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ADMINISTRATION
STATE PROCUREMENT OFFICE
STATE OF HAWAII

STATE PROCUREMENT OFFICE

NOTICE & REQUEST FOR SOLE SOURCE

TO: Chief Procurement Officer

FROM: DAGS/Automotive Management /Parking Control
Name of Requesting Department

Pursuant to HRS §103D-306 and HAR chapter 3-122, Subchapter 9, the Department requests sole source approval to purchase the following:

1. Describe the goods, services, or construction to be procured.
Pro-rata portion of the cost allocable for the maintenance, repair, improvement, refurbishment and operation of the Alli Place Garage's common elements and limited common elements in accordance with allocations set forth.

2. Vendor/Contractor/Service Provider Name: Bristol Alli Holdings	3. Amount of Request: $229,380.00
4. Term of contract (shall not exceed 12 months), if applicable: From: 7/1/2014 To: 6/30/2015	5. Prior SPO-001, Sole Source (SS) No.: SS 13-067W

6. Describe in detail the following:
a. The unique features, characteristics, or capabilities of the goods, service or construction.
Per Tri-Party Agreement effective January 5, 1990, among the State of Hawaii, City and County of Honolulu and Equity Richards Venture(attached).

b. How the unique features, characteristics or capabilities of the goods, service or construction are essential for the department

7. Describe the efforts and results in determining that this is the only vendor/contractor/service provider who can provide the goods, services or construction.

8. Alternate source. Describe the other possible sources for the goods, services, or construction that were investigated but did not meet the department's needs.

9. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required.)
*Point of contact (Place asterisk after name of person to contact for additional information).

Name	Division/Agency	Phone Number	E-mail Address
Brian Saito	*Automotive Mgmt.*	*586-0343*	brian.saito@hawaii.gov

Department shall ensure adherence to applicable administrative and statutory requirements, including HAR chapter 3-122, Subchapter 15, Cost or Pricing Data if required.

All requirements/approvals and internal controls for this expenditure is the responsibility of the department. I certify that the information provided is to the best of my knowledge, true and correct.

Department Head Signature

6/10/14
Date

For Chief Procurement Officer Use Only

Date Notice Posted: 6/10/14

Submit written objection to this notice to issue a sole source contract within seven calendar days or as otherwise allowed from date notice posted to:

state.procurement.office@hawaii.gov

Chief Procurement Officer (CPO) Comments:

Approval is granted for the period of 7/1/2014 – 6/30/2015 and is based on the department's determination that the Tri-Party Agreement sets forth the pro-rata portion of the costs for the maintenance, repair, improvement, refurbishment and operation of the Alii Place Garage's common elements. Sole source contracts in excess of $100,000 require cost or pricing data pursuant to HAR chapter 3-122, subchapter 15 and is required to be documented in the procurement/contract file. This approval is for the solicitation process only, HRS section 103D-310 (c) and HAR section 3-122-112 shall apply (i.e. vendor is required to be compliant on the Hawaii Compliance Express) and award is required to be posted on the Awards Reporting System. Copies of cost or pricing data, the HCE certificate, and awards posting are required to be documented in the procurement/contract file. If there are any questions, please contact Wendy Ebisui at 586-0563, or wendy.mo.ebisui@hawaii.gov.

☒ Approved ☐ Disapproved ☐ No Action Required

6/12/14

Chief Procurement Officer Signature *Date*

WHEREAS, BetaWest is prepared to undertake the development of said Project upon the terms and conditions more particularly set forth in the Development Agreement between the City and BetaWest executed November 29, 1989 (hereinafter "Development Agreement"), one of such terms and conditions being that an agreement be reached with the State of Hawaii pursuant to which it will dismiss said condemnation action; and

WHEREAS, the State is prepared to dismiss such action upon the terms and conditions hereinbelow set forth, which terms and conditions are satisfactory to City and BetaWest; and

WHEREAS, the State, the City and BetaWest understand and agree that the terms and conditions of this Tri-Party Agreement set forth below are subject to the approval of the Board of Land and Natural Resources of the State of Hawaii (hereinafter "Land Board") pursuant to its powers under Chapter 171, Hawaii Revised Statutes and other related statutes;

NOW, THEREFORE, THIS INDENTURE FURTHER WITNESSETH THAT:

In consideration of the premises and the terms and conditions set forth herein, the State, City and BetaWest do hereby agree as follows:

