WENDY J. UTSUMI  6340
Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
Leiopapa A Kamehameha Building
235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
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Attorney for Department of Commerce
and Consumer Affairs

CONTRACTORS LICENSE BOARD
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Contractor's License of

XIAOFENG CAO, doing business as HUA XIA BUILDING & CONSTRUCTION,

Respondent.

CLB 2012-244-L & CLB 2013-514-L

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS' REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"), through its undersigned attorney, and Respondent XIAOFENG CAO, doing business as HUA XIA BUILDING & CONSTRUCTION (hereinafter "Respondent"), enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent was licensed by the Contractors License Board (hereinafter the "Board") as a "B" general building contractor under license number BC 29228. The license was issued on or about August 21, 2008. The license will expire or forfeit on or about September 30, 2016.

2. Respondent's mailing address for purposes of this action is 2734 Kalihi Street, Honolulu, Hawaii 96819.
3. RICO received two (2) complaints alleging that Respondent exhibited poor workmanship, but the allegation could not be substantiated in one complaint and the other complaint was withdrawn after private resolution of the complainant's civil matters.

4. RICO alleges that Respondent's written homeowner contract form is missing items required by Hawaii law.

5. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute and/or rule: Hawaii Revised Statutes ("HRS") § 444-25.5 (disclosures required in written homeowner contracts) and Hawaii Administrative Rules ("HAR") § 16-77-80 (disclosures required in homeowner contracts).

6. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is fully aware that Respondent has the right to be represented by an attorney and voluntarily waives that right.

2. Respondent enters into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondent is aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondent freely, knowingly, and voluntarily waives the right to a hearing and agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein licensed as a contractor by the Board acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondent does not admit to violating any law or rule, but acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent's license.

6. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case Nos. CLB 2012-244-L and CLB 2013-514-L.

8. Respondent understands this Settlement Agreement is public record pursuant to Hawaii Revised Statutes chapter 92F.
C. TERMS OF SETTLEMENT:

1. Administrative Fine. Respondent agrees to pay a fine in the amount of TWO THOUSAND FIVE HUNDRED AND NO/100 U.S. DOLLARS ($2,500.00). Payment shall be made by cashier's check or money order made payable to "DCCA - Compliance Resolution Fund" and mailed to the Regulated Industries Complaints Office, Attn: Wendy J. Utsumi, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due no later than thirty (30) days following Board approval of this Settlement Agreement.

2. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph C.1 above, Respondent's license shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of the license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible Further Sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of contractors in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7, and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Board's usual and customary manner pursuant to the Administrative Procedure Act, Respondent agrees that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondent on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.
7. **No Reliance on Representations by RICO.** Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. **Complete Agreement.** This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

**DATED:** Honolulu, Hawaii, **APR 26 2016**

[Signature]

WENDY J. UTSUMI
Attorney for Department of Commerce and Consumer Affairs
IN THE MATTER OF THE CONTRACTOR'S LICENSE OF XIANGFENG CAO, DOING BUSINESS AS HUA XIA BUILDING & CONSTRUCTION; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; RICO CASE NO(S). CLB 2012-244-L & CLB 2013-514-L

APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII

GUY M. AKASAKI
Chairperson

JOHN POLISCHECK, JR.
Vice Chairperson

TYRUS KAGAWA

NATHAN T. KONISHI

LEONARD K. P. LEONO

KENT MATSUZAKI

DARYL SUEHIRO

DATE

MAY 2 0 2016

ANACLETO “JOEY”
ALCANTARA, JR.

WILLIAM A. KAMAI

PETER H. M. LEE

DANNY T. MATSUOKA

ALDON K. MOCHIDA

LESLIE ISEMOTO

PVL 05/29/15

This decision has been redacted and reformatted for publication purposes and contains all of the original text of the actual decision.
STATE OF HAWAII
)
CITY AND COUNTY OF HONOLULU
)

On this 18th day of April, 2016, before me personally appeared XIANGFENG CAO, to me known to be the person described, and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

This 6-page SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER document dated UNDATED AT TIME OF NOTARIZATION, 2016 was acknowledged before me by XIANGFENG CAO this 18th day of April, 2016, in the City and County of Honolulu, in the State of Hawaii.

Name: CATHARINE CHING
Notary Public, State of Hawaii
My Commission expires: MAY 18, 2019