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**CONTINGENCY FEE AGREEMENT  
FLSA LAWSUIT AGAINST CITY & COUNTY OF HONOLULU**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Home Phone Number: \_\_\_\_\_ Work Phone Number: \_\_\_\_\_  
Cell Phone Number: \_\_\_\_\_ Home e-mail address: \_\_\_\_\_  
Employing Department: \_\_\_\_\_  
Job Classification: \_\_\_\_\_

THIS AGREEMENT is made between \_\_\_\_\_ (hereinafter referred to as "Client") and WINER, MEHEULA & DEVENS and AITCHISON & VICK (hereinafter referred to as "Attorneys"). Client claims that the City and County of Honolulu ("Employer") has violated the Fair Labor Standards Act ("FLSA") (29 USC 201-219) by denying Client compensation for wages and/or overtime hours worked, by failing to pay client as required by the FLSA ("Client's Claim"). Client hereby retains Attorneys to enforce Client's Claim on the following terms:

1. Attorneys will file a lawsuit on behalf of other similarly situated employees to enforce similar claims under the FLSA. Client agrees to execute a Consent form to participate as one of the plaintiffs or Consenters in the Lawsuit, and hereby retains Attorneys to enforce Client's Claim in and through the Lawsuit. Attorneys shall represent Client in the prosecution of Client's Claim in and through the trial of the Lawsuit, and if Client is successful at trial, through an appeal and retrial of the Lawsuit. If Client does not prevail at trial, Attorneys shall not be obligated to file or prosecute an appeal in the Lawsuit. Client understands that Attorneys will not provide any other legal services except as described above, and that if Client wishes Attorneys to provide any additional legal services, a separate written agreement between Client and Attorneys will be required. The fees set forth below will cover all of Attorneys' services hereunder.

2. Client shall compensate Attorneys for services rendered under this Agreement only if Client obtains a recovery by settlement or judgment. Attorneys' fee shall be calculated based on the "gross recovery", as defined in paragraph 3. Attorneys shall be paid by Client a fee consisting of a percentage of the "gross recovery" depending on the stage of the Lawsuit at which it is obtained, as follows:

FEE SCHEDULE

Recovery with or without court action, the fee will be (based on gross amount recovered).....33 1/3 % + state excise tax + costs

Recovery when the case is within 30 days of trial, arbitration, or mediation, and if the case is appealed, the fee will be (based on gross amount recovered).....40% + state excise tax + costs

3. For purposes of computing Attorneys' fees hereunder, the term "gross recovery" shall mean the total of any and all economic benefits conferred on Client as a result of the Lawsuit, including but not limited to the monetary value of any vacation or "comp" time awarded to Client, the fair market value of any property received by Client, and any and all damages and monetary payments awarded by the Court or agreed to be paid in settlement, including any amounts owed by Client to Attorneys for reimbursement of costs and expenses advanced or incurred by Attorneys with respect to the Lawsuit provided, however, that the term "gross recovery" shall not include regular paychecks for wages and overtime already actually received by Client for the period of time covered by the Lawsuit; and provided further that the term "gross recovery" shall include any hourly statutory Attorneys' fees and any litigation costs and expenses awarded to Attorneys by the Court or agreed to be paid by the employer. Any such hourly attorney fees shall be credited against client's contingent fee obligations on a pro rata basis.<sup>1</sup> If hourly statutory fees exceed the contingent fees under this agreement, the attorneys shall be entitled to the hourly fees in lieu of the contingent fees. If the "gross recovery", including the present value of any benefit for which the economic value is not cash or readily reducible to a dollar figure, is greater than the "actual value" of which the case would have been valued had a full cash settlement been arrived at, an economist shall ascertain what the actual cash value of the underlying FLSA case should have been, had a settlement been predicated upon that value, and that figure used in calculating the "gross recovery".

4. The Attorneys' fees set forth in this Agreement are not set or required by law, but have been negotiated between the Attorneys and Client.

5. All communications between the Attorneys and Client, and between Attorneys and any member of the class of plaintiffs and Consenters in the Lawsuit, are not privileged against disclosure to other members of the plaintiff and Consenter class in the Lawsuit, and all such communications between Attorneys and Client may be disclosed to other members of the plaintiff and Consenter class in the Lawsuit.

6. Client agrees that mere participation in this lawsuit will not be asserted by client as a conflict of interest for the purpose of disqualifying attorneys in any subsequent litigation or representation. This section shall in no way preclude client from asserting any future conflict of interest that may arise between clients and attorney's firm based on facts and circumstances other than those arising from client's participation in this lawsuit.

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<sup>1</sup> For example, if the participants in the lawsuit were awarded \$500,000 for unpaid wages and another \$100,000 attorney fees, the contingent attorneys' fees would be 40% of the total award of \$600,000, or \$240,000. The amount of contingent attorneys' fees would be reduced by the amount of statutory attorneys fees which would be paid by the employer to Attorneys (\$240,000 - \$100,000). The amount of contingent attorneys' fees under this agreement would be \$140,000. Each Client's portion of the contingent attorneys' fees would then be apportioned based on the individual Client's pro-rata share of the total award.

7. Client agrees to provide Attorneys with Client's social security number, all other information, and all signed documents requested by Attorneys. Client agrees that Client's social security number may be used as an identification number to facilitate payment to Client if a recovery is made in the Lawsuit. Attorneys will not make the home address of Client public.

8. Client agrees to advise attorneys of any changes of address, particularly in the event of retirement or separation from service. Client agrees that if client fails to communicate with attorneys within one year of settlement or award of a recovery to client, or if client fails or refuses to take the necessary steps to claim a recovery, within one year of the settlement or award becoming final, client agrees that client's settlement or award will be subject to reversion to a charity selected by the attorneys.

9. Attorneys and Client shall use their best efforts to carry out this Agreement and to secure evidence pertaining to the lawsuit.

10. If Client terminates the services of Attorneys for any reason whatsoever, Client shall pay Attorneys for all costs and expenses incurred or paid by Attorneys with respect to the Lawsuit on behalf of Client, and Client shall also pay Attorneys the reasonable value of Attorneys' services rendered up to the date of termination, calculated as a pro rata percentage of Attorneys' fees due under paragraph 2, based on (i) Attorneys' percentage of the total legal work done in the lawsuit, and (ii) the value of the results and size of the "gross recovery" achieved in Lawsuit in whole or in part by Attorneys' services.

12. It is agreed that this Agreement shall operate as an assignment *pro tanto* to Attorneys of said claim, insofar as that is lawful, and of any monies and/or judgment received. Attorneys will have a lien for Attorneys' fees and costs advance on all claims and causes of action that are the subject of this litigation and on all proceeds of any recovery obtained whether by settlement, arbitration award, or court judgment. Client agrees that if checks endorsed to both Client and Attorneys are issued, Client will endorse his/her check and return it to Attorneys for deposit in Attorneys' trust account. Attorneys may then deduct their contingent attorneys' fees and pay Client the balance due. Alternatively, Client authorizes the Employer to deduct from the amount due Client under any settlement or litigated decision, the contingency fees due to Attorneys and to pay such contingency fees directly to Attorneys. Client agrees to perform whatever acts are necessary to effect payment of attorneys' fees to Attorneys.

13. Attorneys reserve the right to withdraw from this action, provided reasonable notice be given to Client.

14. Although Attorneys may offer an opinion as to possible results regarding the subject matter of this Agreement, Attorneys cannot guarantee any particular result. Client acknowledges that Attorneys have made no promises about the outcome and that any opinion offered by Attorneys in the future will not constitute a guarantee.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
(Signature) (Print Name)