

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

November 6, 2019

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

HCDA Board Members:

SUBJECT:

Shall the Authority Authorize the Executive Director to Execute a Right of Entry Agreement with Sea Engineering Inc. for the Charterboat Building at Kewalo Basin Harbor for a Four Month Term?

SUMMARY:

The subcontractor for the Kewalo Basin Harbor improvement project, Sea Engineering Inc., requests an additional four month Right of Entry (ROE) to continue utilizing the Charterboat Building as its on-site office space. This building is otherwise vacant due to pending redevelopment. Staff recommends issuing the ROE to allow Sea Engineering to remain until February 2020.

AUTHORITIES:

The Board must approve all Right of Entry requests over one year in duration.

BACKGROUND:

The Charterboat Building is an approximately 13,000 square foot office building that was previously used as office space for harbor related businesses. The building has been vacant for about seven years, pending redevelopment plans.

In 2015, the Hawaii Community Development Authority (HCDA) solicited a Request for Proposals (RFP) to redevelop the Charterboat Building site, along with two other parcels at Kewalo Basin Harbor. On December 2, 2015, the HCDA awarded the subject RFP to Kewalo Harbor Development Company (KHDC).

Lease negotiations have been ongoing, and an Environmental Assessment (EA) is currently underway. KHDC remains committed to redeveloping the property as outlined in their response to the RFP.

Separately, KHDC is continuing work on improving the docks and slips at Kewalo Basin Harbor as part of the Kewalo Basin Harbor Lease. Their subcontractor for the project is Sea Engineering, Inc.

On March 23, 2018, the HCDA executed an ROE with Sea Engineering, Inc. to lease office space located in the Charterboat Building at Kewalo Basin Harbor. The ROE commenced on October 1, 2018 and expired on September 30, 2019 and is attached hereto as Exhibit "A."

The purpose of the ROE was to provide on-site office space for Sea Engineering to manage and oversee the Kewalo Basin Harbor improvement project. The project was scheduled to be completed by October 2019, and it was expected that Sea Engineering would no longer need an office on-site after the termination of their original ROE.

However, KHDC recently requested additional improvements that will take an additional four months to complete. As such, Sea Engineering requests a new ROE to allow them to remain on-site until the project is completed.

ANALYSIS:

The HCDA is currently not soliciting for long term leases of the Charterboat Building, as the site is scheduled to be redeveloped. Although plans for redevelopment have been delayed in recent years, KHDC is now on track to complete the EA in March/April 2020 and proceed with obtaining the necessary lease, development agreement, and development permits thereafter.

The previous one-year ROE with Sea Engineering was meant to be a short-term measure to utilize the space as-is, with no additional cost to the HCDA. Sea Engineering understood that their ROE could be terminated at any time, once KHDC was ready to begin redevelopment.

Allowing Sea Engineering to continue to utilize the space in Charterboat Building during the harbor improvement project would not negatively impact future plans for redevelopment and would not result in any additional costs to HCDA. The additional four-month term would also provide an additional \$4,000 in revenue to the HCDA.

RECOMMENDATION:

HCDA staff recommends that the Board:


Authorize the Executive Director to Execute a Right of Entry Agreement with Sea Engineering Inc. for the Charterboat Building at Kewalo Basin Harbor for a Four Month Term.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Aedward Los Banos, Executive Director

Attachments

Exhibit A – ROE 4-18

REVOCABLE RIGHT OF ENTRY (ROE 4-18)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (ROE) made and executed this 23rd day of March 2018, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA" or "GRANTOR"), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to SEA ENGINEERING, INC., whose business address is 863 North Nimitz Highway, Honolulu, Hawaii 96817 ("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 the approximately 2,500 square feet of partitioned office and meeting space at the mauka end of the Kewalo Basin Harbor known as the Charterboat Building, at 1125 Ala Moana Boulevard, Honolulu, Hawaii, 96814, identified by Oahu Tax Map Key No. (1)-2-1-058:133 ("**Premises**"). The Premises is more particularly shown and depicted on the map attached to this ROE as Exhibit "A" and made a part hereof. 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 October 1, 2018 (**Commencement Date**) to September 30, 2019 (**Termination Date**). This ROE shall automatically terminate on the Termination Date, unless earlier revoked 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.** The ROE granted hereby shall be for the purpose of maintaining an on-site project office, kitchen, restroom, and meeting facility. GRANTEE shall not alter, obstruct or impede any driveways, entrances, exits or other points of ingress or egress leading to the Premises. Vehicles parked in non-designated spaces for any reason, or otherwise obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal by towing at the expense of GRANTEE's sole expense.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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 fifteen (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 reasonable 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.

10. **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 § 269E-4.

11. **Prohibited Use.** Any use of the Premises not authorized herein shall constitute a material breach of this ROE and 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 forty-eight (48) hours to cure such breach.

12. **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 and 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; provided, however, that 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 storage, if any, to GRANTEE. This provision shall survive the termination of this ROE.

13. **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.

14. **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.

15. **Additional Terms and Conditions.**

- (a) GRANTEE shall pay the HCDA a usage fee of \$1,000 per month 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 (10) days after its due date on the first of the month.
- (b) GRANTEE shall pay for the use of all utilities associated with the Premises, including but not limited to; electric bills and water/ sewer bills.
- (c) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.
- (d) Plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (e) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary; provided that written notice of any such additional terms and conditions shall be provided to GRANTEE not less than thirty (30) days prior to the effective date, and that any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.

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

17. **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: LindseyDoi.Leaverton@hawaii.gov

SEA ENGINEERING, INC.:
Attention: Mr. Russell K. H. Luke
863 North Nimitz Highway
Honolulu, Hawaii 96817
Telephone: (808) 536-3603
E-mail: rluke@seaengineering.com

18. **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.

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

20. **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.

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

22. **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: Garrett Kamemoto
Garrett Kamemoto
Interim Executive Director

SEA ENGINEERING, INC.

By: Russel K. H. Luke
Russel K. H. Luke
Construction Project Manager

APPROVED AS TO FORM:



Deputy Attorney General

EXHIBIT A

PARKING & COMFORT STATION

