

Memorandum of Understanding
between
Kawaikini New Century Public Charter School,
The University of Hawaii - Hawaii Natural Energy Institute,
Kauai Community College, and Project FROG, Inc.

This Memorandum of Understanding (MOU) is entered into by and between the Kawaikini New Century Public Charter School (Kawaikini), whose business address is P.O. Box 662014, Lihu'e, Hawaii 96766, the University of Hawaii (UH) - Hawaii Natural Energy Institute (HNEI), whose business address is 1680 East-West Road, POST 109, Honolulu, Hawaii 96822, Kauai Community College (KCC), and Project FROG, Inc. (FROG), whose business address is 1500 Sansome Street, San Francisco, California 94111 (hereinafter referred to collectively as "Parties" and individually referred to as "Party"). UH is a body politic and is authorized to enter into this MOU. KCC is a campus within the University of Hawai'i System, whose business address is 3-1901 Kaumuali'i Hwy, Lihu'e, Hawaii 96766 and signs this MOU to acknowledge its responsibility under this MOU. FROG is a for profit corporation incorporated in the state of Delaware and is authorized to enter into this MOU through its employee who is authorized to sign on behalf of FROG.

Article I - Background And Objectives

HNEI, under a grant from the Office of Naval Research (ONR), Grant No. N00014-10-1-0310, seeks to conduct a research project to procure, install, test, and evaluate passive and active energy systems using modular test platforms to be fabricated by FROG (Project). The test platforms incorporate advanced design elements to decrease user energy demand, thus increasing the effectiveness of integrated energy generation systems. The overall purpose of the Project is to study the integrated performance and effectiveness of the test platforms and energy systems in relevant Pacific region environments for potential future Navy applications.

The objective of this MOU is to establish the roles and responsibilities of Kawaikini, HNEI, KCC, and FROG during the Project period including, but not limited to fabrication, installation, maintenance, and testing and evaluation of the test platforms and energy systems.

Generally, HNEI will procure the test platform equipment from FROG under a Purchase Order issued by the Research Corporation of the University of Hawaii (RCUH). Additionally, any work to be performed by FROG on the test platforms at the Project site including, but not limited to installation of test platforms and energy systems equipment, will proceed under terms and conditions which will be stated in a subcontract between RCUH and FROG in its role as Project research partner.

The activities and relationship of HNEI and Kawaikini with respect to this Project will be governed by a separate Memorandum of Agreement (MOA) between HNEI and Kawaikini which will be executed prior to initiation of any site specific work.

FROG will fabricate and install the test platforms and install the energy systems at the Project site, Kawaikini New Century Public Charter School. Kawaikini will provide the Project site, facilitate

installation, and take ownership of and maintain the test platforms upon installation. HNEI will serve as technical expert for the Project, which will include the collection and analyses of operational data from the energy systems installed at the Project site during the Project data collection period of up to five (5) years. KCC will review and approve the test platform Design Package, to be prepared by FROG, consistent with the terms of its lease with Kawaikini. Detailed Roles and Responsibilities of the Parties are further described under Article II.

Article II - Roles and Responsibilities

A. Kawaikini agrees to:

1. Allow FROG, as the fabricator and installer of the test platforms, to install test platforms at the Kawaikini campus as shown in the Project site plan attached as Exhibit I.
2. Provide for the connection of utilities to the test platforms including electrical service, water and sewer services, if any, and other ancillary services necessary for school operations such as fire alarm, program bell, and public address systems.
3. Provide for site preparation and other site improvements including, but not limited to, walkways necessary for access to the test platforms.
4. Coordinate with the Project Team during planning, design, and installation of the test platforms and alternative energy systems. See Article III, below for the Project Team members. (Kawaikini has confirmed that the installation of the test platforms is exempt from Environmental Assessment and Environmental Impact Statement requirements.)
5. Enter into a MOA with HNEI. The MOA will provide the manner in which Kawaikini will take ownership and responsibility for the operation and maintenance of the test platforms with the effective date stated in the MOA.
6. Provide access to HNEI and its authorized representatives to the test platforms to conduct data collection for a period of up to five years beginning with the date of acceptance of the installation of the test platforms by HNEI and Kawaikini.
7. Agree to an extension of the data collection period which will be mutually agreed to between Kawaikini and HNEI in writing.
8. Prior to any work at the Project site by FROG, review and approve the test platform Design Package to be prepared by FROG as further described below, including review and approval by KCC consistent with the terms of its lease with Kawaikini.

