminated area to help prevent direct soil contact by anyone coming on the property. The site is surrounded by highly vegetated former plantation land and pasture land. Residential housing on HICDC land is located within 500 feet of the site to the southwest, and the Kohala Mission School is located to the east within several hundred feet. The property that contains this site was owned by the Kohala Sugar Company from circa 1863 through 1971. The site was then owned by the Kohala Company from 1971 to 1980, when it was purchased by the Hawaii Conference Foundation. HICDC acquired the property in 2006. Also, see Figures 5-8 in the Final Removal Action Report (Attachment B).

6. Background Facts

- a. HICDC is a 501(c)(3) non-profit corporation that acquired the property to provide affordable housing opportunities for low and moderate income residents in north Kohala. To date, HICDC has subdivided approximately 13 acres of the original 31.2 acre property and created 43 single family residential parcels. Thirty-three single family dwellings have been completed for low income families. When purchased, HICDC was unaware that a former pesticide mixing area was located on a portion of the property. HICDC had conducted due diligence for the property, even sampling the former agricultural fields for arsenic that may have been used. However, the PMA was located in a small gulch behind a pasture

fence, and it was overlooked until a later survey revealed this area was part of the property.

- b. The HICDC affordable housing development on this property is serving to address the North Kohala community's identified needs for more affordable housing. When the property is fully developed the site will contain approximately 88 single family residential units with more than 60% of the units intended for families earning less than 60% of the median family income. Until the former PMA is cleaned up, the contaminated soil not only prevents any housing development in that immediate area, but presents a potential exposure concern from trespass of any nearby residents or neighbors, including children (though there is a fence and signs to discourage trespass).
- c. The specific dates of operation of the PMA are unclear, but high levels of arsenic indicate the site may have been active as long ago as circa 1920s. The Sugar Company operated until 1975. Although arsenic and dioxin are the primary contaminants driving the risk at the site, pentachlorophenol (an herbicide that contained dioxin as a manufacturing by product) was also found on the site at levels that exceeded applicable state soil action levels. These pesticides were stored, mixed with water, loaded to trucks, and applied to the surrounding sugarcane fields. Soil at the former PMA presumably became contaminated as a result of chemical spills, mixture runoff, and rinse water discharge during pesticide mixing and loading. Arsenic and dioxins have also been identified as the primary contaminants at other pesticide mixing plants in Hawaii.
- d. A number of site investigations and site characterization activities occurred at the Property and surrounding properties over a period of about 3 years which establish a substantial administrative record for the Site and the surrounding area.
- e. As part of the Department of Health HEER Office "Site Discovery" activities, the HEER Office conducted initial soil sampling at the site in August 2009. Multi-increment sampling was conducted in four decision units in the area of the former PMA. Arsenic, dioxin, lead, mercury, and pentachlorophenol were detected at levels above action limits for unrestricted land use. Arsenic and dioxin were identified as the primary contaminants driving health risks for the contaminated soil. In the two most contaminated areas (Decision Units), bioaccessible arsenic was as high as 200 and 230 mg/kg, and dioxins/furans were as high as 7,100 and 11,000 ng/kg. These levels are 10X or more the HDOH soil action screening levels of 23 mg/kg for bioaccessible arsenic and 240 ng/kg for dioxins/furans.

