

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

July 1, 2020

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

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with Royal Contracting Co. Ltd. for the Use of a Portion of Halekauwila and Queen Streets in Kakaako for the Purpose of Utility Relocation (ROE 16-19) to Extend the Term for an Additional One Year Until July 13, 2021?

SUMMARY:

Royal Contracting Co. Ltd. has been contracted by the City and County to relocate and install electrical lines, water/sewer lines, gas lines, and storm drains in preparation for the Honolulu rail project. Some of this work is being done on HCDA property in Kakaako. Royal Contracting Co. Ltd. currently has a one-year ROE with HCDA for the subject area but requires additional time to complete the work. They request another year be added to the term of their current ROE.

AUTHORITIES:

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

BACKGROUND:

On July 13, 2018, the Hawaii Community Development Authority (HCDA) executed a one-year Right of Entry (ROE) agreement with Royal Contracting Co., Ltd. for 138,810 square feet of roadway in HCDA-owned remnants of Halekauwila Street and Queen Street in Kakaako Mauka. These road remnants are two of 50 other remnants that will eventually be transferred to the City and County of Honolulu, in accordance with the HCDA board decision on May 2, 2018. The purpose of this ROE was to allow Royal Contracting Co. to relocate infrastructure in advance of rail construction commencing in Kakaako. This included relocation of electrical lines underground, relocation of gas lines, removal /installation/relocation of storm drain, water and sewer lines, temporary road repairs as needed, permanent roadway reconstruction, communications/electrical line relocations and related activities to achieve these purposes.

Due to legal problems and project delays, the work was not completed by the time the original ROE expired in July 2019. The HCDA board executed a new right of entry agreement (ROE 16-19) with Royal Contracting Co. for the same area, with the intent that the work would be completed by July 13, 2020. This ROE is attached hereto as Exhibit A. However, continued project delays and the onset of the COVID-19 pandemic further delayed construction. Royal

Contracting Co. now requests an additional year to complete the utility work, requiring an amendment to the existing ROE 16-19. The proposed amendment extending the term of ROE 16-19 to July 13, 2021 is attached hereto as Exhibit B.

If the board decides not to approve this extension, ROE 16-19 will expire on July 13, 2020 and Royal Contracting Co. will be unable to complete its utility relocation and installation on HCDA property.

ANALYSIS:

The relocation of utilities is necessary for the rail project to move forward in the Kakaako Community Development District. Royal Contracting Co. Ltd. requires this extension of time to complete its work in the area, as the HCDA still controls the remnant roadway parcels until they can be transferred to the City.

Although the HCDA still intends to transfer all of its remnant road parcels in Kakaako Mauka to the City and County of Honolulu, a timeline for the transfer is unclear. Extending the current ROE 16-19 for an additional year will allow Royal Contracting Co. to continue their work while the HCDA and the City work to effectuate the remnant road land transfer.

Royal Contracting Co. Ltd. agrees to exercise diligence and due care for public safety while conducting its work on HCDA property and will repave and restore the roadways upon completion of the utility relocation work.

RECOMMENDATION:

HCDA staff recommends that the Board Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with Royal Contracting Co. Ltd. for the Use of a Portion of Halekauwila and Queen Streets in Kakaako for the Purpose of Utility Relocation (ROE 16-19) to Extend the Term for an Additional One Year Until July 13, 2021?

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:

