

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

October 23, 2020

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

REQUEST AUTHORIZATION FOR THE CHAIRPERSON TO ENTER INTO A USE  
AND OCCUPANCY AGREEMENT WITH THE HAWAII DEPARTMENT OF  
TRANSPORTATION REGARDING THE CONSTRUCTION OF JOB NO. H70C805B,  
MALAEKAHANA STATE RECREATION AREA (SRA), KAHUKU SECTION,  
PARK IMPROVEMENTS – PHASE 1, OAHU, HAWAII,  
TAX MAP KEY: (1) 5-6-01:ROAD

BACKGROUND:

The Kahuku Section of Malaekahana SRA comprises roughly 36.288 acres. Camping and lodging accommodations at the Kahuku Section of the park are currently managed by Malaekahana Beach Campground, LLC through a lease agreement with the Department of Land and Natural Resources (DLNR), Division of State Parks.

The Division of State Parks proposes to improve Malaekahana SRA for continued recreational use including camping, lodging and day use activities. The proposed improvements of this project will generally be located within Tax Map Keys (TMKs): (1) 5-6-01:024, 045-047, 049-065.

PROJECT LOCATION AND DESCRIPTION:

The project is located along Kamehameha Highway in Kahuku, Oahu, Hawaii. The proposed improvements will generally be located within the State-owned Malaekahana SRA. Driveway improvements and new water and overhead electrical connections, will extend into the Kamehameha Highway right-of-way (ROW) which is under the jurisdiction of the State of Hawaii Department of Transportation (HDOT). The Malaekahana SRA is currently used by day park users and overnight campers. Existing facilities include an unpaved access road through the park, rental cabins, a caretaker's dwelling, an office building, and maintenance shed. The existing access road currently has a driveway connection at both the North and South ends of the park that allow vehicles access to and from Kamehameha Highway. The project proposes to replace the existing unpaved road throughout the park with a new gravel road; construct new gravel parking areas to accommodate day park users and overnight campers; and construct a comfort station, satellite restroom, accessible campsite, and 3 pot wash stations.

For the new water line connection on the HDOT ROW, a Use and Occupancy Agreement will be required between the DLNR and the HDOT. A site plan of the proposed work within the HDOT ROW is attached in Exhibit A.

DEPARTMENTAL AGREEMENT:

The Use and Occupancy Agreement will grant the DLNR the non-exclusive right to use and occupy the subject portion of the HDOT ROW for the sole purpose of constructing, operating, maintaining and repairing a water line project, including all improvements, equipment, facilities, components and appurtenances related thereto. Additionally, the DLNR shall obtain a permit from the HDOT for any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the water line project on, within, under, over or across the subject portion of the HDOT ROW prior to commencing such work. A draft of this agreement is attached in Exhibit B.

RECOMMENDATION:

That the Board of Land and Natural Resources:

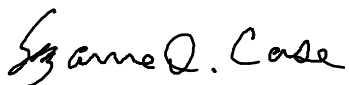
1. Authorize the Chairperson, subject to review and approval as to form by the Department of the Attorney General, to enter into a Use and Occupancy Agreement between the DLNR and the HDOT, as needed, to carry out the intent of the project scope of work.

Respectfully Submitted,



CARTY S. CHANG  
Chief Engineer

Approved for Submittal:



SUZANNE D. CASE  
Chairperson

- Exhibit(s)
- A. Site Plan – Water line Connection Department of Transportation
  - B. Draft Use and Occupancy Agreement Department of Transportation



