

STATE OF HAWAII  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
**KAKAAKO**  
Honolulu, Hawaii, 96813  
*February 7, 2018*

Chairperson and Members  
Hawaii Community Development Authority  
State of Hawaii  
Honolulu, Hawaii

HCDA Kakaako Board Members:

**SUBJECT:**

Shall the Authority Authorize the Interim Executive Director to Execute a Month-to-Month Right of Entry Agreement with PASHA Hawaii for the "Wastewater Lot", TMK No. (1) 2-1-60-2 (por)?

**SUMMARY:**

PASHA Hawaii's Right of Entry for the Wastewater Lot expires on February 28, 2018 unless another Right of Entry agreement is executed. A short-term month-to-month extension will provide HCDA much needed revenue while the future of the property is settled.

**AUTHORITIES:**

Agreements over one year in length are brought before the board for their approval.

**BACKGROUND:**

On March 1, 2017, HCDA staff executed a one year Right of Entry agreement (ROE) with PASHA Hawaii for the use of the Wastewater Lot for car storage. The ROE is set to expire on February 28, 2018, with a rent of \$13,965 a month for the duration of the ROE. PASHA Hawaii has indicated its desire to continue utilizing the lot for as long as possible.

HCDA recently retained Colliers to conduct a market study of HCDA's properties. This study revealed that certain properties, such as the Wastewater Lot, have a higher market rent than what is being charged to current tenants. The Collier's study estimated market rent for the Wastewater lot property at 40 cents a square foot, or approximately \$34,800 per month for the 87,000 square foot parcel.

Given that this figure is over twice the current rent, PASHA Hawaii is unable to continue utilizing the lot if the higher market rent is assessed. PASHA Hawaii notes that the lot is unpaved and of a mixed media foundation that makes it difficult to utilize without disturbing the contaminants under the gravel cap. Given these limitations, PASHA Hawaii requests the board instead consider a 7.5% increase in its current rent from March 1, 2018 to June 30, 2018, and another 5.5% increase from July 1, 2018 to February 28, 2019. The proposed rent would be as follows:

- March 1, 2018 to June 30, 2018 = \$15,012.38 a month (a \$1,047.38 per month increase over current rent)
- July 1, 2018 to February 28, 2019 = \$15,838.06 a month (\$1,873.06 per month increase over current rent)

**ANALYSIS:**

HCDA staff believes the proper procedure for achieving Highest and Best Use of the Wastewater Lot would involve conducting a Request for Information (RFI) or a Request for Expression of Interest (REOI) to determine market demand for using/ developing the lot. A Request for Proposals (RFP) could then be drafted and solicited before awarding a longer-term lease for the parcel. Recognizing that these steps take time, HCDA staff believes it prudent to continue leasing the Wastewater Lot to PASHA on a month-to-month basis until these steps can be completed.


Concurrently, the HCDA is contemplating transferring its lands in Kakaako Makai to the City and County of Honolulu. While a City transfer would eliminate the need to conduct an RFI, REOI, or RFP, it also comes with a significant time commitment. During the months of transition, it is prudent for the HCDA to continue as many revenue generating activities as possible. A month-to-month agreement with a 30-day termination clause like the one proposed would allow ample time for both parties to terminate the agreement when the City transfer is complete.

It should also be noted that PASHA Hawaii's constant presence in the Wastewater Lot has kept the property clear of encampments and vandalism that has plagued other HCDA properties in the area. Allowing the ROE to expire and removing PASHA Hawaii from the lot would likely attract undesirable activities, as the Wastewater lot would sit vacant for several months.


**RECOMMENDATION**

HCDA staff recommends that the Board execute a Month-to-Month Right of Entry Agreement with PASHA Hawaii for the Wastewater Lot with the terms listed above.

Respectfully submitted,

  
\_\_\_\_\_  
Lindsey Doi  
Asset Manager

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Garrett Kamemoto, Interim Executive Director  
Hawaii Community Development Authority

Attachments  
Exhibit A – Draft ROE

REVOCABLE RIGHT OF ENTRY (ROE 03-18)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (ROE) made and executed this \_\_\_\_\_ day of \_\_\_\_\_ 2018, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA” or “GRANTOR”), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to THE PASHA GROUP, a business located at 745 Fort Street, Suite 1600, Honolulu, Hawaii 96813 (“GRANTEE”) a nonexclusive right of entry upon and use of the Premises (as defined below) subject to each of the following terms and conditions:

1. **Grant of Right-of-Entry.** The HCDA hereby grants to GRANTEE and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, “Permitted Persons”) an ROE to enter upon the Premises (as defined below) for the sole purposes set forth herein. GRANTEE is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons and ensuring compliance by Permitted Persons with such terms and conditions.

2. **Premises.** This ROE shall pertain to an approximately 2.2 acre lot, commonly referred to as the former City and County Waste Water Lot, located at 98 Koula St., Honolulu, Hawaii 96813, identified by Oahu Tax Map Key (1) 2-1-60-2 (por.), and depicted on the map attached to this ROE as Exhibit “A” and made a part hereof (hereinafter, the “Premises”). Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved by GRANTOR.