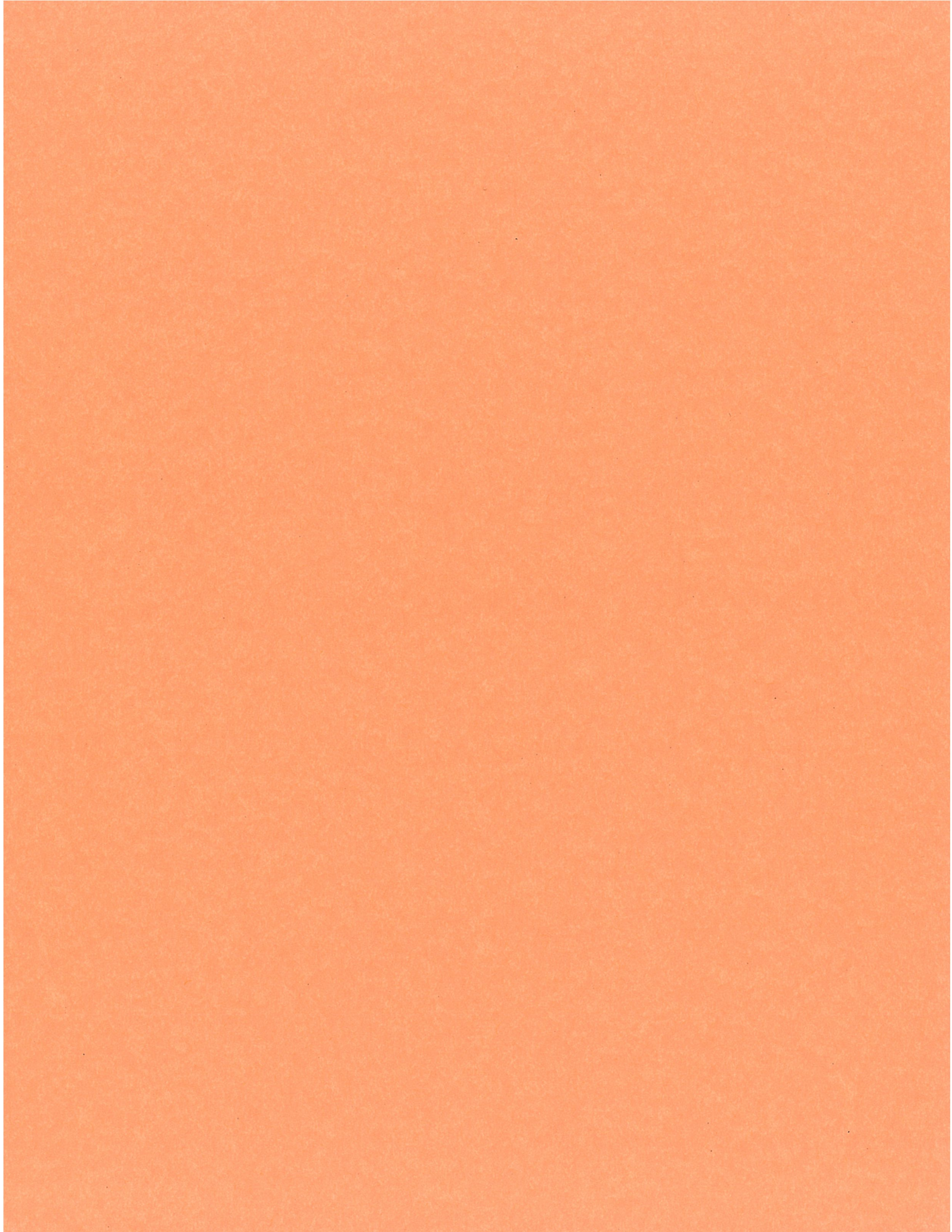


Garrett Kamemoto, Interim Executive Director

Attachments

Exhibit A – Executed Right of Entry Agreement ROE 16-19

Exhibit B – DRAFT First Amendment to Right of Entry Agreement ROE 16-19



REVOCABLE RIGHT OF ENTRY (ROE 16-19)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (“ROE”) made and executed this 24th day of June 2019, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA” or “GRANTOR”), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to ROYAL CONTRACTING CO. LTD., whose business address is 677 Ahua Street, Honolulu, Hawaii 96819 (“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 following Oahu Tax Map Key Numbers below:

- 2-1-051:003 400 sq. ft. Exhibit A
- 2-1-051:019 8,059 sq. ft. Exhibit A
- 2-3-003:087 29,763 sq. ft. Exhibit B
- 2-3-004:080 64,942 sq. ft. Exhibit C
- 2-1-050:067 19,230 sq. ft. Exhibit D
- 2-1-052:022 16,371 sq. ft. Exhibit D
- 2-1-030:046 45 sq. ft. Exhibit E