1. State's Exclusive, Perpetual Easement. The City, as fee simple owner of the Property and Landlord under that certain Ground Lease dated November 19, 1989, and BetaWest, as Tenant under said Ground Lease and the developer of the

SS13-001W

ORIGINAL SIGNED
COPY - PR
FILE COPY

TRI-PARTY AGREEMENT

THIS AGREEMENT, made this 5th day of January, 1990, effective January 5, 1990, by and among the State of Hawaii (hereinafter called "State"), the City and County of Honolulu (hereinafter called "City") and Equity Richards Venture, a Colorado general partnership (hereinafter called "BetaWest"), --

W I T N E S S E T H :

WHEREAS, the City owns land bounded by Alakea, Richards and Hotel Streets, Honolulu, Hawaii, containing an area of approximately 68,754 square feet, identified on the Oahu taxation maps as Tax Map Keys 2-1-17: 7, 8 and 17, improved by a two-story public parking structure (hereinafter the "Property"), which it wishes BetaWest to develop into a first class office and commercial retail facility with approximately 1,000 parking spaces (hereinafter "Project"); and

WHEREAS, the State filed Civil No. 89-0754-03, an action in the First Circuit Court, State of Hawaii, seeking to condemn said land and improvements in order to construct a parking and office building complex thereon as part of the State's master plan for the State Capital District, which complex would be the focus of the Ewa Entry to the Capital District; and

Hawkins - File
PB REC'D 1/1/90
FEB 27 1992
SS13-001W

Project, shall grant to the State an exclusive perpetual easement for the use of 432 parking spaces (hereinafter "State Parking Spaces") in the garage apartment (hereinafter "Garage") of the Project to be developed on the Property by BetaWest, including use of those portions of the Project needed for vehicular and pedestrian ingress to and egress from the State Parking Spaces. The parties hereto acknowledge that the Project is to be submitted to a condominium property regime ("CPR") in accordance with Chapter 514A, Hawaii Revised Statues, with several apartments comprising the CPR, one of which shall be the Garage. As part consideration for the grant of said exclusive perpetual easement, the State agrees to pay no more than Nine Million Five Hundred Four Thousand Dollars ($9,504,000) (hereinafter "State Funds") toward the construction of the State Parking Spaces, which monies are to be paid and expended in accordance with the provisions of Paragraphs 10, 11 and 12 herein. The State, City and BetaWest agree to establish an escrow account in accordance with the Escrow Agreement attached hereto as Exhibit "A" and incorporated herein by reference, into which the State shall deposit the State Funds. The exclusive perpetual easement document in favor of the State, fully executed and acknowledged by the City and BetaWest, shall be deposited into escrow within ten (10) days following the execution of said easement

document by the Land Board on behalf of the State and shall be delivered to the State by the escrow agent at the time the Garage is substantially complete and a temporary certificate of occupancy for the Garage has been obtained.

2. State Parking Spaces. The State Parking Spaces will comprise all of the parking spaces, including tandem (or double) spaces, located in the two basement levels of the Garage, with the remaining spaces to be located on a portion of the seventh (7th) (top) floor, starting with the most distant spaces and moving nearer to the bottom of the Garage until all of the State Parking Spaces have been assigned. The State Parking Spaces shall be laid out substantially as shown in the drawings attached hereto as Schedule I and made a part hereof, subject to changes due to revisions in the construction plans for the Garage, provided, however, that in all cases, the types and numbers of parking stalls per type comprising the State Parking Spaces shall be in substantial compliance with the following: 212 standard size stalls, 196 compact size stalls, 6 handicap stalls, 9 compact tandem stalls and 9 full-size tandem stalls and eighty-two (82) parking stalls located on the seventh (7th) (top) floor of the Garage. The sizes and dimensions of the standard size, compact, handicap, compact tandem and full-size tandem parking stalls shall be in accordance with the standards and provisions of the Land Use

Ordinance of the City and County of Honolulu. The State Parking Spaces shall be laid out by BetaWest in accordance with applicable code or in the absence of an applicable code, with prevailing local custom for similar contemporary office and retail commercial facilities in Downtown Honolulu, and which, in BetaWest's opinion, leads to the most efficient use of available space for parking. As plans for the Garage are revised and the revisions are approved by BetaWest, copies of the revised plans will be furnished to the State. BetaWest shall consult the State in preparing plans for layouts of the State Parking Spaces.

