

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 9, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:18OD-115

OAHU

Grant of Perpetual, Non-Exclusive Easement to City and County of Honolulu for Drainage Purposes; Issuance of Management Right-of-Entry; Kapalama, Honolulu, Oahu, Tax Map Keys: (1) 1-2-025: portions of 011 and 089, (1) 1-5-032 portions of 002 and 043

APPLICANT:

City and County of Honolulu ("City").

LEGAL REFERENCE:

Sections 171-55 and -95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Kapalama, Honolulu, Oahu, identified by Tax Map Keys: (1) 1-2-025: portions of 011 and 089, and (1) 1-5-032 portions of 002 and 043, and its approximate location is shown by the red line on the attached **Exhibit A**.

AREA:

5,061 square feet, more or less, plus a 15-foot wide outfall. Final area to be reviewed and approved by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: I-3 and P-1

TRUST LAND STATUS:

Acquired after Statehood, i.e. non-ceded

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Executive Orders Nos. 3457 and 3947 setting aside to the Department of Transportation for harbor purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair the box culvert under and across State-owned land for drainage purposes.

TERM:

Perpetual.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on November 8, 2014.

DCCA VERIFICATION:

Not applicable. Government agency.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Execute and enter into a Memorandum of Agreement with the Department of Transportation that establishes the roles and responsibilities of the Applicant, and DOT regarding the easement and the box culvert mentioned in this submittal;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
3. Process and obtain designation of easement approval at the Department of Planning and Permitting at Applicant's own cost.

REMARKS:

On July 19, 1965, the Army granted a 5,061-square foot, 50-year easement to the City to

construct, use, operate and maintain a box culvert for drainage. The easement was recorded at the Bureau of Conveyances under Liber 5135, Page 389. When the Army transferred Piers 39 and 40 [portions of former Kapalama Military Reservation] to the State by a quitclaim deed in 1988, portion of the above-mentioned easement was actually within the 1988 fee transfer.

By another quitclaim deed in 1990, the Army transferred additional lands in the vicinity to the State, including the remaining portions of the 1965 drainage easement area.

Pursuant to Executive Orders Nos. 3457 and 3947, the Department of Transportation, Harbors Division (“DOT”) manages the subject parcels, including the easement area, as part of the Honolulu Harbor.

Kapalama Container Terminal (“KCT”)

As part of the development of the former Kapalama Military Reservation area into the KCT, DOT plans to build a bridge structure over the existing drainage structure. The new bridge structure will provide sufficient loading capacity for the traffic in the new KCT. Therefore, the box culvert will not bear and be impacted by the new loads associated with container terminal operations. As described above, DOT and the City are currently working towards a memorandum of agreement (“MOA”) addressing the box culvert as well as the design and construction of an extension beyond the current easement area. A copy of a letter dated July 13, 2018 from DOT to the City documents the latest understanding between the two agencies and is attached as **Exhibit B**.

Proposed easement

The 50-year easement granted by the Army to the City expired in 2015. DOT has no objection to the continuance of the easement in the future KCT, provided that the City agrees and executes the MOA and complies with its terms and conditions. Until the issuance of the new easement, DOT requests the department issue a right-of-entry permit for the interim maintenance and other responsibilities of the City for the existing culvert.

Right-of-entry

Staff recommends the Board authorize the issuance of a management right-of-entry retroactively from July 19, 2015 until the issuance of the proposed easement covering both the existing culvert and the extension to be constructed by DOT. The requested right-of-entry shall also include an automatic termination clause in the event the City fails to execute the MOA presented by DOT or upon the termination of the MOA in the event of the City’s non-compliance with its terms and conditions.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff did not solicit comments from other government agencies, except DOT and City, noting that such solicitation for comment was done during the preparation of the environmental impact statement stage.

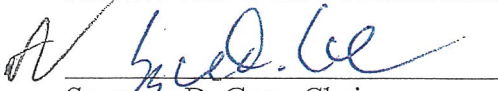
RECOMMENDATION: That the Board:

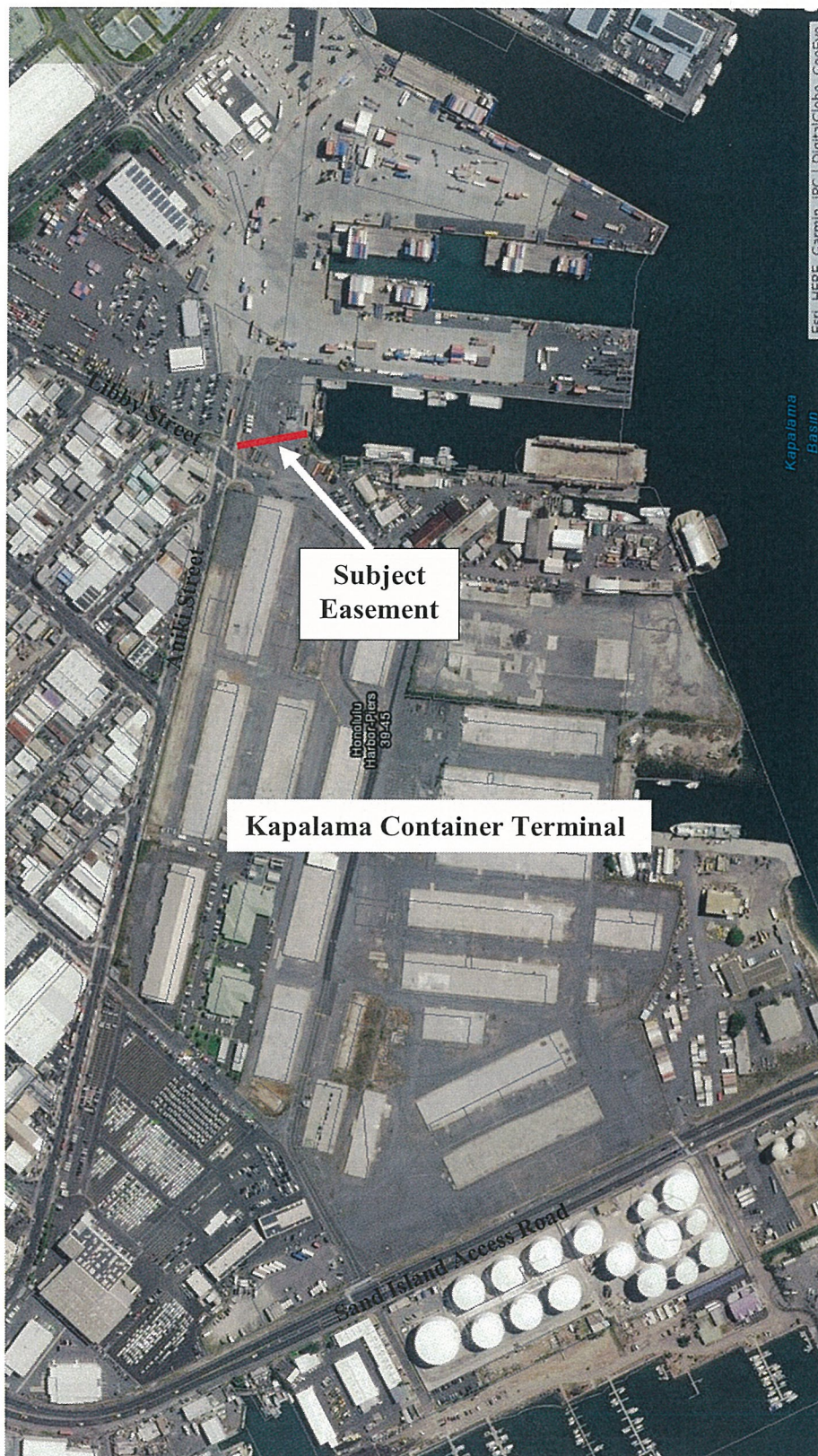
1. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the City and County of Honolulu covering the subject area for drainage purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry permit to the City and County of Honolulu covering the subject area for drainage purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit document form, as may be amended from time to time;
 - B. The right-of-entry shall commence from July 19, 2015 and expire upon issuance of the requested easement;
 - C. The right-of-entry shall automatically be terminated upon the City and County of Honolulu's failure to execute the memorandum of agreement to be presented by the Department of Transportation regarding the new easement or upon the termination of the memorandum of agreement in the event of the City and County of Honolulu's non-compliance with its terms and conditions; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 1-2-35: por. 11, 89 and (1) 1-5-32: por. 02, 43

EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:
DIR 0679
HAR-ESP 0339.18
R/S 18.0546

July 13, 2018

Mr. Ross S. Sasamura, P.E.
Director and Chief Engineer
Department of Facility Maintenance
City and County of Honolulu
1000 Uluohia Street, Suite 215
Kapolei, Hawaii 96707

Dear Mr. Sasamura:

Subject: The New Kapalama Container Terminal Wharf and Dredging, Honolulu Harbor, Oahu, Hawaii, Job H.C. 10498, Pier 40F, Tax Map Key Nos.: (1) 1-2-025: 011 and (1) 1-5-032: 002 & 043, at Kalihi-Kai, Honolulu, Oahu

Thank you for your letter of June 6, 2018, a copy of which is enclosed, pertaining to an existing drainage box culvert (box culvert), that was built and operated by the City and County of Honolulu (City), from Auiki Street to Honolulu Harbor, as well as to easements for the box culvert which expired in June 2015 (see Document No. 90-167346 and Liber 5135, Page 389).