The Tax Map Key Numbers listed above represent approximately 138,810 square feet of roadway area along Halekauwila Street and Queen Street, Honolulu, Hawaii, 96813 (Premises). The Premises is more particularly shown and depicted on the maps attached to this ROE as Exhibits “A” through “E” 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 at 12:00 a.m. on July 13, 2019 and terminate at 11:59 p.m. on July 13, 2020 (“Termination Date”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. 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 relocation of electrical lines underground, relocation of gas lines, removal /installation/relocation of storm drain, water and sewer lines, temporary road repairs as needed, permanent roadway reconstruction,

communications/electrical line relocations and related activities to achieve these purposes. GRANTEE shall employ appropriate safety measures at all times, including but not limited to, traffic mitigation measures, environmental protection measures, and roadway protection measures (i.e., steel plates). 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 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 Indemnified Parties for all costs and expenses, including reasonable

attorney's fees, incurred in connection with the Indemnified Parties 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:
\$100,000 Bodily Injury by Accident Each Accident
\$100,000 Bodily Injury by Disease
\$500,000 Policy Limit and \$500,000 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. Upon request, GRANTEE shall furnish a certificate of insurance to confirm that HCDA is included as an additional insured in the above limits.
- (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.

10. **Condition of Premises/Assumption of Risk.** GRANTEE hereby agrees and acknowledges that 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 known to HCDA or reasonably discoverable by GRANTEE. GRANTEE agrees that all property, approved improvements, and equipment of GRANTEE kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of GRANTEE. This provision shall survive the expiration or earlier termination of the ROE.

11. **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 Chapter 269E.

12. **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.

13. **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.

14. **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.

15. **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.

16. **Additional Terms and Conditions.**

- (a) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.
- (b) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (c) Plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (d) 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.

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

18. **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

Royal Contracting Co., Ltd.
Attention: Leonard Leong
677 Ahua Street, Honolulu, Hawaii 96819
Telephone: (808) 839-9006
E-mail: Leonard@royalcontracting.com

19. **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.

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

21. **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.

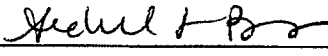
22. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

23. **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: 
Aedward Los Banos
Executive Director

ROYAL CONTRACTING CO., LTD.

By: 
Name: Leonard K.P. Leong
Title: V. Pres.

APPROVED AS TO FORM:

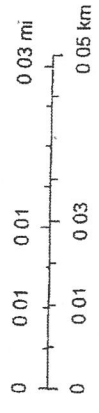

Deputy Attorney General

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October 30, 2018

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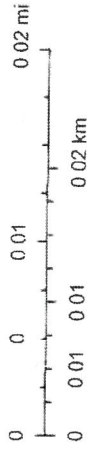
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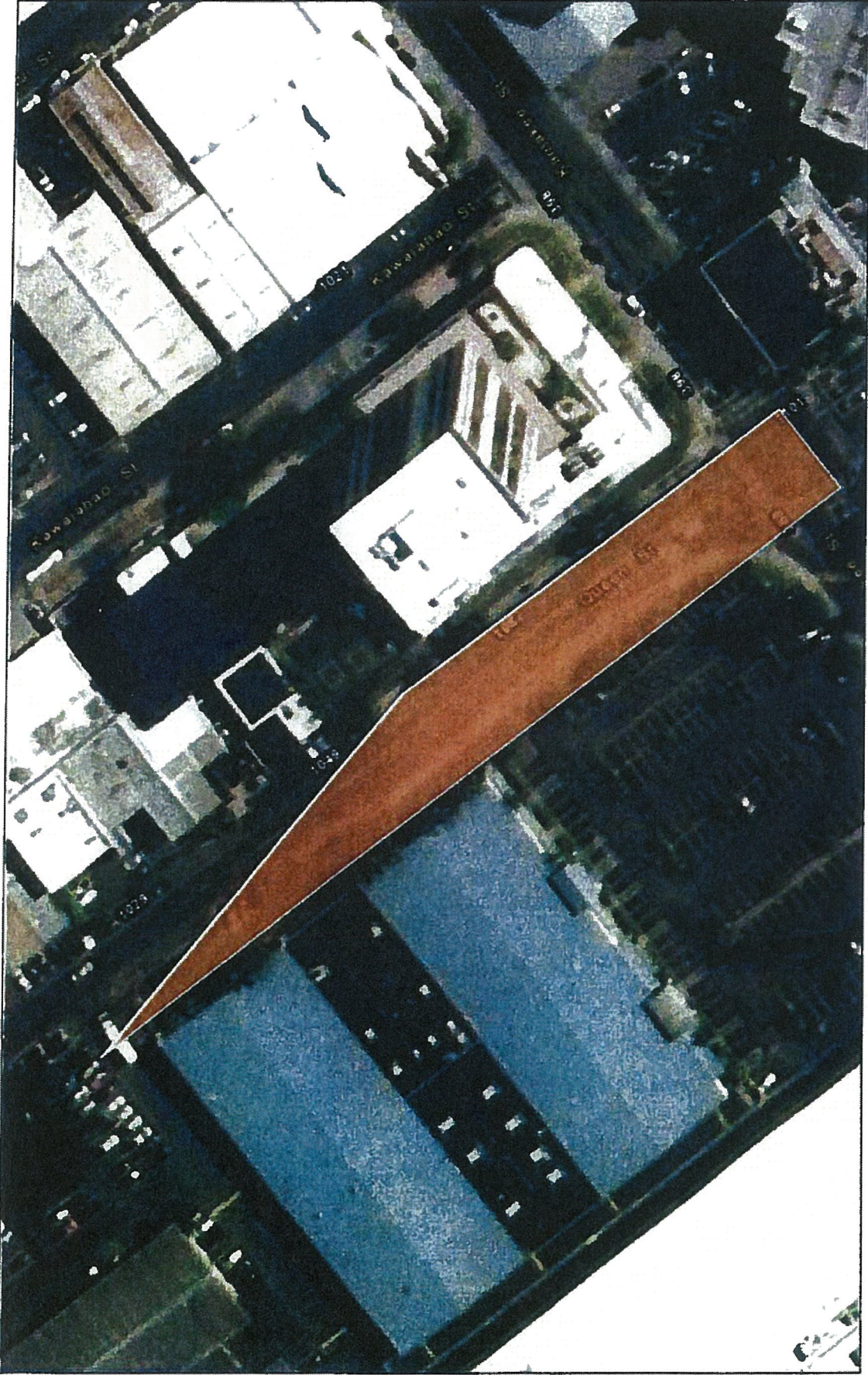
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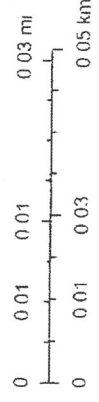
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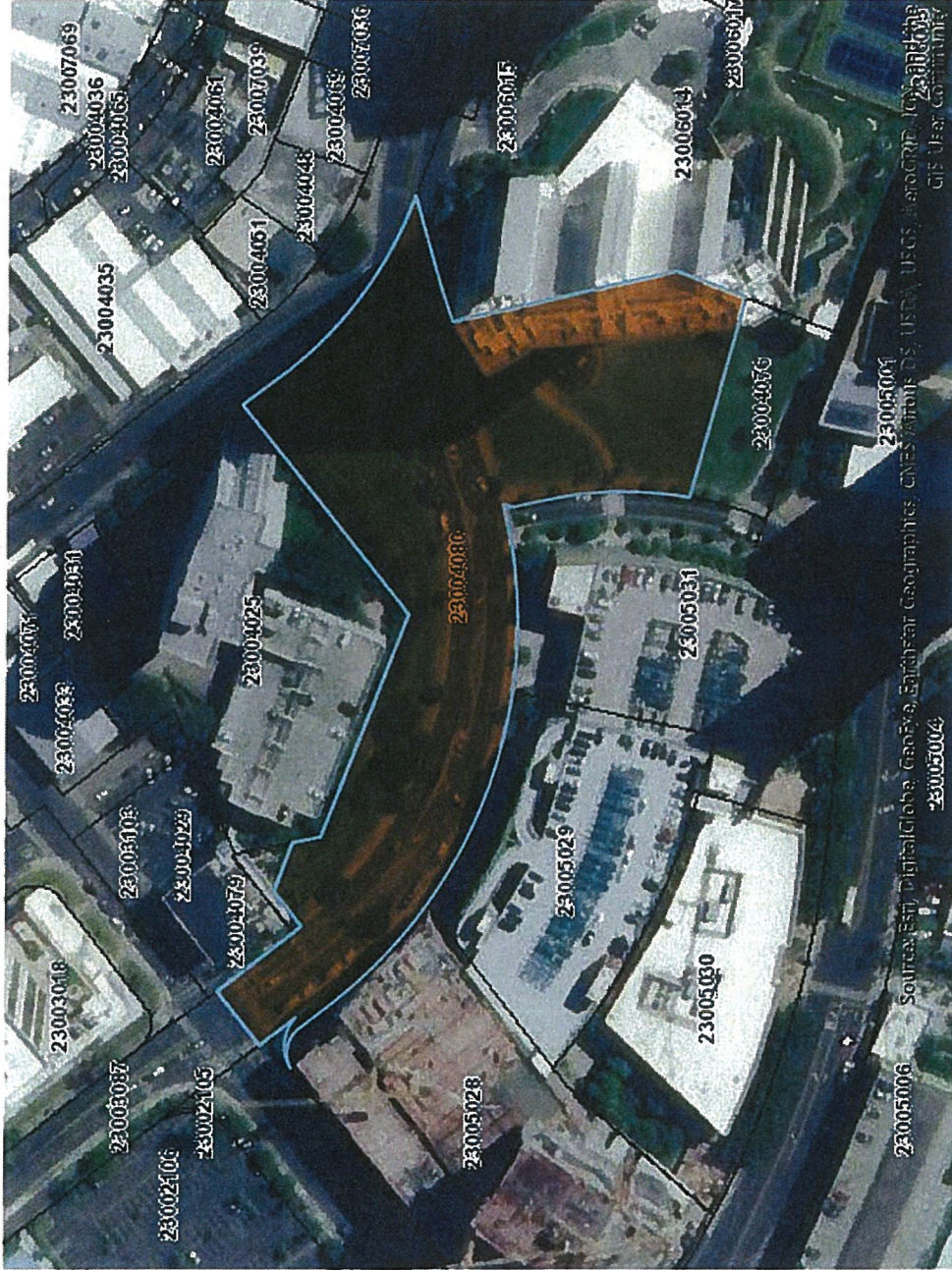