BWS FLOW REQUIREMENTS

PREMISE ID #2398624863

METER NUMBER (M/N): 15060299

DESCRIPTION	FL	GPM	GPD
A. PROPOSED DOMESTIC*	147	80	29,600
B. PROPOSED IRRIGATION**	300	80	4,800
C. OTHER:	0	0	0
D. TOTAL PROPOSED:			
DOMESTIC:	147	80	29,600
IRRIGATION:	300	80	4,800
E. TOTAL FUTURE:			
DOMESTIC:	150	80	29,600
IRRIGATION:	0	0	0
F. DEMOLITION***:			
DOMESTIC:	176	60	22,200
IRRIGATION:	300	80	4,800
G. NET CHANGE:			
DOMESTIC:	121	50	18,500
IRRIGATION:	0	0	0
H. EXISTING TO REMAIN:			
DOMESTIC:	0	0	0
IRRIGATION:	0	0	0
I. GRAND TOTAL:			
DOMESTIC:	297	110	40,700
IRRIGATION:	300	80	4,800

NOTES:

\* PROPOSED DOMESTIC FIXTURE COUNT INCLUDES THE FULL BUILD-OUT OF THE SITE PER MALAEKAHANA SRA FINAL ENVIRONMENTAL ASSESSMENT.

\*\* IRRIGATION TO BE DONE DURING NON-PEAK HOURS

\*\*\* EXISTING FIXTURE COUNTS ARE BASED ON BWS RECORD DWGS "MALAEKAHANA STATE RECREATION AREA WATERLINE", JOB NO. 01-011S.

FOR ESTIMATING PURPOSES ONLY

DESCRIPTION OF WORK	ESTIMATE
DOMESTIC SERVICE - MALAEKAHANA STATE (PROPOSED ONLY) RECREATION AREA METER	
INSTALLATION CHARGE	\$0.00
DOMESTIC/IRRIGATION =	\$0.00
WATER SYSTEM FACILITIES CHARGES	
FIRE SERVICE	
8"x2" METER INSTALLATION CHARGE	\$7,304.00
ONE-TIME CHARGE	\$21,100.00
TOTAL	\$28,404.00

THIS ESTIMATE IS SUBJECT TO CHANGE AND A FORMAL WRITTEN QUOTATION SHALL BE OBTAINED WITHIN 30 DAYS AFTER THE CONSTRUCTION PLAN IS APPROVED BY BWS. ALL PAYMENTS FOR CHARGES SHOWN ON THE FORMAL QUOTATION SHALL BE MADE WITHIN 30 DAYS OF THE BWS APPROVAL DATE. IF PAYMENTS ARE NOT RECEIVED WITH THE 30 DAY PERIOD, THE PROJECT WILL BE SUBJECT TO PREVAILING RATES.

LEGEND:

---	PROPERTY LINE
WS	POT WASH STATION
SR	SATELLITE RESTROOM
W8	WATER LINE W/SIZE
S6	SEWER LINE W/SIZE

APPROVED:

MANAGER & CHIEF ENGINEER  
BOARD OF WATER SUPPLY  
CITY & COUNTY OF HONOLULU  
(FOR WORK AFFECTING BWS FACILITIES  
IN STATE R/W AND BWS EASEMENTS ONLY)

DATE

REVISION NO.	SYM.	DESCRIPTION	SHT./OF	DATE	APPROVED
STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES ENGINEERING DIVISION					
MALAEKAHANA SRA - KAHUKU SECTION PARK IMPROVEMENTS O'AHU, HAWAII					
GENERAL UTILITY PLAN					
DESIGNED:	JK, CJ	SUBMITTED:	JUNE 2018		
DRAWN:	AK, CJ	DATE:	XXXX		
CHECKED:	JL	SCALE:	1"=80'		
APPROVED:				DRAWING NO.	C-102
CHIEF ENGINEER				DATE	

THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION AND  
CONSTRUCTION OF THIS PROJECT  
WILL BE UNDER MY OBSERVATION.







**USE AND OCCUPANCY AGREEMENT NOS. 384-A and 384-B**

THIS USE AND OCCUPANCY AGREEMENT NOS. 384-A and 384-B (hereinafter referred to as the "Agreement") is made on \_\_\_\_\_, but effective as of \_\_\_\_\_, by and between the STATE OF HAWAII, by its Director of Transportation (hereinafter referred to as the "GRANTOR"), and the STATE OF HAWAII, Department of Land and Natural Resources, Board of Land and Natural Resources, by its Chairperson, (hereinafter referred to as the "GRANTEE").