3. City mass transit station. Some of the State Parking Spaces may need to be relocated by the City to accommodate mass transit needs of the City. Such relocation can be to other spaces within the Project belonging to the City as may be arranged by the City (which would then be required to compensate BetaWest for any loss it would suffer in connection therewith) or to a garage or other location outside the Project, but can only be to a garage or other location outside the Project if the new site which the City proposes is acceptable to the State, in the State's sole discretion.

4. State's share of maintaining, repairing, improving, refurbishing and operating the Garage. For purposes of establishing the State's pro-rata portion of the reasonable

costs for the maintenance, repair, improvement, refurbishment and operation of the Garage, to the greatest extent possible, the Garage shall be regarded as if it stood alone, rather than formed as part of the CPR and the Garage costs will be allocated separately from the costs of maintaining, repairing, improving, refurbishing and operating all other parts of the Project. Costs attributable only to a particular owner of easement rights within the Garage (e.g., costs for operation of a gate separating that owner's parking spaces from other parking spaces) will be charged to such owner only. Costs applicable to owners of easement rights generally will be charged to all such easement owners by way of a non-discriminatory monthly per parking space garage fee payable by the respective owners of the easement rights to each parking space, provided that such reasonable costs established for the maintenance, repair, improvement, refurbishment and operation of the Garage may include a reasonable allocation of the costs attributable to Garage users' use of non-Garage common areas of the Project. The draft budget dated December 19, 1989 and attached hereto as Exhibit "B" is agreed by the parties to be a reasonable determination of the State's share of the expense of operating and maintaining the Garage. The parties recognize that the budget is only a draft and that the dollar amounts will change, however the parties agree that the allocations of

costs and methodology used in determining them is acceptable. Other costs, if any, shall be allocated in a reasonable manner.

5. State's Enforcement Rights. BetaWest will be responsible for the management of the Garage and its maintenance, repair, improvement, refurbishment and operation to a standard suitable to a garage in a first class office and commercial retail facility and the State agrees to permit BetaWest to so manage the State Parking Spaces in conjunction therewith. If the State becomes dissatisfied with BetaWest's management of the Garage, in any way, the State shall have the same rights as the City and BetaWest under any and all agreements relating to parking management executed by BetaWest or its successors and assigns for the management of the Garage, to enforce the terms and conditions of said agreements relating to parking management. If the State, after availing itself of its rights under said agreements relating to parking management, remains dissatisfied with BetaWest's management of the Garage, the State, in its sole discretion, upon one (1) year's written notice to BetaWest and the City, and the inability of BetaWest and the City to improve management of the Garage to a level satisfactory to the State within said one (1) year period, may withdraw that portion of the State Parking Spaces located on one or more of the basement levels of the Garage from BetaWest's Garage operation and assume sole

responsibility for the maintenance, repair, improvement, refurbishment and operation of that portion of the State Parking Spaces, provided that the State will pay a pro-rata portion of the costs allocable to the Project for the maintenance, repair, improvement, refurbishment and operation of the Garage's common elements and limited common elements in accordance with allocations set forth in Exhibit "B." If the State assumes management of the Garage basement levels, the State may make any changes to said basement levels it deems necessary provided that the State shall make no building system (e.g., ventilation, mechanical, electrical or exhaust systems or any utility) or structural changes without first obtaining the approval of BetaWest, provided further, that the number of vehicles parked in the two basement levels shall not exceed three hundred and fifty (350). The State, the City and BetaWest agree that any alterations, modifications, revisions or changes to the State Parking Spaces, the State's interest therein or the exclusive, perpetual easement rights to be granted to the State pursuant to paragraph 1 above shall be subject to the State's review and approval.

6. Alienability. The State, the City and BetaWest agree that the State Parking Spaces are freely alienable and transferable by the State, whether by sale, lease, rental, assignment or any other form of conveyance or disposition, and

the State may freely encumber and mortgage said State Parking Spaces, without the consent of either the City or BetaWest. The State, the City and BetaWest agree that the following will be incorporated into the perpetual easement document in favor of the State described in paragraph 1 above: If the State desires to sell, lease, rent, assign or otherwise convey or dispose of the State Parking Spaces or any portion thereof for purposes other than to provide parking for (a) State employees, (b) the owners or occupants of the State Office Tower located on the former Galen Building site (TMK No. 2-1-17:19) or (c) the owners or occupants of the Hemmeter corporate headquarters located on the former Armed Services YMCA site (TMK No. 2-1-17:1), the State agrees to first offer the State Parking Spaces or the relevant portion thereof to BetaWest if the Ground Lease between the City and BetaWest is then in effect, otherwise to the City, provided that the offeree, whether BetaWest or the City, agrees to pay to the State the appraised fair market value of the State Parking Spaces or the relevant portion thereof at the time of the State's offer, as established by an independent appraisal ordered and paid for by the State. If the offeree accepts the State's offer, the offeree shall be responsible for paying to the State one-half (1/2) the cost of said appraisal. The offeree shall have ninety (90) days in which to accept the State's offer relating