October 30, 2018

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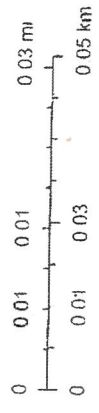


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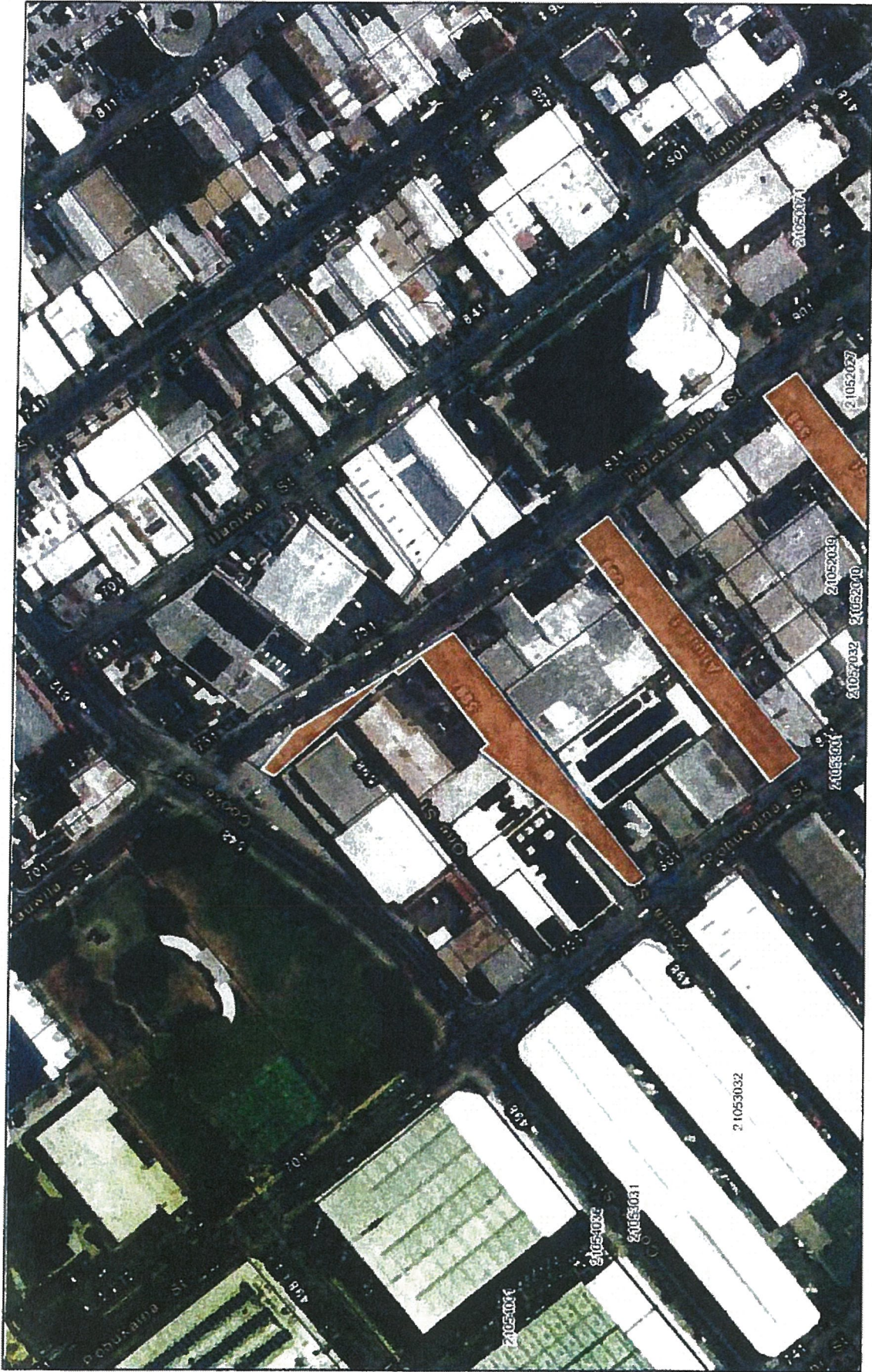
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