- f. In late 2010 Weston Solutions, Inc. and the HDOH HEER Office conducted additional site characterization at the PMA. Weston Solutions, under an EPA grant that had been awarded for additional site characterization, conducted horizontal and vertical delineation of the contaminants found on the HICDC property by HDOH in 2009, and the HEER Office sampled an immediate adjacent portion of a (private) parcel. These investigations further delineated the extent of contamination on HICDC property as well as on a neighboring adjacent property.
- g. In 2011, the HDOH HEER Office conducted additional horizontal delineation at the former PMA to help ensure that the full extent of soil contamination (arsenic and dioxins) had been estimated on the HICDC property, and planning for remediation efforts for this property could begin.
- h. In 2013 Integral Consulting, who had been hired by HICDC to develop remedial alternatives for the site, collected additional soil samples to evaluate hazardous waste potential. High contamination areas were tested and run with the toxicity characteristic leaching procedure (TCLP test). No TCLP results were above regulatory levels for determination of hazardous waste, indicating that one option for soil remediation could be to excavate contaminated soils and dispose of them in an on-island approved landfill.
- i. In 2013 Integral Consulting also conducted multi-increment sampling of surface soils from an open field area on HICDC property approximately ¼ mile distant from the PMA for evaluation as clean fill soil to use as part of the site remedy. The soils were tested for metals (including arsenic), organochlorine pesticides, and dioxins/furans. This testing demonstrated that chemical concentrations in the open field area were below HDOH soil action levels, and therefore suitable to use as part of a site remedy.
- j. In late 2013, Integral completed a Draft Removal Action Report (Draft RAR) that summarized investigations at the site, provided a hazard evaluation for the site based on the investigation data, and evaluated five remedial alternatives for the site. These remediation alternatives included: 1) No Action, 2) Excavation and On-Island Landfill Disposal, 3) Excavation and Mainland Landfill Disposal, 4) Consolidation and Capping with Soil, and 5) Consolidation and Capping with Concrete.
- k. The HEER Office published notice of availability of the Draft RAR for public review in the local newspaper on December 5, 2013 and solicited public review and comment through Jan 8, 2014. In addition to the notice in the newspaper, solicitation included a public meeting held in Kapaau on December 12th, posting relevant site documents in the North Kohala

Public Library for review, sending a 2-page fact sheet and invitation to review the Draft RAR and attend the public meeting to approximately 40 nearby residents or landowners, publishing notice of the Draft RAR and public meeting in the HDOH Environmental Notice bulletin, and posting the Draft RAR, fact sheet and invitation to comment on the HEER Office website.

1. Based on a review of the remedial alternatives proposed as well as the public comment received, the HEER Office decided that the final remedial action most appropriate for this site was complete excavation of contaminated soils and disposal at an approved local landfill. This decision was included in the Final Removal Action Report (Final RAR) dated April 23, 2014.

- m. The Final RAR includes a brief Conceptual Design and Implementation description for the selected remedy that includes major actions that will be carried out to implement the remedy, as well as cost estimates for these actions.

7. Work to be Performed

- a. HICDC agrees to perform the tasks and, unless waived by HDOH, to submit reports identified in the *Scope of Work* (Attachment A) in accordance with a schedule provided therein. The current schedule is estimated based on a start date of mid-April 2015, and may be revised by HICDC and HDOH, based on the pending initiation date of the remediation project. All work will be conducted in accordance with the *Scope of Work*, the ERL, the SCP, and the Department's technical guidance. Upon request by HICDC or on its own initiative, the Department has the right to waive specific deliverable requirements if it determines that a particular deliverable is unnecessary or is sufficiently satisfied by other deliverables or completed work.

- b. All response work performed pursuant to this Agreement will be under the direction and supervision of HICDC or an authorized representative, who will be a qualified environmental professional with expertise in hazardous waste site investigation and remediation. Integral is currently the contractor that is planned to direct, supervise and implement the *Scope of Work*. HICDC will notify the Department in writing immediately if there is a change in contractor and will notify the Department in writing of the name, title, and qualifications of any environmental contractors and subcontractors to be used in carrying out the terms of this Agreement.

- c. All documents, plans, reports, approvals, disapprovals, and other correspondence to be submitted pursuant to this Agreement, will be sent to the addressees in Section 8 or to such other addressees as the parties may designate hereafter in writing, and be deemed submitted on the date received by the Department or HICDC.

8. Key Contacts

The following persons are designated by the Parties to receive all notices and correspondence regarding this Agreement:

For the Department of Health, State of Hawai'i:

John Peard
Office of Hazard Evaluation and Emergency Response
Hawai'i Department of Health
Hawaii District Health Office
1582 Kamehameha Avenue
Hilo, Hawaii 96720-4623
Phone: (808) 933-9921
Fax: (808) 933-0400
e-mail: john.peard@doh.hawaii.gov

For HICDC.:

Keith Kato, Executive Director
Hawaii Island Community Development Corporation (HICDC)
100 Pauahi Street, Room 204
Hilo, Hawaii 96720
Phone: (808) 969-1158 ext. 105
Fax: (808) 935-6196
e-mail: keith.hicdc@gmail.com

with a copy to:

Brian T. Nishimura, Planning Consultant
101 Aupuni Street, Suite 217
Hilo, Hawaii 96720
Phone: (808) 935-7692
Fax: (808) 935-6126
e-mail: nishimura.brian@gmail.com

If either party decides to change its designated contact person or if any contact information changes, the party will give written notice of such changes as set forth in this section.