As you know, the Department of Transportation, Harbors Division (DOT Harbors) will be extending the container yard at Pier 40F over this box culvert under the "The New Kapalama Container Terminal Wharf and Dredging, Honolulu Harbor, Oahu, Hawaii, Job H.C. 10498" project (H.C. 10498 Project).

We understand that the City desires to retain ownership, and continued operation and maintenance, of the box culvert and is therefore requesting that a new perpetual easement for the existing box culvert be granted by the State of Hawaii (State) as well as for any extension to the box culvert that the State, or the City, might construct to accommodate the H.C. 10498 Project.

Please be advised that DOT Harbors is amenable to the State granting the requested perpetual drainage easement, subject to agreement between the City and DOT Harbors as to the respective roles and responsibilities of each agency regarding the easement, the box culvert, including access, maintenance, and repairs thereto, the container yard, and the H.C. 10498 Project above, and the processing of any plans and documents associated with these elements. These roles and responsibilities would be memorialized in a Memorandum of Agreement (MOA) which we will be transmitting to the City for review and execution shortly.

EXHIBIT "B"

In any case, your letter contained the following requests associated with the new easement as well as to the maintenance of the box culvert. Please see our responses to these requests, some of which will be incorporated into the MOA, as follows:

- *We also request the following: 24-hour, 7-days a week access to Pier 40F, above our box culvert, for our maintenance personnel and equipment for any emergency response requirement as the need arises. We acknowledge that there is the possibility that harbors operations, or security situations, may temporarily hinder access, such as a vessel being moored in front of or adjacent to the box culvert outlet, but that DOT Harbors will make every reasonable effort to provide access to the City in emergency circumstances.*

The box culvert is within a harbor facility that is secured under the federal Maritime Transportation Security Act (MTSA) and the federal Security and Accountability for Every (SAFE) Port Act. However, there are no restrictions for City personnel entering the Harbor during emergencies, and access for such situations can be arranged by contacting our Harbors Operations Section at (808) 587-2070 or the Harbors Traffic Control (at Aloha Tower) at (808) 587-2076. These offices are staffed around the clock, seven days a week.

Furthermore, during obvious emergency circumstances, i.e., flooding, a pavement collapse, etc., City personnel could approach the guard at the Young Brothers gates at either Auiki Street or at the end of Waiakamilo Street. The guard there would either grant access outright (and immediately) depending on the gravity of the situation, or the guard would call Harbors Operations Section or Harbors Traffic Control, or the Harbors Police, to confirm the situation and/or verify authorization to allow City personnel to enter the harbor facility. City personnel may also directly call Harbors Police (587-2007/2006) to gain access in an emergency.

- *(We also request . . .) Access to Pier 40F, for routine maintenance and operation of the box culvert security clearances, to be coordinated with adequate advanced notice to DOT Harbors.*

Access for routine maintenance and operations can be coordinated by advance notice, by email or phone, one week (or five working days) in advance, to our Harbors Operations Section and to our Harbors Traffic Control concurrently. The Harbors Operations Section and the Harbors Traffic Control can be contacted at the numbers above and each will provide an email contact. The request for routine entry will need to include the date(s) and time(s) for requested entry, the purpose and location of work (i.e., maintenance of the City's box culvert within the drainage easement), the number of City personnel, as well as the number of any contractors, subcontractors or other agents acting on behalf of the City, if applicable, along with a description of any equipment, to be entering the Harbor security zone, and the name and phone number for the point-of-contact person.

Due to MTSA and SAFE requirements, City personnel, and any contractors, subcontractors or other agents acting on behalf of the City, if applicable, will need to possess Transportation Worker Identification Credential (TWIC) and Maritime Security (MARSEC) clearances for routine maintenance access on a one-to-one ratio. A City maintenance worker, or one contractor, subcontractor, or agent, who has TWIC/MARSEC card/clearance, may escort one City worker, or one contractor, subcontractor, or agent, who does not have these clearances, into the Harbor security zone.

The TWIC application process can be found at: <http://www.tsa.gov/for-industry/twic>. There are several local entities that provide MARSEC training, including Star Protection, Securitas, and Young Brothers.