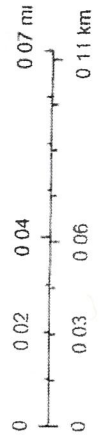
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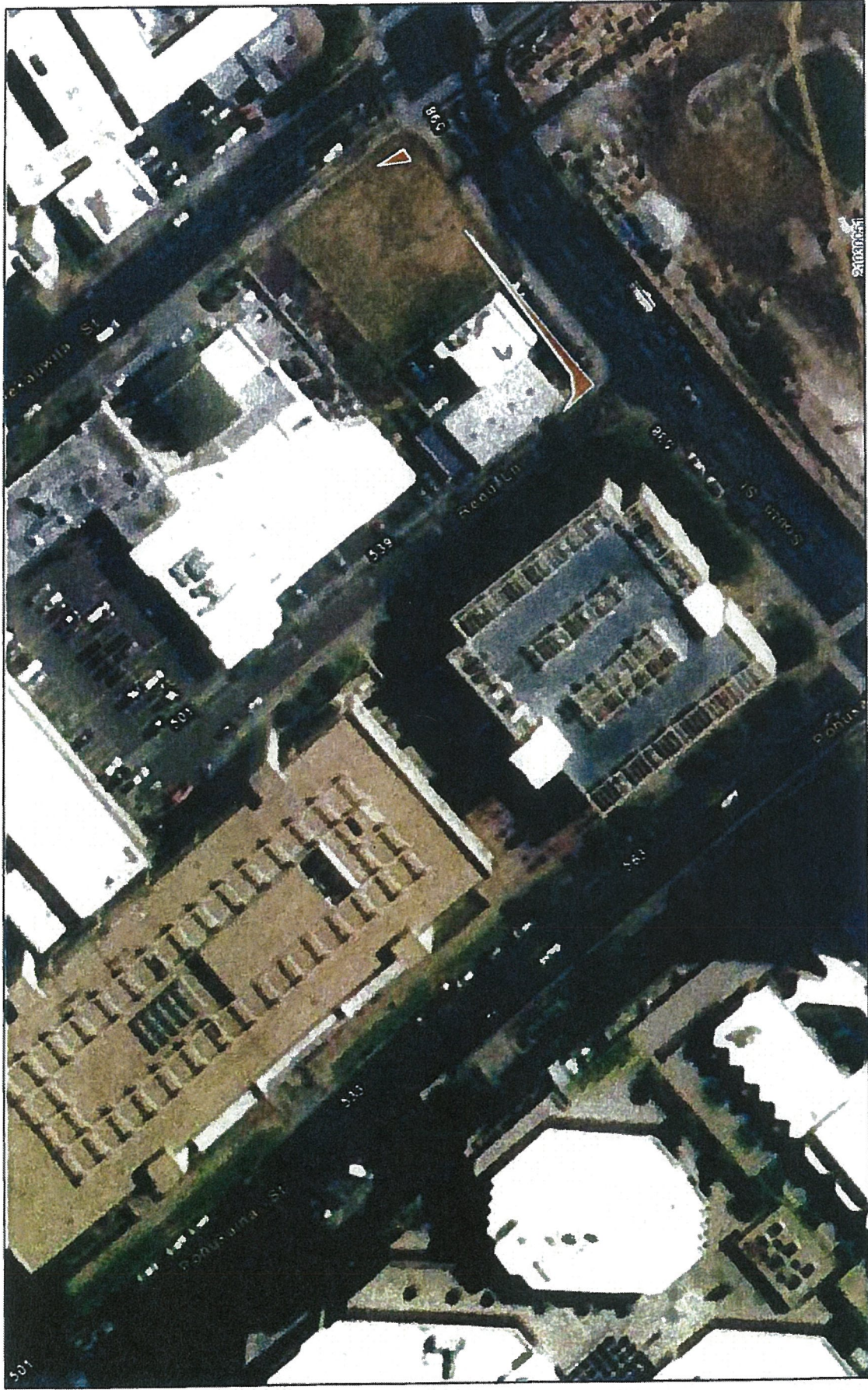
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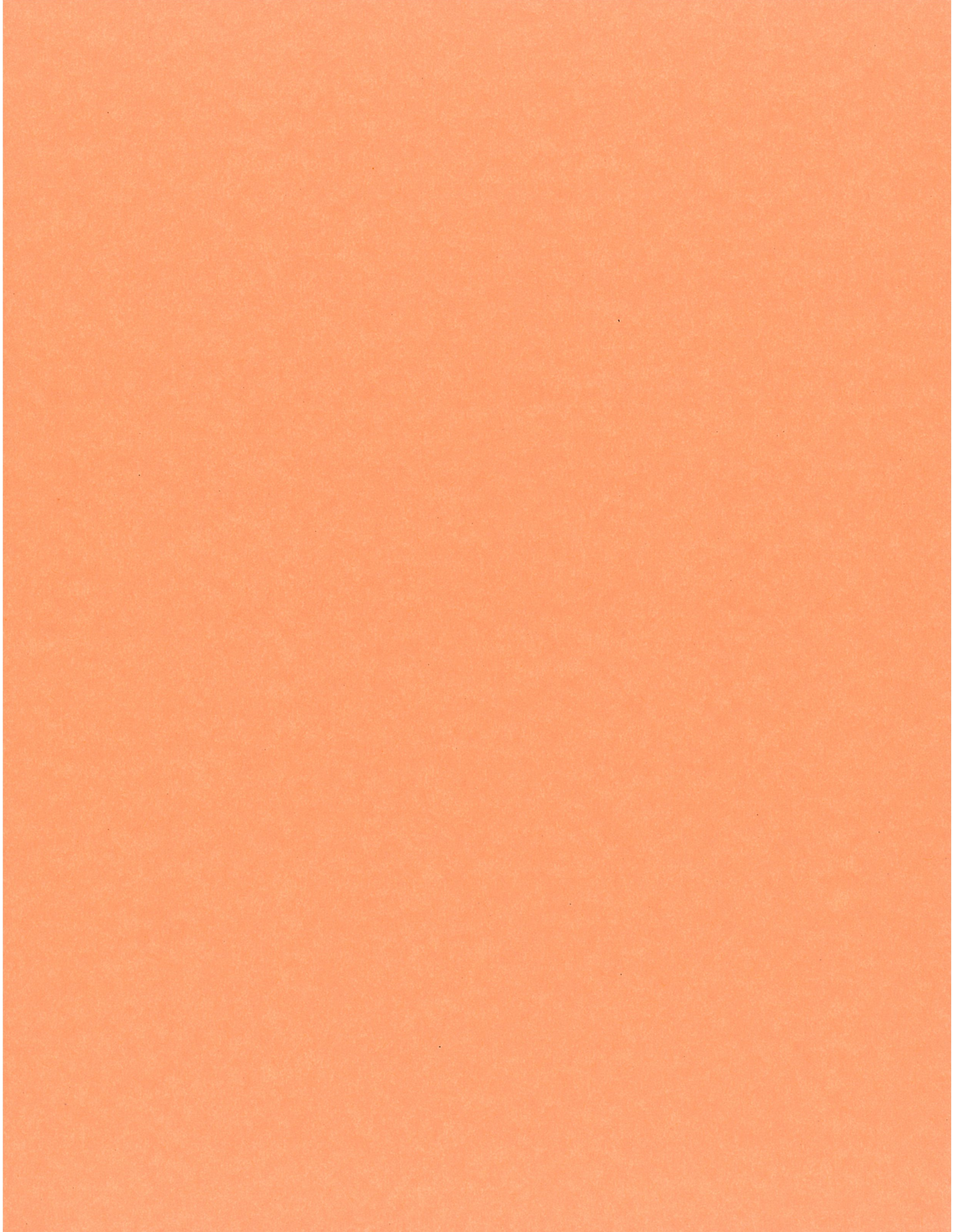


