

Reviewed and Approved by Executive Director: Gajx2LA

October 4, 2023

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Negotiate and Execute a Ground Lease between the Hawaii Community Development Authority and the Kalaeloa Heritage and Legacy Foundation (KHLF) for the Kalaeloa Heritage Park, Located on Parcel No. 13073-D at 91-1940 Coral Sea Road, Kapolei, Hawaii, Tax Map Key No. (1) 9-1-013:069, for a Period of Five Years.

II. BACKGROUND

The Kalaeloa Heritage and Legacy Foundation (KHLF) is a Section 501(c)(3) tax exempt entity that is a Native Hawaiian organization formed by members of ‘Ahaui Siwila Hawaii O Kapolei (ASHOK) and dedicated residents of the Honouliuli ahupua‘a (land district) for the purpose of preserving and protecting Native Hawaiian Cultural and historical sites of Kalaeloa by creating a heritage park.

KHLF currently holds a nonexclusive revocable Right of Entry Agreement (ROE 7-19) from the Hawaii Community Development Authority (HCDA), for the sole purpose of preserving and maintaining the archaeological, cultural, and natural resources in the Kalaeloa Heritage Park (hereafter, the Park). ROE 7-19 is attached hereto as Exhibit A.

The Park is located on an approximately 11.501-acre parcel identified as Parcel No. 13073-D located in Kalaeloa Community Development District (KCDD) and identified as Tax Map Key No. (1) 9-1-013:069 (hereafter, the Premises).

KHLF previously held a ground lease for the Premises and a much larger 65-acre adjacent parcel; however, that lease was terminated in April 2019 due to failure to resolve stockpiling issues on site.

ROE 7-19 was executed on May 17, 2019, and was originally intended to be a short-term, six-month agreement to allow time to negotiate a longer-term arrangement with KHLF for future maintenance of the Park. However, due to the onset of the COVID-19 pandemic and other delays, the HCDA and KHLF agreed to extend the term of ROE 7-19 five times while negotiations on an arrangement continued. ROE 7-19 currently terminates on November 17, 2023.

HCDA staff and KHLF negotiated the terms for a longer-term arrangement in late 2019, but execution of the agreement was put on hold until questions regarding a burial vault and other improvements located at the Park could be satisfactorily resolved.

In May 2020, Kalaeloa Authority members requested KHLF to complete the following eight milestones, included as a part of the Second Amendment to ROE 7-19, prior to the consummation of a longer-term arrangement:

1. Work with HCDA to finalize a proposed stewardship agreement;
2. Develop a management plan specifying how the population of free-range animals (i.e., chickens, peacocks, etc.) is being managed by KHLF to ensure that the premises is not damaged or adversely impacted;
3. Maintain an updated monthly site inventory at all times, that includes all large equipment brought on premises (i.e., water totes/trucks, storage containers, wood chippers, equipment trailers, etc.);
4. Stripe/demarcate the parking and events area located within the maintenance yard to ensure that use and activities are conducted within the TMK boundaries of the ROE premises;
5. List of cultural, historical, and archaeological sites/features to be refurbished/restored, and specify how these cultural, historical, and archaeological sites/features will be restored;
6. List all new native animal or plant species (e.g., pueo, etc.) for reintroduction on the Premises;
7. List the available grants that KHLF is pursuing to help fund maintenance activities on the Premises; and
8. Submit copies of all building permits/approvals and related correspondence for all structures on premises.

KHLF satisfactorily completed the majority of the milestones by the end of 2020 and finally completed the eighth milestone in December 2022, with the Hawaii State Historic Preservation Division (SHPD) providing after-the-fact acceptance of the burial vault. A summary of the milestones and their completion dates is attached as Exhibit B.

III. DISCUSSION

As the landowner of the Park, the HCDA is bound by restrictions, stipulations, and covenants contained in Section VI, Subsection H, Historic Preservation Covenant, and provisions H(i) through H(vii), of that certain Quitclaim Deed dated September 21, 2010 (hereafter the Deed), attached hereto as Exhibit C, to protect and maintain the historic properties on the premises in a manner that preserves the attributes that contribute to the eligibility of the said historic properties for the National Register of Historic Places.

KHLF's mission is stewardship and preservation of the historic properties and the cultural landscape of the Park, as well as to educate the community on cultural traditions and practices, advocate cultural awareness, and implement and maintain an authentic Hawaiian presence in the KCDD.

The HCDA recognizes that the cultural, historical, and educational activities provided to the public by KHLF at the Park are valuable to the community and believes KHLF should continue to manage the Park on HCDA's behalf under a lease to provide necessary stewardship services.

Now that all eight milestones have been completed, HCDA staff and KHLF are requesting approval to memorialize the stewardship responsibilities in the form of a ground lease as summarized below:

HCDA Duties and Obligations

1. **Lease.** HCDA hereby grants to KHLF a leasehold interest in the premises for the purposes of carrying out the stewardship obligations.
2. **Historic Properties.** HCDA shall allow KHLF to manage the Historic Properties pursuant to Section VI, Subsection H, Historic Preservation Covenant, in the Deed, on behalf of the HCDA.
3. **Monitoring and Inspections.** HCDA shall monitor KHLF's performance throughout the term of the lease to determine whether the requirements as specified herein are being satisfactorily performed. The HCDA reserves the right to conduct periodic and unscheduled site inspections at any time; however, HCDA will perform, at a minimum, an annual site inspection of the Premises to inspect the Premises and confirm site inventory.
4. **Permitting.** HCDA shall assist and cooperate with KHLF to obtain any and all necessary permits or permissions to facilitate any authorized activity in accordance with state law or county ordinances.