3. **Term.** The term of this ROE shall commence on March 1, 2018 (Commencement Date) and shall continue on a month to month basis thereafter. This ROE shall automatically terminate upon 60-days written notice to either party, or as provided below. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

4. **Use of Premises.** This ROE is nonexclusive. The ROE granted hereby shall be for the sole purpose of staging and parking vehicles by GRANTEE’s employees in connection with GRANTEE’s business operations. GRANTEE shall not alter, obstruct or impede any driveways, entrances, exits or other points of ingress or egress leading to the Premises. Vehicles obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal by towing at GRANTEE’s sole expense.

5. **Environmental Hazard Management Plan.** Pursuant to the June 2009 Environmental Hazard Management Plan prepared for HCDA, attached hereto as Exhibit “B” and incorporated herein, the Premises is covered by a 6-inch layer of gravel, which is intended to contain the soils therein. Unless GRANTEE obtains the prior written permission of HCDA, which HCDA may withhold in its sole and absolute discretion, GRANTEE’s use of the Premises shall not result in the removal, substantial disturbance,

or penetration of such gravel.

6. **Acknowledgement of Use By Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified herein, GRANTEE shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

7. **Due Care and Diligence.** GRANTEE shall exercise diligence and due care for public safety in entering upon the Premises and shall not unreasonably disrupt or disturb the activities customary to the operations of the HCDA or its agents on the Premises, or other persons or entities who have the right to enter and/or use the Premises with the approval of the HCDA. At all times during the term of this ROE and upon the termination of this ROE, GRANTEE shall be responsible for: (a) removing any debris or trash deposited on the Premises; (b) repairing any damage to the Premises caused by its actions or the actions of third-persons due to GRANTEE's actions or inactions in securing the Premises; and (c) restoring the Premises to substantially the same condition it was in at the time of GRANTEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this ROE.

8. **Release and Waiver by GRANTEE.** GRANTEE expressly acknowledges and agrees that GRANTOR assumes no responsibility for any damages to person or property arising out of this ROE. Any items left on the Premises, whether owned and/or operated by GRANTEE or Permitted Persons, are at the sole risk of the GRANTEE. GRANTEE expressly agrees that GRANTOR shall not be responsible for any loss or damage to any persons or property, including but not limited to collision, fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other Permitted Persons or any other individual.

9. **Indemnity.** GRANTEE shall defend, indemnify and hold harmless the HCDA and the State of Hawaii, and its respective officials, directors, members, employees, and agents (collectively the "**Indemnified Parties**") from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) GRANTEE's breach of this ROE; (b) any Permitted Person's tortious conduct or violation of law on or upon the Premises; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of GRANTEE's entry and use of the Premises under this ROE (collectively, "**Covered Claims**"). GRANTEE shall also reimburse the HCDA for all costs and expenses incurred by HCDA, including reasonable attorneys' fees incurred by HCDA in connection with the HCDA's defense of any Covered Claims. This provision shall survive the termination of this ROE. Notwithstanding anything to the contrary herein, GRANTEE shall not be liable for indemnifying the Indemnified Parties with respect to claims, actions, penalties, damages, liabilities, costs or expenses to the extent they are caused by the negligence or willful misconduct of any such Indemnified Parties.

10. **Insurance.** (a) GRANTEE shall obtain and maintain at all times during the term of this ROE, at its own expense, insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

**Commercial General Liability:**

\$1,000,000 per occurrence and \$2,000,000 in the aggregate  
\$1,000,000 Completed Operations Aggregate Limit  
\$1,000,000 Each Occurrence Limit  
\$1,000,000 Personal & Advertising Limit

**Umbrella Liability:** \$2,000,000 Aggregate (optional, if other limits cannot met)

**Worker's Compensation:**

Coverage A: As required by Hawaii Laws  
Coverage B: Employer's Liability:  
\$1,000,000 Bodily Injury by Accident Each Accident  
\$1,000,000 Bodily Injury by Disease  
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

**Automobile:** \$2,000,000 combined single limit OR \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per accident, and \$1,000,000 property damage per damage

- (b) Prior to GRANTEE's first entry onto the Premises, GRANTEE shall provide to the HCDA a certificate of insurance to evidence compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by GRANTEE in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (d) The HCDA shall be notified at least 15 days prior to the termination, cancellation or any material change in GRANTEE's insurance coverage.
- (e) GRANTEE shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE or Permitted Persons in connection with GRANTEE's use or occupancy of the Premises.