B. HNEI agrees to:

1. Procure the test platforms and systems, including installation, from FROG.
2. Serve as lead research partner and technical expert for the application and testing of alternative energy systems installed at the Project site.
3. Coordinate visits to the test platforms with the school administration to minimize possible disruptions to school instruction and/or operations.
4. Transfer all warranties for the test platforms and related energy systems received from FROG to Kawaikini at a mutually agreed time to be specified in the MOA.

C. FROG agrees to:

1. Prepare a Design Package for the review and approval of Kawaikini and KCC. The Design Package will include specifications for the design and installation of the test platforms and systems at the Project site, which design and installation will be in

compliance with all the applicable safety codes and design standards in effect in the State of Hawai'i at the time of installation.

2. Install the test platforms and systems in conformance with the Design Package approved by Kawaikini and KCC. Each test platform shall be single story structures of no less than 1,300 sf and no more than 2,800 sf with sufficient clear span to have at least 1,000 sf of column-free interior and varied ceiling height ranging from 8'-6" to 14'-0". The platform will be horizontally expandable on two of the four sides. The proposed test platform is based upon optimum passive strategies for decreased baseline user energy demand and thus increased active energy systems effectiveness. The system provides optimized day lighting, glare reduction, air quality management and thermal comfort through the design of the geometry of the structure and the use of natural convection and air displacement to reduce the requirements for mechanized systems.
3. Plan and obtain permits for two (2) single spine units of approximately 2,300 square feet.
4. Provide all scope within the footprint of the test platforms, systems, and required entrances and exits. This scope may be expanded to include attached decking or other immediate improvements with authorization from HNEI.
5. Provide warranties for materials and installation on the test platforms and systems commensurate with industry standards. FROG specifically understands that said warranties are to be provided to HNEI and to Kawaikini despite the fact that the Purchase Order for the test platform equipment and the subcontract for services at the Project site will be issued by the RCUH.

D. Kauai Community College agrees to:

1. Review and approve the test platform Design Package, to be prepared by FROG, consistent with the terms of its lease with Kawaikini.

Article III – Project Team Principals

A. Project Team principals are as follows:

Kawaikini:

Anthony Perry
President, Kawaikini New Century Public Charter School
P.O. Box 662014
Lihue, Hawaii 96766
(808) 632-2032
kimoperry@yahoo.com

HNEI: Richard E. Rocheleau

Director, Hawaii Natural Energy Institute
University of Hawaii at Manoa
1680 East-West Road, POST 109
Honolulu, HI 96822
(808) 956-8346 phone
(808) 956-2336 fax
rochelea@hawaii.edu

FROG: Mark Miller
Founder and Director, Project FROG, Inc.
Roundhouse One, 1500 Sansome Street,
San Francisco, CA 94111
(415) 814-8500 phone
miller@projectfrog.com

KCC: Helen Cox
Chancellor, Kauai Community College
3-1901 Kaumualii Hwy.
Lihue, HI 96766
(808) 245-9210 phone
helencox@hawaii.edu

- B. No change in a Project Team principal may be made without written notice to the other Parties to this MOU reasonably in advance of the proposed change and concurrence by each Party, which concurrence will not be unreasonably withheld.