KHLF Duties and Obligations

1. **Quitclaim Deed.** KHLF acknowledges and agrees to comply with all applicable terms and conditions set forth in the Deed, specifically including but not limited to the restrictions, stipulations and covenants set forth in Section VI, Subsection H, Historic Properties Covenant, on behalf of itself, its successors and assigns (KHLF Duties).
2. **Costs and Expenses.** KHLF shall pay for all costs, fees, and expenses incurred in connection with KHLF's Duties and authorized activities at the Premises. KHLF may utilize community volunteer labor, seek grants from charitable, community, and governmental organizations, and allocate its own operating budget to cover costs.
3. **Permitting.** KHLF shall seek, obtain, and pay for all required permits for its Duties and authorized activities in accordance with and pursuant to all applicable

laws and rules. KHLF shall work with SHPD to review any project requiring a permit with the potential to affect or impact Historic Properties.

4. **Reporting.** KHLF shall submit written reports to the HCDA on a monthly basis to summarize all activities on the Premises no later than the 15th of each month for the preceding month. Such monthly reports shall include but is not limited to an updated site inventory, summary of events that occurred in the preceding month, and a financial summary of all revenue collected in the preceding month. Any incidents, activities or updates related to health or safety shall be immediately reported to HCDA in writing. KHLF shall also provide an annual report to the HCDA no later than the month of March for the preceding year.
5. **HCDA Authority Updates.** At a minimum, KHLF shall provide an annual update to the HCDA Kalaeloa Authority at an Authority meeting but shall be available to provide updates upon request by the HCDA.
6. **Feral Animal Management.** KHLF shall continue to implement its Kalaeloa Heritage Park Feral Animal Management Plan, submitted to HCDA on July 23, 2020 to ensure the Premises is not damaged or adversely impacted.
7. **Authorized Programs and Activities.** KHLF may allow Permitted Persons, as defined in the Lease, to perform or conduct authorized programs and activities on the Premises in furtherance of the KHLF Duties, including those for the purposes of education, native Hawaiian cultural practices or which relate to the natural and/or cultural resources of the Premises. Such programs and activities may be conducted by KHLF or other Permitted Persons, subject to prior written HCDA approval. KHLF may also conduct community service workdays that promote the preservation and protection of the Historic Properties and environmental resources in the Premises, as well as host or allow local or nationally chartered US veteran services groups or organizations to host gatherings related to the historical landscape of the Premises.
8. **Commercial Activities.** KHLF may charge fees for the following activities to generate income subject to prior HCDA written approval:
 - a) Docent-led or self-guided site tours at the Premises;
 - b) KHLF fundraisers or other paid events on the Premises, provided KHLF obtains all necessary federal, state and local permits, including, but not limited to, liquor licenses and/or a Conditional Use of Vacant Land permit from the HCDA. Such events may not extend beyond the boundaries of the Premises at any time, for any reason;
 - c) Sales of products developed from materials available at the Premises (i.e. kiawe wood, native plants and seeds, craft items, etc.) or related goods/services, provided KHLF obtains all necessary federal, state and local permits for such activities and as consistent with the HCDA KCDD rules;

- d) Sales of refreshments, crafts, gifts, and souvenirs in a gift-shop type environment, provided all required federal, state and local permits are obtained as necessary and as consistent with the HCDA KCDD rules; and
- e) Photo shoots and/or videography on the Premises, provided all required federal, state and local permits are obtained as necessary and as consistent with the HCDA KCDD rules.

The initial lease term would be for a period of five (5) years, with further extensions allowable with written mutual agreement. A termination clause will allow either the HCDA or KHLF to terminate the lease with six months advance written notice.

There will be no lease rent charged to KHLF, and there will be no compensation provided by HCDA to KHLF for their stewardship activities, including Park maintenance duties, which would otherwise be the HCDA's responsibility under the Deed for the Premises.

The HCDA agrees to support KHLF in legislative requests for capital improvement funding for Park improvements, such as perimeter fencing, road improvements, and the installation of utilities servicing the Premises (e.g., water, sewer, electricity).

KHLF intends to continue utilizing community volunteer labor, grant funding, and program/activity fees to cover the cost of operating and maintaining the Premises. As part of the lease, KHLF will continue submitting monthly reports to the HCDA to summarize all activities and revenues raised on the Premises.

At all times, KHLF will comply with all federal, state, and county laws, and will obtain all necessary permits for any activities or work at the Premises.

IV. RECOMMENDATION

It is recommended that the Board Authorize the Executive Director to Negotiate and Execute a Ground Lease between the Hawaii Community Development Authority and the Kalaeloa Heritage and Legacy Foundation (KHLF) for the Kalaeloa Heritage Park, Located on Parcel No. 13073-D at 91-1940 Coral Sea Road, Kapolei, Hawaii, Tax Map Key No. (1) 9-1-013:069, for a Period of Five Years and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:

Exhibit A – ROE 7-19, as amended.

Exhibit B – Milestones completion summary and supporting documentation.

Exhibit C – Quitclaim Deed dated September 21, 2010

Prepared By: Lindsey Doi, Asset Manager  _____