to the State Parking Spaces or the relevant portion thereof, and fully pay the said appraised fair market value to the State and if said offeree fails to fully and unequivocally accept the State's offer and fully pay the State within said ninety (90) day period, the State shall be free to convey or dispose of the State Parking Spaces or the relevant portion thereof as it deems fit, in its sole discretion. If the State reduces the price of the State Parking Spaces or relevant portion thereof, the State shall then re-offer them to BetaWest or the City, as in the case of the original offer and the offeree shall have ten (10) days within which to fully and unequivocally accept with full payment to be made to the State within eighty (80) days thereafter, or the State shall be free to convey or dispose of the State Parking Spaces or the relevant portion thereof as it deems fit, in its sole discretion. All offers and acceptances must be in writing.

7. Dismissal of State's condemnation action. No later than ten (10) days after the Land Board executes the easement document granting the State the exclusive, perpetual easement set forth in paragraph 1 above and said fully executed easement document is deposited into escrow, the State and City will file a stipulation dismissing the condemnation action presently pending in the First Circuit Court, denominated State of Hawaii v. City and County of Honolulu; et al., Civil

the execution date of the Tri-Party Agreement, provided that the time for delivery of the State Parking Spaces to the State may be extended for a period equal to the number of days the time for delivery is actually and necessarily delayed by the following force majeure events: (1) fire, (2) tsunami, (3) flood, (4) earthquake, (5) or other acts of God or the elements, (6) litigation by any third party, (7) war or civil disturbances, (8) construction, transportation or shipping strikes or other labor disturbances, (9) unavailability of materials, (10) unreasonable delay in securing governmental approvals or permits (except the City is not excused for unreasonable delays on the part of the City), or (11) other matters or conditions beyond the reasonable control of BetaWest or the City; provided further that in no event shall any delay caused by any of the foregoing events cause the delivery of the State Parking Spaces to the State to be made more than five (5) years after the execution date of this Tri-Party Agreement; or

(c) the State has given the City and BetaWest notice of a default under the Development Agreement and a reasonable time to cure the default (not less than fifteen (15) days) and the default has not been cured.

No. 89-0754-03, with provisions specifying that the dismissal is without prejudice, and that in the event the State reinstitutes the action prior to the time the Project is certified as complete, the City agrees that the just compensation payable to the City for its fee simple absolute interest in the Property is no more than the value of the City's fee simple absolute interest in the Property as of March 10, 1989, the date that the State filed its condemnation action; and the City and BetaWest agree that the value of their interests in any improvements made to or on the Property after March 10, 1989 is equal to the lower of cost or appraised value of any such improvements. The State, the City and BetaWest each agree to bear its own costs and fees in connection with the State's above-entitled condemnation action.

8. Reinstitution of State's condemnation action. The State agrees to reinstitute its condemnation action to acquire the Property only if:

(a) the Project is not commenced and completed in substantial compliance with the Project as described and presented to the City Council and approved by resolution dated July 12, 1989, Resolution No. 89-275, CD-1; or

(b) the State Parking Spaces are not available for occupancy by the State within three (3) years from

9. New condemnation action. Nothing herein shall in any way be construed as a limitation on or surrender of the State's right, as sovereign, to bring a new condemnation action at any time from and after the time the Project is certified as complete, provided, however, that the agreements concerning the limitations on value expressed in paragraph 7 above would not apply in any such new condemnation action.

10. State funds in escrow. No later than ten (10) days after the Land Board executes the easement document granting the State the exclusive, perpetual easement described in paragraph 1 above and said easement document is deposited into escrow, the State agrees to deposit the State Funds in the principal sum of NINE MILLION FIVE HUNDRED FOUR THOUSAND AND NO/100 DOLLARS ($9,504,000.00) into escrow in accordance with escrow instructions substantially in the form of those attached hereto as Exhibit "A" and made a part hereof. The State Funds shall be deposited by the escrow agent in an interest bearing account in a depository approved by the State Director of Finance in accordance with Chapter 36, Hawaii Revised Statutes. Interest earned on the State Funds shall belong to the State and shall be rolled over and reinvested by the escrow agent to the State's credit and all interest earned on the State Funds shall be held in escrow and paid to the State by

the escrow agent at the time the easement document described in paragraph 1 above is delivered to the State.