**RECITALS:**

WHEREAS, the GRANTOR is the owner or otherwise has jurisdiction over Kamehameha Highway, at Kahuku, Hawaii (hereinafter referred to as the "Highway") situated on certain real property designated as Tax Map Key Nos. (1) 5-6-01:Road (hereinafter referred to as the "Property"); and

WHEREAS, the GRANTEE desires to occupy a portion of the Property, as described in Exhibit A and delineated on Exhibit B, both exhibits of which are attached hereto and incorporated herein by reference (hereinafter referred to as the "Premises"), for the construction, operation, maintenance, and repair of a water line project (said project, together with all improvements, equipment, facilities, components and appurtenances related thereto, is hereinafter referred to as the "Project"); and

WHEREAS, the GRANTOR does not object to granting the GRANTEE use and occupancy rights in the Premises provided the GRANTEE fully complies with the terms and conditions set forth below;

NOW, THEREFORE, pursuant to Section 264-13, Hawaii Revised Statutes ("HRS"), the parties do hereby agree as follows:

**AGREEMENT:**

1. Grant of Use and Occupancy Rights. The GRANTOR hereby grants to the GRANTEE the non-exclusive right to use and occupy the Premises for the sole purpose of constructing, operating, maintaining and repairing the Project. The GRANTEE acknowledges and agrees that this Agreement is for a limited purpose and that the GRANTEE shall use the Premises only for the purpose of serving the Project. Any intensification to include modification

or expansion of the use of the Project from what is approved herein, including but not limited to, connection of additional laterals or extensions that feed or are fed from the Project shall require the prior written approval of the GRANTOR, which approval may be withheld in the GRANTOR's sole discretion, and may require a new request and review and consideration of any user not covered by this Agreement.

2. Right to Construct the Project. The GRANTEE may construct, maintain, and repair the Project on, within, under, over and across the Premises provided that the GRANTEE obtains the GRANTOR's prior written approval for the plans and specifications for construction of the Project and any subsequent alterations and repairs thereto. The GRANTEE shall be solely responsible for all costs and expenses incurred in connection with the Project and the maintenance of the Premises, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

3. Work Permit. The GRANTEE shall obtain a permit from the GRANTOR for any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work. Without limiting the foregoing or any other provision contained herein, the GRANTEE shall comply with any and all other requirements of the GRANTOR relating to any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project, and any required permits, including, but not limited to, any permits and/or approvals that may be required by federal, state, county, local or other laws or rules applicable to the proposed construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work except to perform emergency repair or maintenance ("Emergency Work"). The GRANTEE may enter the Premises to perform Emergency Work without first obtaining such permit(s), provided that GRANTEE notifies GRANTOR of the location and type of emergency not later than one business day after the Emergency Work has commenced and provided that GRANTEE obtains any required permits as soon as reasonably possible thereafter. "Emergency work" shall mean immediate repair or maintenance work needed to protect public health, safety, welfare or the environment as reasonably determined by GRANTOR.

4. Work Completion. Upon the completion of any work performed on, within, under, over or across the Premises by the GRANTEE, the GRANTEE shall promptly remove therefrom all equipment and unused or surplus materials, if any, and shall restore the Premises and any other affected areas to a condition satisfactory to the GRANTOR in its sole discretion. In addition, the GRANTEE shall provide all as-built drawings of all work completed, including metes and bounds documents of the Project, for the GRANTOR's acceptance within sixty (60) days of the GRANTEE's final acceptance of the GRANTEE's contractor's work. The GRANTEE shall warranty the restoration work for a period of not less than two (2) years from the date of final inspection and acceptance by the GRANTOR. Such warranty shall insure that the GRANTEE shall be responsible for any failure of the restoration work, including, but not limited to, any potholes occurring in and along the restoration area.