- (f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, GRANTEE shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of GRANTEE or the Permitted Persons connected with this ROE.
- (g) GRANTEE shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. GRANTEE shall furnish a copy of the policy or policies to the HCDA.
- (h) Failure of GRANTEE to provide and keep in force such insurance shall be regarded as a material default under this ROE and the HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of GRANTEE.
- (i) The HCDA is a self-insured State agency. GRANTEE's insurance or self-insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute toward insurance provided by GRANTEE.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's discretion, the above insurance does not provide adequate protection for the HCDA, it may require GRANTEE to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

11. **Condition of Premises/Assumption of Risk.** GRANTEE acknowledges receipt of the Hazardous Materials Survey Report prepared by EnviroServices & Training Center, LLC, dated April 17, 2006 (Hazardous Materials Report), attached hereto as Exhibit "C" and made a part hereof, which indicates the presence of hazardous materials and/or conditions in, on, and/or under the Premises and accepts the Premises in "as is" condition. Notwithstanding the Hazardous Materials Report, GRANTEE expressly agrees to be solely responsible for and shall indemnify, defend, and hold harmless HCDA and the State of Hawaii, and their respective officials, directors, members, employees, and agents from and against any loss, damage, cost, expense, or liability arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on the Premises caused by GRANTEE or Permitted Persons, including without limitation those resulting from the removal or construction of improvements, on, under, or about the Premises, including the costs of any required or necessary removal, repair, cleanup, or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial, or other required plans, and all reasonable costs and expenses incurred by HCDA in connection therewith, including without limitation reasonable attorneys' fees. Except to the extent caused by the gross or sole negligence or willful misconduct of HCDA and/or its members, employees, officers,



directors, representatives, agents, invitees, guests, and independent contractors, GRANTEE further expressly agrees to waive and release any and all claims it may have against HCDA and the State of Hawaii with respect to any losses, damages, liabilities, costs and expenses, property damage, personal injury or wrongful death based upon or arising out of or in connection with the presence of hazardous materials or dangerous or defective conditions on or in the Premises. Except as otherwise provided herein, GRANTEE hereby agrees and acknowledges that, except for the Hazardous Materials Report, HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are reasonably discoverable by HCDA or GRANTEE. Except to the extent caused by the gross or sole negligence or willful misconduct of HCDA and/or its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors, GRANTEE expressly agrees to indemnify, defend, and hold harmless HCDA and the State of Hawaii, and their respective officials, directors, members, employees, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death based upon or arising out of or in connection with the presence of hazardous materials or dangerous or defective conditions on or in the Premises sustained by a Permitted Person. GRANTEE further agrees that any property left on the Premises during the term of this ROE shall be left there at the sole risk of GRANTEE. GRANTEE further agrees that any property left on the Premises during the term of this ROE shall be left there at the sole risk of GRANTEE. This provision shall survive the expiration or earlier termination of the ROE.

12. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E and HRS Section 269E-4.

13. **Prohibited Use.** Any use of the Premises not authorized herein shall constitute a material breach of this ROE. Upon such breach, the HCDA may terminate this ROE and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give GRANTEE notice thereof and afford GRANTEE 48 hours to cure such breach.

14. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by GRANTEE shall remain the property of GRANTEE. GRANTEE shall have the right, prior to the termination or revocation of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises. In the event the GRANTEE shall fail to remove the improvements prior to the

termination or revocation of this Permit or within an additional period, the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and any storage to GRANTEE. This provision shall survive the termination of this ROE.

15. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

16. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the HCDA's express prior written consent.

17. **Additional Terms and Conditions.**

- (a) GRANTEE shall pay the HCDA a graduated usage fee as follows:
  - a. March 1, 2018 to June 30, 2018 = \$15,012.38 a month
  - b. July 1, 2018 to February 28, 2019 = \$15,838.06 a month
  - c. Any period thereafter shall be subject to further negotiation
- (b) Payment shall be made without notice or demand, on the first (1st) day of each month for the ensuing month during the term of this ROE. If the first (1st) day falls on a weekend or State holiday, GRANTEE shall tender payment of the usage fee on the first business day immediately following the weekend or State holiday. Without prejudice to any other remedy available to the HCDA, GRANTEE shall, without further notice or demand, pay to the HCDA, a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid more than ten days after its due date on the first of the month.
- (c) GRANTEE shall pay for any damage and repairs associated with their use of Premises.
- (d) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.
- (e) Plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (f) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary. Written notice of any such additional terms and conditions shall be provided to GRANTEE not less than 30 days prior to the effective date. Any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.



18. **Termination.** Either Party may terminate this ROE at any time upon not less than 30 days prior written notice.

19. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority  
Attention: Lindsey Doi, Asset Manager  
547 Queen Street  
Honolulu, Hawaii 96813  
Telephone: (808) 594-0300  
Fax: (808) 587-0299  
Email: [contact@hcdaweb.org](mailto:contact@hcdaweb.org)

The Pasha Group  
745 Fort Street, Suite 1600  
Honolulu, HI 96813  
Attention: Reggie Maldonado, General Manager  
Telephone: (808) 523-8625  
E-mail: [reggie.maldonado@pashanet.com](mailto:reggie.maldonado@pashanet.com)

20. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

21. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.

22. **Representation on Authority of Parties/Signatories.** Each person signing this agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

23. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

24. **Entire Agreement.** This ROE constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior

communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the HCDA and GRANTEE have caused this ROE to be executed as of the day and year first above written.

**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Garett Kamemoto  
Interim Executive Director

**THE PASHA GROUP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Not to Scale

### Exhibit A

### FORMER CITY & COUNTY WASTE WATER LOT

(Not to scale)

TMK (1) 2-1-60-2 (Por) ; 98 Koula Street