9. Sampling, Access, and Data / Document Availability

- a. HICDC will provide the Department with all information regarding hazardous substance contamination at, or released from, the Site, including but not limited to:
 - i. The results and Quality Assurance/Quality Control (QA/QC) documentation of all sampling and/or testing results or other technical data generated by HICDC or on HICDC's behalf with regard to soil, ground water, surface water, or air contamination at the Site. Documentation of all new sampling and analysis data will be presented in a status report within 3 months of being available from the lab.
 - ii. Previous studies or reports regarding environmental investigative and remedial activities at the Site (if the HEER Office does not already have copies);
 - iii. Written communications between HICDC and local, state, or federal regulatory authorities; and
 - iv. Permits from local, state, or federal regulatory authorities regarding hazardous substances use or contamination at the Site.
- b. HICDC will provide field replicate sample data as advised in the HEER Office Technical Guidance Manual as part of the *Scope of Work* to the Department or its authorized representatives. HICDC will notify the HEER Office of any planned sample collection activity as far in advanced of the sampling event as practical.
- c. While conducting sample collection and analysis activities required by this Agreement, HICDC will use quality assurance, quality control, and chain of custody procedures described in the HEER Office Technical Guidance Manual as well as the site-specific *Quality Assurance Project Plan* that will be subject to HEER Office approval. To provide quality assurance and maintain quality control, HICDC will i) Use a laboratory that has a documented Quality Assurance Program per EPA guidance; and ii) Cooperate with the Department whenever Department personnel or Department-authorized representatives seek access to the laboratory and personnel utilized by HICDC for analysis.

- d. HICDC will permit the Department or its authorized representatives, upon reasonable prior notice, to have reasonable access at all times to the Property to monitor any activity conducted pursuant to the *Scope of Work* or to conduct such tests or investigations as the Department deems necessary.
- e. HICDC will permit the Department or its authorized representatives to inspect and copy all records, documents, and other writings, including all sampling and monitoring data that in any way concern soil, ground water, surface water, or air contamination at the Site, and which are not privileged or otherwise protected from disclosure by law. Nothing in this Agreement will be interpreted as limiting the Department's inspection authority under state law.
- f. If at any time during the response process HICDC becomes aware of the need for additional data beyond the scope of the *Scope of Work*, HICDC will submit a memorandum to the Department within 30 days documenting the need for additional data.
- g. If the Department becomes aware of the need for additional data beyond that called for by the *Scope of Work*, it will inform HICDC in writing of the data it believes necessary. The Department and HICDC will discuss the appropriate method and schedule for obtaining and reporting the requested data.
- h. To the extent that HICDC requires access to land other than land owned by HICDC, HICDC will use its best efforts to obtain access agreements from the present owners or lessees within 60 days from the date the Department deems access necessary. Such agreements executed after the effective date of this Agreement will provide for reasonable access for the Department, its contractors and oversight officials, and HICDC or its authorized representatives. In the event that HICDC is not able to obtain site access to property owned or controlled by persons or entities other than HICDC, HICDC will notify the Department promptly regarding both the lack of, and the efforts to obtain, such access.
- i. HICDC will consummate no conveyance of its interest in the property comprising the Site without a provision permitting the uninterrupted implementation of the provisions of this Agreement.

10. Roles and Responsibilities

- a. The Department will review all documents, written submittals and requests for changes in the *Scope of Work* or related requests sent by HICDC within 30 days from the date of receipt. Within that time, the

HEER Office will provide the HICDC representative with written comments by letter or email, or a letter stating that the submittal is acceptable. If more time is needed, the Department will notify the HICDC representative in writing of the need for additional time, the date by which the review will be completed, and the reason why the normal review period is being extended. When the HEER Office has so extended the time for review of submittals, HICDC will be given a correlating extension of time for tasks which are affected by the HDOH delay in review. While the Department may provide informal advice, guidance, or comments, all approvals and decisions must be conveyed in writing by the Department to be official.