5. Maintenance. The GRANTEE shall, at its sole cost and expense, keep the Premises and the Project in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all repairs to the Project, and shall not make, permit or suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.

6. Repair. The GRANTEE shall not damage, undermine or otherwise destroy any portion of the GRANTOR's Property, including without limitation, any Highway facilities or improvements or facilities of other Highway tenants or other permitted users of the Highway situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The GRANTEE shall, at its sole cost and expense, repair, restore and reconstruct that portion of said State property so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances. All repairs, restoration, and reconstruction shall be completed by the GRANTEE immediately to the existing, or better, condition and shall be inspected and approved by the GRANTOR in its sole discretion.

7. No Obstruction. The GRANTEE shall not construct, replace, repair or maintain any landscaping or any portion of the Project (including any staging and/or temporary storing of equipment and materials) on, within, under, over or across the Premises in such a manner as to: (a) unnecessarily obstruct traffic; (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the Highway; (c) otherwise constitute a hazard to users of the Highway, as determined by the GRANTOR in its sole discretion; (d) obstruct

Highway operations; and/or (e) obstruct operations of Highway tenants or other permitted users of the Highway on the Property or near the Premises.

8. Reservation of Rights. The GRANTOR reserves unto itself the full use and enjoyment of the Premises and the right to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of the GRANTEE, provided that such use by the GRANTOR and/or third parties does not unreasonably interfere with the GRANTEE's rights to use the Premises under this Agreement. The GRANTEE shall take steps necessary to ensure that the GRANTEE's exercise of the rights and privileges granted hereunder does not cause any substantial interference with the GRANTOR's operations in or near the Premises.

9. GRANTOR Work Within or Affecting the Premises. If the GRANTOR decides to perform work of any kind, on, within, under, over, across, near, or affecting the Premises, the GRANTOR will coordinate such work with the GRANTEE. The GRANTEE shall not prevent the GRANTOR from performing such work, provided, however, that the GRANTOR will take certain protective measures to assure that such work does not unreasonably interfere with the GRANTEE's use of the Premises as described herein. At the GRANTOR's sole option, the GRANTEE, at the GRANTEE's sole cost, except as may otherwise be required by law, shall relocate the Project to the extent the Project conflicts with any other GRANTOR's project.

10. Removal of Improvements. If the GRANTOR decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the GRANTEE shall be responsible for the removal or relocation of all or any portion of the Project from the Premises deemed necessary by the GRANTOR, without cost and expense to the GRANTOR, within thirty (30) days from the date the GRANTOR requests such removal or such longer period of time as may be approved in writing by the GRANTOR, except as shall be otherwise required by applicable law.

11. Safety. The GRANTEE shall at all times with respect to the Project and the Premises use due care for public safety.

12. Insurance. The GRANTEE, as a sovereignty, is self-insured.

13. Abandonment. This Agreement and all of the GRANTEE's rights hereunder shall terminate, without any action on the part of the GRANTOR, in the event of non-



use or abandonment by the GRANTEE of the Premises or the Project, or any portion thereof, for a period of one (1) year.

14. Hazardous Substances.

a. Definitions. For purposes of this Agreement, the GRANTEE acknowledges and agrees that the following terms shall have the following meanings:

“Environmental Laws” shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the federal Environmental Protection Agency and the State Department of Health.

“Hazardous Substance” shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls, methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by the state or federal authorities.

b. GRANTEE’s Activities and Duties.

b. 1. Compliance with Environmental Laws. The GRANTEE agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to the Property and the GRANTEE’s occupancy, activities, operations, and use of the Project and the Premises, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities. This duty shall survive the expiration or earlier termination of this Agreement, which means that the GRANTEE’s duty to comply with Environmental Laws shall include complying with all Environmental Laws that may in the future apply, or be determined to apply, to the occupancy and activities of the GRANTEE on the Premises after the expiration or earlier

termination of this Agreement. In addition, GRANTEE shall comply with any National Pollutant Discharge Elimination System permits, or similar permits, which are applicable to the Premises or the Project.