City vehicles entering the Harbor security zone will need to be marked (i.e., as City vehicles) and have current safety check, registration, and certificate of insurance. The registration, safety check, and insurance of any vehicles of any contractor, subcontractor, or agent acting on behalf of the City, entering the security zone will also need to be current.

As you acknowledged in your letter, there could be occasions when City personnel will be denied access, on a specific day, or time, so access would have to be rescheduled. Such circumstances might include times when Harbor operations would conflict with the requested maintenance work (i.e., a boat is scheduled to be moored and/or if cargo is actively being unloaded) or if the Harbor security level is elevated.

- *(We also request . . .) Nine and a half feet (9.5') clearance on either side of the centerline of the box culvert, for a total width of 19-feet, below the container yard pavement, should any maintenance or excavation repairs be required.*

As shown in the H.C. 10498 Project construction plans which were submitted to the City Department of Planning and Permitting (DPP) for review on May 5, 2018, sheet piles are proposed to be installed along each side, and four feet clear, of the exterior of the box culvert. According to the record drawings for the "Job No. 19-65 Improvement District No. 183 Kalihi Kai" project, the exterior width of the box culvert is 11'-5". Based on the 11'-5" width noted in the record drawings, the horizontal distance between the proposed sheet piles would be $(4' + 11'-5" + 4' =) 19'-5"$ which will be slightly more than the requested horizontal width. However, due to construction tolerances, slight variations in this clearance may be necessary.

- *(We also request . . .) No containers or equipment should be permanently stored over the easement.*

To recap discussions in meetings with your staff on January 18, 2018 and February 15, 2018, DOT Harbors has no objection to this provision and will include it as a provision in the MOA as well as in the grant of easement, subject to any change by the Board of Land and Natural Resources (BLNR).

- *(We also request . . .) If you do plan to extend the box culvert, we request the inside dimensions of the box culvert be no smaller than the inside dimensions of the existing box culvert and a maintenance manhole be provided above the box culvert extension, at no cost to the City.*

Subject to authorization, DOT Harbors agrees to construct any box culvert extension, as needed to accommodate the H.C. 10498 Project, with inside dimensions no smaller than the inside dimensions of the existing box culvert. Furthermore, as mentioned in meetings with your staff on January 18, 2018 and February 15, 2018, DOT Harbors is amenable to providing a new maintenance manhole above any extension of the box culvert at no cost to the City. The City will assume ownership, as well as operation and maintenance, of the box culvert extension as well as the manhole after they have been constructed.

These provisions will be incorporated into the MOA, and/or the grant of easement as appropriate, subject to any change by BLNR.

- *Please note that our box culvert is over 50 years-old and it was not designed for heavy shipping, loading, or traveling over the box culvert. DOT Harbors should design and construct a pavement bridging structure to support these loads so that they do not bear directly onto the box culvert structure and cause damage due to any added loading.*

A bridging structure over the box culvert was proposed as part of the H.C. 10498 Project and construction drawings showing it, and accompanying calculations, were reviewed by DPP who returned comments to our consultant, Moffatt & Nichol, on May 26, 2015. The bridging structure will remain as part of the H.C. 10498 Project and will be shown on the next iteration of the construction drawings which will be submitted for City review and approval shortly.

As you point out, the box culvert is over 50 years old. Therefore, due to its age, and its continuous exposure to seawater, DOT Harbors strongly recommends the City to consider replacing the box culvert concurrently with DOT Harbors' H.C. 10498 Project. We note that accessing the existing box culvert later after the bridging structure has been constructed and the container yard is in active operation will be extremely difficult and costly. Furthermore, container yard operations will take precedence over any future construction activities to repair or replace the existing box culvert, if they are warranted later.

In the meantime, we appreciate that the City, and all of its agencies which include, but are not limited to, the Department of Facility Maintenance, the Department of Design and Construction, and DPP, are committing to expedite its review of our H.C. 10498 Project construction documents and provide comments back to us within a reasonable time, which we would consider as being two weeks after each submission by DOT Harbors to the City.

Mr. Ross S. Sasamura, P.E.
July 13, 2018
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HAR-ESP 0339.18

Upon execution of the MOA, which we will be transmitting to you shortly, DOT Harbors will work with the Department of Land and Natural Resources to process the grant of perpetual easement.

Should you have any questions, please contact Mr. Carter Luke, Engineering Program Manager, at (808) 587-1862.