- b. HICDC agrees to perform and submit all work in accordance with the requirements and schedule set forth in the *Scope of Work* and any revisions of these requested by the Department. If any changes become necessary, HICDC will notify the Department in writing or by e-mail describing the change needed. Changes to the statement of work are to be agreed upon in writing by both parties prior to any change in the work becoming effective. However, verbal agreements for changes are acceptable when necessary and may be relied upon, provided they are followed up in writing by the party who initiated the change within ten business days of verbal approval. Requests for extensions of time should be made in advance of the date on which the activity or document is due and should include a justification for the delay. All changes acknowledged and approved in writing will be incorporated into this Agreement.

11. Failure to Comply with the Scope of Work

- a. HICDC will conduct the Work in accordance with the technical requirements and schedule in the *Scope of Work* attached to this Agreement.
- b. HICDC, or its contractor, may request an extension of a deadline. In making such a request, HICDC or its contractor will, prior to the deadline and within 20 days of becoming aware of a possible delay, notify the Department in writing or e-mail of the possible delay, document the reason for the possible delay, and submit a proposed revised schedule. The Department anticipates granting extensions for reasonable requests received in accordance with the requirements of this paragraph. However, granting an extension is at the sole discretion of the Department.
- c. If HICDC fails to complete the *Scope of Work* in accordance with the technical requirements and schedule of this Agreement, the Department may notify HICDC in writing of the Department's intent to assume control of and complete the work. If the Department assumes control of the work,

all costs incurred by the Department may be sought from HICDC in accordance with Section 128D-5 of the ERL.

12. Satisfactory Completion and "No Further Action" Letter

- a. Within 30 days of satisfactory completion of the tasks specified in the *Scope of Work* as reasonably determined by the Department, the Department will issue a letter or e-mail confirming satisfactory completion of that task.
- b. Within 30 days of satisfactory completion of the work described in the *Scope of Work* as reasonably determined by the Department, the HEER Office will issue to HICDC a "No Further Action" letter ("NFA") in accordance with Chapter 128D of the HRS, the SCP, and this Agreement. The NFA may include site use restrictions and institutional controls if contamination remains on the site.

13. Reservation of Rights

Notwithstanding compliance with the terms of this Agreement, HICDC is not released from liability, if any, for any actions beyond the terms of this Agreement taken by the Department respecting the Site. The Department reserves the right to take any enforcement action pursuant to the ERL and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or of this Agreement. In the event that HICDC does not complete the tasks specified in the *Scope of Work*, the Department reserves the right to take action consistent with Chapter 128D, HRS, against HICDC, and to exercise rights the Director may have pursuant to any law including recovering costs and taking enforcement actions.

The Department expressly reserves all rights and defenses that it may have, including the Department's right both to disapprove of work performed by HICDC and to request that HICDC perform tasks in addition to those detailed in the *Scope of Work*, as provided in this Agreement. The Department reserves the right to undertake whatever response actions are permitted by law at any time. The Department reserves the right to seek reimbursement from HICDC for such costs incurred by the State of Hawai'i in accordance with applicable laws.

14. Other Applicable Laws

HICDC will undertake all actions required by this Agreement in accordance with the requirements of all applicable local, state, and federal laws and regulations.

15. Dispute Resolution

HICDC and the Department agree to notify one another as soon as possible if a material disagreement regarding this Agreement becomes apparent to them. If this occurs, the

party that identifies any such disagreement will notify the representative of the other party specified in Section 8. Initial notification will be by phone or in person, at which time the Parties will attempt to resolve this disagreement. If the disagreement is successfully resolved, the situation will require no further action. If the disagreement continues, it will be discussed between the Manager of the HEER Office and representatives of HICDC. If the situation is still not resolved, it will be described in writing and presented to the Deputy Director for Environmental Health, Hawai'i Department of Health. The Deputy Director will gather whatever additional information he/she feels is necessary and will render a decision in writing regarding the disagreement. If the decision is satisfactory, the Parties will abide by the decision and no further action is necessary. If it is not satisfactory, HICDC or the Department may terminate this Agreement and no party will have any further obligation under this Agreement.