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October 30, 2018



FIRST AMENDMENT TO REVOCABLE RIGHT OF ENTRY (ROE 16-19)

This First Amendment to the Revocable Right of Entry 16-19 (“**First Amendment**”) is executed this _____ (“**Execution Date**”), by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”** or “**GRANTOR**”), a body corporate and a public instrumentality of the State of Hawaii, and **ROYAL CONTRACTING CO. LTD.**, whose business address is 677 Ahua Street, Honolulu, Hawaii, 96819 (“**GRANTEE**”) (GRANTOR and GRANTEE are each called a “**Party**” and collectively called “**the Parties**”).

WHEREAS, the Parties entered into a Revocable Right of Entry (ROE 16-19) dated June 24, 2019 (hereinafter, the “**ROE**”), a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, the Parties desire to extend the term of the ROE for one additional year;

WHEREAS, the HCDA Kakaako Board approved the one-year extension at its Authority meeting held on July 1, 2020;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. Section 3 of the ROE is hereby replaced in its entirety as follows:

3. Term and Duration. The term of this ROE shall commence at 12:00 a.m. on July 13, 2019 (“**Commencement Date**”) and terminate at 11:59 p.m. on July 13, 2021 (“**Termination Date**”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

2. This First Amendment, upon execution by the Parties, shall be effective as of the date stated above. All understandings and agreements between the Parties with respect to the ROE are merged into, or superseded by, this First Amendment. This First Amendment fully and completely expresses the agreement of the Parties and shall not be modified or amended except by written agreement executed by each of the Parties hereto.

3. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

4. This First Amendment 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 amendment of the ROE.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: _____
Garett Kamemoto
Interim Executive Director and CEO

ROYAL CONTRACTING CO. LTD.

By: _____
Name:
Title:

APPROVED AS TO FORM:

Deputy Attorney General