Article IV – Public Release of Information

- A. Any Party may initiate a public release of information. The initiating Party shall notify all other Parties in writing at the above indicated postal or email addresses of any public release of information regarding the Project that refers to any of the other Parties using only standard language pre-approved by the other Parties. Any other release of information to the public that refers to the non-initiating Parties will require prior notification and approval of the affected Parties.
- B. The Parties will obtain prior Kawaikini approval for any public release of information that refers to any Kawaikini employee (by name or title) unless pre-approved as provided in Article IV, paragraph A. The specific text, layout, photographs, etc., of the proposed public release must be submitted to Kawaikini in writing at the above indicated postal or email addresses along with the request for approval.
- C. Site visits by government officials or agencies, partners, media, etc. to visit the Project site will require the prior notification of all Parties.
- D. No Party shall publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, pictures, still and motion pictures, articles, manuscripts or other publications) which states or implies that the Federal Government or Federal Government employee endorses the Party's product, service, or position. In addition, no release of information relating to this MOU may state or imply that the Federal Government approves of the work product of the any of the Parties or considers the Parties' work product in this Project to be superior to products or services offered by any other person or entity.

- E. Each Party will ensure that all information submitted for publication or other public releases of information regarding this Project will include the following disclaimer:

“The views and conclusions contained in this document are those of the authors and are not to be interpreted as representing the opinions or policies of the U.S. Government or of any other Party. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.”

- F. The Parties agree to include the above paragraphs A-E of this Article IV in any sub-award to any sub-recipient, except for a sub-award to a state government, a local government, or to a federally recognized Indian tribal government.
- G. No Party will unilaterally publish a joint article about this Project without consulting the other Parties. Publication of articles about the Project may be published independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those persons contributing to the publication and shall also acknowledge the role of the Parties in the Project. In the event that an agreement is not reached concerning the manner of publication of an article or the interpretation of results of the Project, each Party may use the data for publication after due notice is given to each of the other Parties and the proposed manuscript is submitted to the other Parties. In such instances, the Party that prepared the manuscript or plans to publish the data will give due credit to all those persons who contributed to the results but assume sole responsibility for the content and any conclusions of the publication.

Article V – Memorandum of Agreement

Prior to initiation of any site-specific work by FROG (which includes the installation of the test platform and systems), HNEI and Kawaikini will mutually agree in writing to terms and conditions concerning the administration of the test platforms and systems after they are installed, which agreement shall include, although is not limited to, provisions related to:

1. Ownership and/or transfer of ownership of the test platforms and systems,
2. Right to use of test platforms and systems by Kawaikini and HNEI,
3. Responsibilities related to repairs and maintenance,
4. Warranties for the test platforms and systems and their installation as well as potential liabilities, including premises liability, and
5. Any other provisions that the Parties agree should be included in the MOA.

Article VI – Duration of Memorandum of Understanding

This MOU is effective upon signing by all the principals who are authorized to sign for their respective entities. This MOU will expire and terminate upon execution of the MOA by the Parties pursuant to Article V. This MOU may be modified only by a written instrument executed by all the Parties. Furthermore, this MOU may be extended beyond its termination date only by a written instrument executed by all the Parties.

Article VII - Non-Binding MOU

This MOU is solely an indication of the Parties’ present intention to work together on the Project under the terms and conditions expressed in this MOU and is not intended by the Parties in any way to constitute a binding commitment by any of the Parties to perform the intention except as provided in the MOA. It is the intent of the Parties that no liability or obligation will arise to any Party who is a signatory to this MOU nor can any cause of action be based on any provision under this MOU.

Article VIII - Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto sign and approve this MOU on the date(s) set forth below.

Kawaikini New Century Public Charter School

Signature: _____

Name: _____

Title: _____

Date: _____

University of Hawaii – Hawaii Natural Energy Institute

Signature: _____

Name: _____

Title: _____

Date: _____

Kauai Community College

Signature: _____

Name: _____

Title: _____

Date: _____

Project FROG, Inc.