Sincerely,


JADE T. BUTAY
Director of Transportation

Enclosure

c: City & County of Honolulu, Department of Design and Construction
City & County of Honolulu, Department of Planning & Permitting
Carter Luke, DOT Harbors Division, Engineering Branch

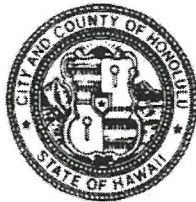
bc: DEP-HWY, DEP-H

WM:cy

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

1000 Ulu'ohia Street, Suite 215, Kapolei, Hawaii 96707
Phone: (808) 768-3343 • Fax: (808) 768-3381
Website: www.honolulu.gov

KIRK CALDWELL
MAYOR



June 6, 2018

ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER

EDUARDO P. MANGLALLAN
DEPUTY DIRECTOR

IN REPLY REFER TO:
DRM 18-238

Mr. Jade T. Butay, Director
State of Hawaii
Department of Transportation
Highways Division
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

Dear Mr. Butay:

Subject: HC10498 KCT Wharf Draining and Dredging Easement at
Honolulu Harbor Pier 40F

In 1965, the Army granted an easement to the City and County of Honolulu (the "City"), across of what was then the Kapalama Military Reservation (or "KMR"), to construct, operate and maintain a box culvert for drainage purposes for a term of fifty-years. We understand that the Army subsequently transferred much of KMR, including the area over the box culvert easement from Auiki Street to Honolulu Harbor in 1990 to the State of Hawaii, which has had jurisdiction over the area since then. The easement for our box culvert expired in 2015, and it is our understanding that the Department of Transportation, Harbors Division (or "DOT Harbors") plans to expand harbor operations and extend the container yard over the box culvert and the expired easement, for future shipping operations under the "H.C. 10498 Kapalama Container Terminal Wharf and Dredging" project (or "HC 10498 Project").

The City currently relies on its existing box culvert as a primary conveyance for storm water flows from its municipal separate storm sewer system in the Kalihi-Kai area. Therefore, the City and County of Honolulu requests that the State of Hawaii grant a new perpetual easement over our existing box culvert and any extension of it necessary to accommodate the HC 10498 Project, to allow the City to continue operation and maintenance of our box culvert from the Auiki Street right-of-way to Honolulu Harbor. The City will retain ownership of the box culvert, inclusive of any extension, and continue to be responsible for storm water discharge into State waters inclusive of any permits associated with or necessary for such discharge.

18 JUN -8 10:08

We also request the following:

1. 24-hour, 7-days a week access to Pier 40F, above our box culvert, for our maintenance personnel and equipment for any emergency response requirement as the need arises. We acknowledge that there is the possibility that harbors operations, or security situations, may temporarily hinder access, such as a vessel being moored in front of or adjacent to the box culvert outlet, but that DOT Harbors will make every reasonable effort to provide access to the City in emergency circumstances.
2. Access to Pier 40F, for routine maintenance and operation of the box culvert security clearances, to be coordinated with adequate advanced notice to DOT Harbors.
3. Nine and a half feet (9.5') clearance on either side of the centerline of the box culvert, for a total width of 19-feet, below the container yard pavement, should any maintenance or excavation repairs be required.
4. No containers or equipment should be permanently stored over the easement.
5. If you do plan to extend the box culvert, we request the inside dimensions of the box culvert be no smaller than the inside dimensions of the existing box culvert and a maintenance manhole be provided above the box culvert extension, at no cost to the City.

Please note that our box culvert is over 50 years-old and it was not designed for heavy shipping, loading, or traveling over the box culvert. DOT Harbors should design and construct a pavement bridging structure to support these loads so that they do not bear directly onto the box culvert structure and cause damage due to any added loading.

We acknowledge that DOT Harbors will take every reasonable precaution to avoid damaging our box culvert during construction of such a bridging structure.

We understand that DOT Harbors is willing to prepare the easement map and description, and grant and record the easement that we are requesting, through the Department of Land and Natural Resources, on behalf of, and at no cost to the City. Therefore, In recognition of the service and benefit that DOT Harbors is providing to the City in preparing the easement map, extending our existing box culvert for our use, and granting of the perpetual easement to accommodate our box culvert, the City, which includes all its agencies, commits to expedite its review of the H.C. 10498 Project construction documents and provide comments back to DOT Harbors at a reasonable time.

Mr. Jade T. Butay, Director
June 6, 2018
Page 3

If you have any questions, please call Mr. Lan Yoneda of the Division of Road Maintenance at 768-3600.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ross S. Sasamura', with a long horizontal flourish extending to the right.

Ross S. Sasamura, P.E.
Director and Chief Engineer

cc: ✓ Carter Luke, Engineering Program Manager, State of Hawaii, Harbors Division
Department of Design and Construction
Department of Planning and Permitting