11. Withdrawal of State funds. As more particularly specified in Exhibit "A", the total allowable withdrawal of State Funds from escrow by BetaWest during the course of the Project's construction shall be based on the percentage of completion of Garage construction as certified by BetaWest's Project architect, that is, the amount of each withdrawal of State Funds by BetaWest shall not cause the total amount of State Funds withdrawn to exceed that percentage of State Funds which corresponds to the percentage of completion of the Garage's construction; provided, however, that the maximum amount of the State Funds which may be withdrawn from escrow shall be the cost of the State Parking Spaces. The cost of the State Parking Spaces will be equal to the product of 432 multiplied by the lower of (a) $22,000 or (b) the sum of (i) the "actual average hard cost of construction of the parking spaces" in the Garage and (ii) $2,000, provided that in no event shall the cost of the State Parking Spaces exceed the value of the State's exclusive, perpetual easement rights to the Property established by an independent appraisal ordered and paid for by the State. If the appraised value of the State Parking Spaces is below $22,000.00 per parking stall, the appraisal shall be subject to the acceptance of the City and BetaWest.

12. Return of State Funds. If any of the events giving rise to the State's right to reinstitute its condemnation action to acquire the Property occurs, the State shall have the right to stop any further withdrawal of State Funds from escrow and the escrow agent, upon receiving notice from the State, shall immediately halt any withdrawals of State Funds and return the remaining balance of the State Funds to the State; and the City and BetaWest shall be jointly and severally responsible for returning to the State any and all of the State Funds withdrawn from escrow in connection with the Project.

13. Hard cost of construction. "Hard cost of construction of the parking spaces" is the actual cost of construction which must be paid to the contractor for constructing the Garage, inclusive of the contractor's fee and Hawaii general excise tax. To facilitate the establishment of "actual average hard cost of construction of the parking spaces" in the Garage, the City and BetaWest agree to require bidders for the Project to submit bids which separate the hard costs of construction for the Garage from the hard costs of construction for all other parts of the Project.

14. Corporate guaranty. BetaWest may furnish the City with a corporate guaranty in lieu of a performance bond to assure that BetaWest satisfactorily completes the Project, such guaranty to be substantially in the form of that attached as

Exhibit "C" and made a part hereof, as it may be amended by agreement between the Guarantor and the City's Director of Finance, provided, however, that all amendments shall be subject to the State's approval.

15. Position not restricted. Except as to any of the State's regulatory duties and responsibilities, the State is willing not to take positions that are adverse to any of BetaWest's applications for any City, State or Federal government approval, permit, waiver or other action, unless any of BetaWest's applications propose to alter, modify, revise or change the Project so as to (a) increase the height of the Project (286' 6" as measured from the Datum line) by more than 5.92', (b) reduce the Richards Street street level setback (as measured from the Richards Street property line) to less than 6' 3", (c) reduce the Hotel Street (Diamond Head portion) street level setback (as measured from the Makai [YWCA] property line) to less than 195' 0", (d) reduce the Hotel Street (Ewa portion) street level setback (as measured from the Makai [Jury Box] property line) to less than 171' 11", (e) reduce the Alakea Street street level setback (as measured from the Alakea Street property line) to less than 6' 9", or (f) change any other aspect of the Project, in any material way, as the Project was described and presented to the Department of Land Utilization of the City in BetaWest's application, dated December 22, 1989, for a waiver of certain

height and setback restrictions applicable within the Hawaii Capital District. If any of said BetaWest's applications contain any such alterations, modifications, revisions or changes, the State may take any position it deems necessary and appropriate.

16. Approvals. Whenever the approval of a party is required by the terms of this Tri-Party Agreement, such approval may not be unreasonably withheld or delayed, provided that the provisions of this paragraph shall not alter or modify the State's right of approval or discretion under paragraphs 3, 5, 6 and 8 above. The State, the City and BetaWest agree to use their best efforts to obtain and secure any approvals referenced in this Tri-Party Agreement in a timely manner and not unreasonably delay securing the same.

17. Binding on successors. This Tri-Party Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the State, the City and BetaWest.