Signature: _____

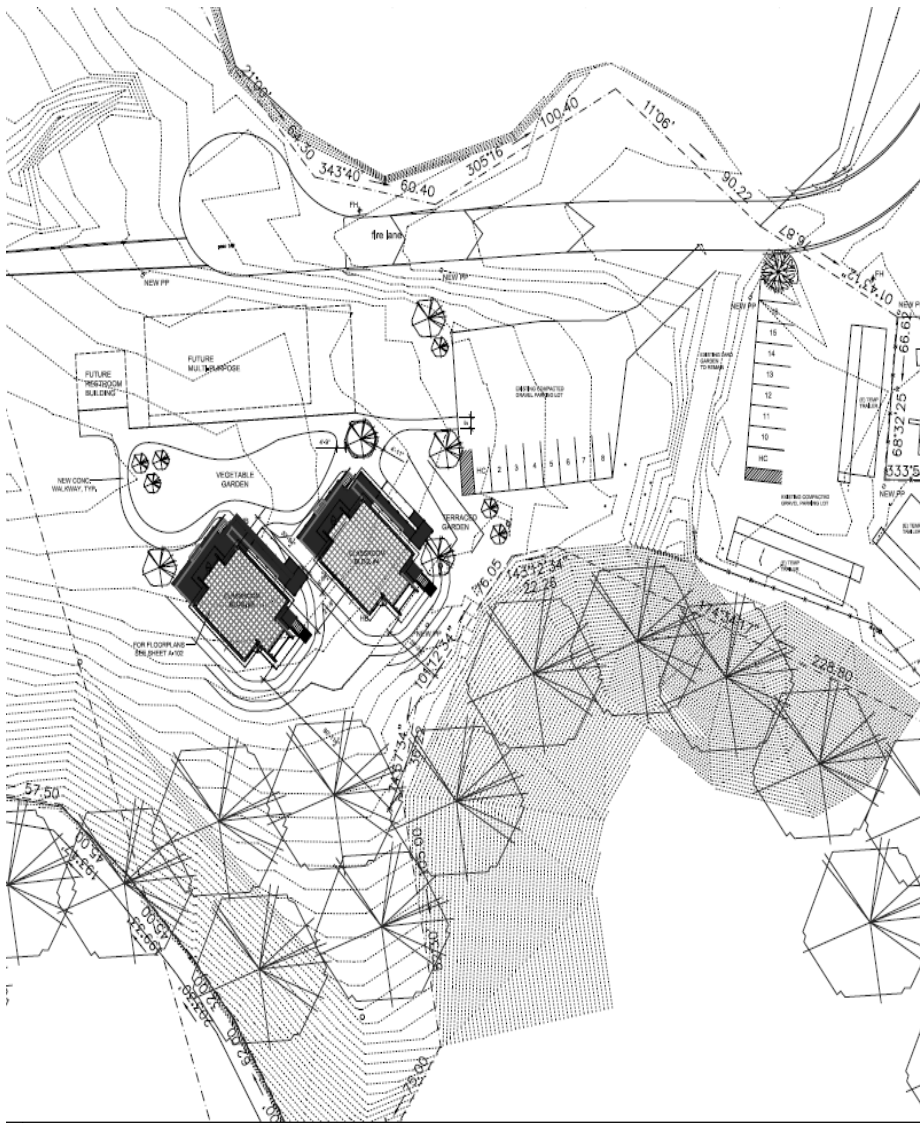
Name: _____

Title: _____

Date: _____

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Exhibit I



1 ENLARGED UPPER CAMPUS SITE PLAN

2 SITE PLAN NOTES

KAWAIKINI NEW CENTURY PUBLIC CHARTER SCHOOL
 BUILDING PERMIT - PHASE 02, 02

PROJECT FROG, INC.
 ENGINEER

KAWAIKINI NEW CENTURY PUBLIC CHARTER SCHOOL

Scale: 1/4" = 1'-0"

Date: 10/12/2010
 Drawn: J. W. WOOD
 Check: J. W. WOOD
 Scale: 1/4" = 1'-0"
 Sheet: T-6