16. Effective Date and Subsequent Modification

- a. This Agreement is effective on the date signed by the Department.
- b. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, and any other writing submitted by HICDC will be construed as relieving HICDC of its obligation to obtain such formal approval as may be required by this Agreement.
- c. Any deliverables, plans, technical memoranda, reports, specifications, schedules, and attachments required by this Agreement are, upon approval by the Department, incorporated into this Agreement.
- d. Either party may terminate this Agreement in accordance with the provisions contained herein. HICDC may choose to terminate the Agreement at any time upon written notice to HDOH. The Department may terminate the Agreement when:
 - i. There is an imminent and substantial threat to public health, the environment, or natural resources;
 - ii. HICDC fails in good faith to comply with the terms of this Agreement and fails to commence such activities to cure such noncompliance within 30 days after the Department issues to HICDC a written notice of noncompliance;
 - iii. Additional information is brought to the attention of the Department which renders the response action inadequate; or

- iv. Materially new information not available as of the effective date of this Agreement becomes available that necessitates a significant change in the *Scope of Work*.

The party initiating termination of this Agreement will immediately provide written notice to the other party of its intention to terminate the Agreement and the date upon which termination will be effective. Upon termination of this Agreement, the Department may pursue any action related to the Site within its authority.

- e. This Agreement may be amended in writing by mutual agreement of the Department and HICDC. Such amendment will be effective upon the date the change is signed by both parties and will be deemed incorporated into this Agreement.
- f. With prior written approval of the Department, which will not be unreasonably withheld, all rights and benefits conferred upon Respondents under this Agreement may be assigned or transferred to any person. HICDC will notify the Department in writing of its intention to transfer its rights and benefits. Upon receiving HEER Office approval, the transferee will be bound by all the terms and conditions of this Agreement.

17. No Admission of Liability

HICDC enters into this Agreement voluntarily. This Agreement and any action taken to comply with the terms are not, and will not be deemed to be, admissions of fault, liability, violation or wrongdoing by HICDC, and will not be interpreted or construed as admissions of liability under, or violation of, any federal, state or local law or regulation, or as admissions of fact or evidence of such.

18. Counterparts

This Agreement may be executed and delivered in any number of parts, each of which will be deemed to be an original and together constitute one and the same document.

19. No Third Party Beneficiaries

This Agreement is solely for the benefit of the Parties and does not create any rights in or obligations on any third parties except as specifically stated in this Agreement.

20. Governing Law

This Agreement will be construed in accordance with, and governed by, the laws of the State of Hawai'i.

21. Actions Against Other Parties

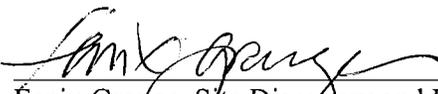
The Parties to this Agreement retain their rights against third parties. This Agreement does not waive or otherwise affect any rights and remedies that HICDC may have against any contractor or consultant performing activities required by this Agreement.

22. Approvals

The undersigned hereby agree to the terms and conditions set forth above and to all attachments incorporated into this Agreement.

IT IS SO AGREED:

STATE OF HAWAII
DEPARTMENT OF HEALTH, HEER OFFICE

By: 
Fenix Grange, Site Discovery and Remediation
Manager ~~Supervisor~~

Date: 11/19/14

HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION

By: 
Keith Kato, Executive Director

Date: 11/13/2014

Attachment A Scope of Work

This Scope of Work describes the steps to be taken by HICDC to respond to the presence of chemicals of potential concern at the Site. This scope includes both the activities and documents completed and those to be done in accordance with the ERL and the SCP as required. The scope of work will be updated periodically as requested by HDOH.

Schedule of Work

Except as provided in Section 7 of the Agreement, all work in this Scope of Work will be conducted in accordance with the following schedule:

Milestone	Estimated Date of Completion
Phase I/II Investigation (Weston Solutions)	Completed – April 2011
Draft Removal Action Report (Integral Consulting)	November 2013
Final Removal Action Report (Integral Consulting)	April 23, 2014 (Approved by HDOH)
Removal Action Design, Construction, and Implementation Work Plan with Health & Safety Plan (special precautions for dust control)	July 15, 2015
Site Preparation Activities	September 15, 2015
Soil Excavation and Disposal	November 15, 2015
Post-excavation Confirmatory Sampling and Analysis	December 15, 2015
Additional Soil Excavation and Disposal (as necessary)	January 15, 2016
Additional Post-excavation Confirmatory Sampling and Analysis (as necessary)	February 15, 2016
Site Restoration	March 15, 2016
Removal Action Completion Report	April 15, 2016
Issue No Further Action Report	May 15, 2016

Attachment B: Final Removal Action Report
Former Kohala Sugar Company
Pesticide Mixing Site North Kohala, Hawaii
April 23, 2014

(SEE ATTACHED)