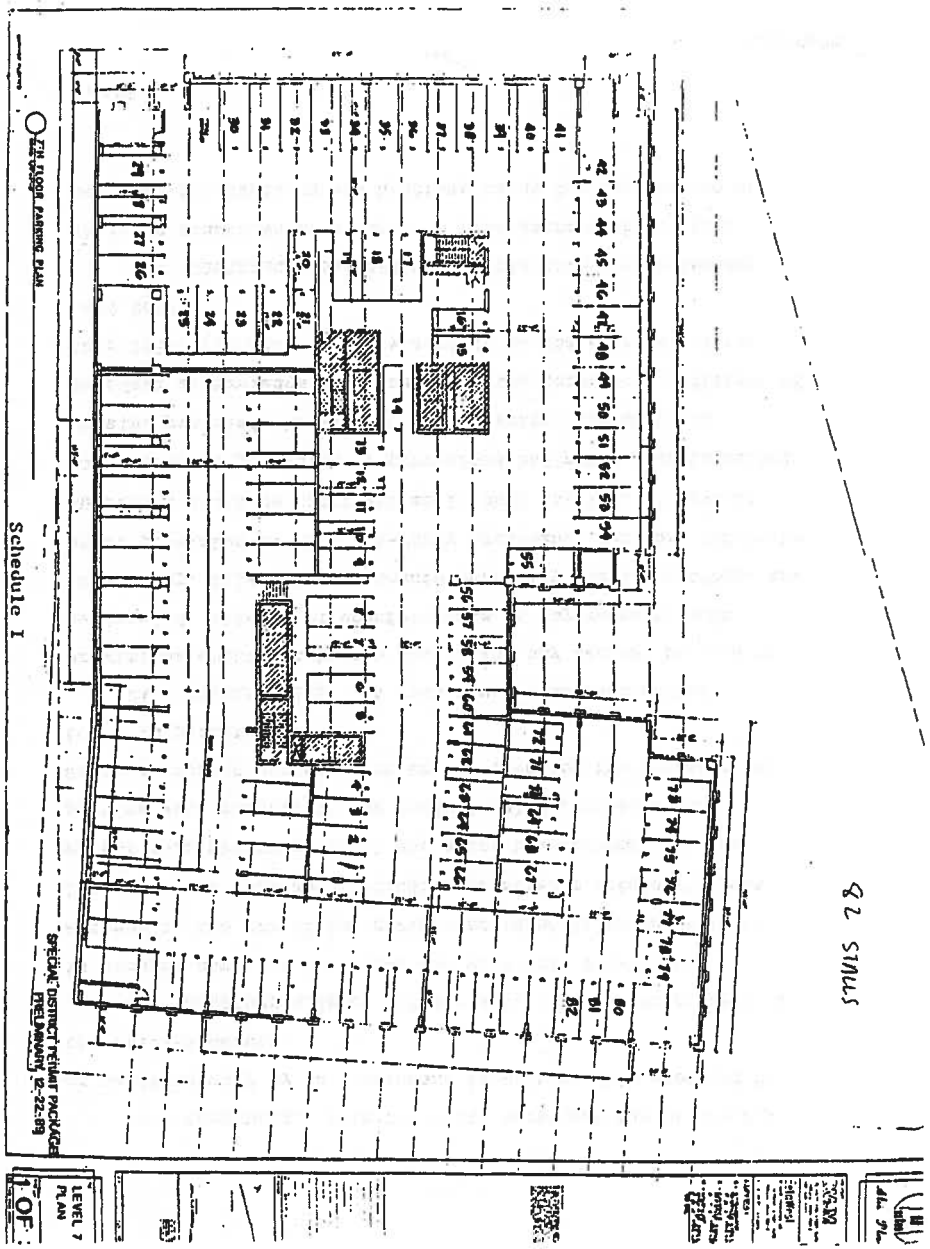
18. Applicable law. This Tri-Party Agreement is made and entered into and shall be governed by and construed in accordance with the laws of the State of Hawaii and any lawsuit or other legal action concerning the subject matter of this Tri-Party Agreement shall be brought in, and the parties consent to the jurisdiction of, the courts of the State of Hawaii.

19. Amendment. This Tri-Party Agreement may be amended or modified only by an instrument in writing duly executed by the parties hereto.

20. Attorney's fees. If any action, suit, or proceeding is brought under or in connection with this Tri-Party Agreement, the prevailing party therein shall be entitled to its costs and expenses, including reasonable attorney's fees, except this paragraph shall not alter the agreement of the parties with respect to the conditional dismissal of the State's present condemnation action covering the Property set forth in paragraph 7 above.

21. Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Tri-Party Agreement, but this Tri-Party Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein, provided, however, that the State, the City and BetaWest acknowledge and agree that the terms and conditions of this Tri-Party Agreement are subject to the approval of the Land Board.

22. Construction, headings. This Tri-Party Agreement shall be construed as a whole in accordance with its fair meaning, the captions and headings being for convenience of



Schedule I

reference only and not intended to fully describe or define the provisions in the portions of this Agreement to which they may pertain.

23. Performance by BetaWest Not Required. Anything herein to the contrary notwithstanding, BetaWest shall have no obligations under this Tri-Party Agreement if it chooses not to proceed with the construction of the Project in accordance with the terms of the Development Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents on the day and year first above written.

EQUITY RICHARDS VENTURE

By BETAWEST PROPERTIES, INC., General Partner

By _____
Its Vice President

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

CITY AND COUNTY OF HONOLULU

By _____
Its

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED AS TO FORM AND LEGALITY:

Deputy Attorney General

STATE OF HAWAII

By _____
Its

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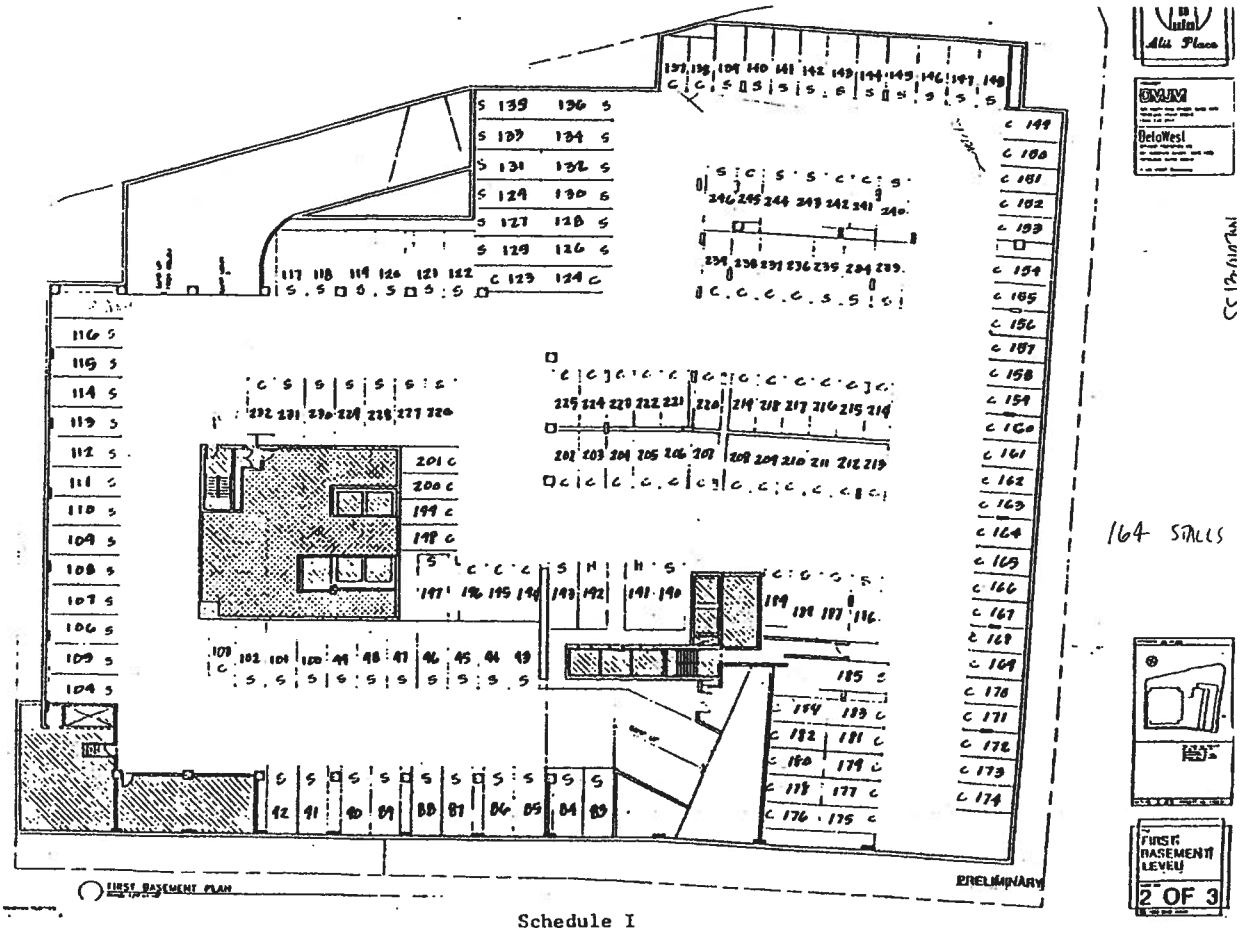
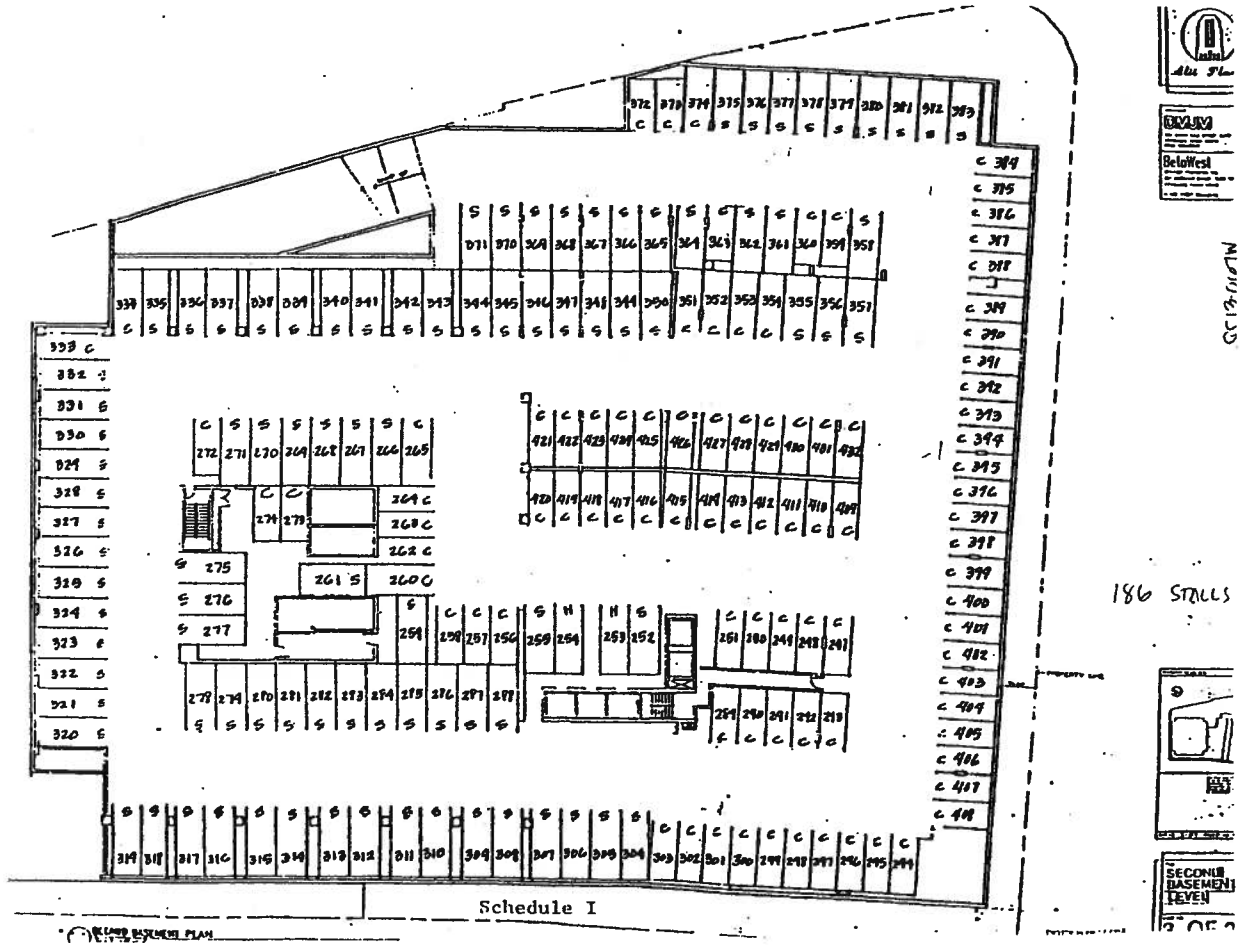


Schedule I



Schedule I