b. 2. Hazardous Substances. The GRANTEE shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its officers, employees, agents, contractors, guests, invitees or third persons, on the Premises without first obtaining the written consent of the GRANTOR (which consent may be withheld by the GRANTOR in its absolute discretion).

b. 3. Notice to the GRANTOR. The GRANTEE shall keep the GRANTOR fully informed at all times regarding all matters related to any Environmental Laws affecting the GRANTEE, the Project, or the Premises. This duty shall include, but not be limited to, providing the GRANTOR with a current and complete list and accounting of all Hazardous Substances of every kind which are present in, on or about the Premises by or as a result of the GRANTEE, together with evidence that the GRANTEE has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority, under any authority or Environmental Laws. The GRANTEE shall provide said list and accounting at the commencement of this Agreement and shall update said list and accounting whenever any Hazardous Substance not accounted for on said list is or becomes present in, on, or about the Premises by the GRANTEE or otherwise. The GRANTEE shall also provide immediate written notice to the GRANTOR of any spills, releases, and/or discharge of Hazardous Substances, investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to the GRANTEE by any federal, state, or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the GRANTOR shall include copies of all written communications from any federal, state, or county authority or individual, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the GRANTEE. At least thirty (30) days prior to termination of this Agreement or termination of the use and occupancy of the Premises by the GRANTEE, whichever occurs first, the GRANTEE shall provide the GRANTOR with written evidence satisfactory to the GRANTOR that the GRANTEE has fully complied with all Environmental Laws, including any orders issued



by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the GRANTOR pursuant to subparagraph 14.b.5. (Environmental Investigations and Assessments) of this provision, or by any governmental agency responsible for enforcement of the Environmental Laws.

b. 4. Disposal/Removal. Except as to the possession and handling of Hazardous Substances for which the GRANTEE is authorized by law, including those Hazardous Substances for which the GRANTEE has obtained all currently required permits to store or use certain Hazardous Substances on the Premises, including written permission from the GRANTOR, the GRANTEE shall cause any Hazardous Substances resulting from the GRANTEE's use to be removed and transported from the Premises for disposal solely by duly licensed hazardous substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. Within ten (10) days of any such disposal, the GRANTEE shall provide the GRANTOR with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws. This provision shall survive the expiration or earlier termination of this Agreement.

b. 5. Environmental Investigations and Assessments. The GRANTEE, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as may be reasonably directed from time to time by the GRANTOR, or by any federal, state or county authority. The extent and number of any environmental investigations and assessments shall be determined by the GRANTOR or the federal, state or county authority directing said investigations and assessments to be conducted. The GRANTEE shall retain a competent and qualified person or entity that is satisfactory to the GRANTOR or other governmental authority, as the case may be, to conduct said investigations and assessments. The GRANTEE shall direct said person or entity to provide the GRANTOR or other governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the GRANTOR and the other governmental authority, at the sole expense of the GRANTEE, written results of all tests on said samples upon completion of said testing. In any event, the GRANTEE shall have the option to conduct

environmental assessments as aforesaid prior to or at the time of termination of this Agreement in order to determine the condition of the Premises.

b. 6. Remediation. In the event that any Hazardous Substance is used, stored, treated, or disposed on the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, or handled, discharged or released by the GRANTEE, or determined to be present on the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, by or as a result of the GRANTEE's actions, the GRANTEE shall, at its sole expense and cost, remediate the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, of such Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with subparagraph 14.b.4. (Disposal/Removal) of this Agreement. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the GRANTOR or other governmental authority to the GRANTEE to remediate such Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is reasonably satisfactory to the GRANTOR and governmental authority, as the case may be.

b. 7. Tanks, Pipelines; Inspections and Repairs. Unless the GRANTOR specifically agrees in writing otherwise prior to their installation, all pipes, pipelines, tanks, containers, or conduits of any kind that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type (hereafter referred to as a "facility" or "facilities"), must be installed above ground level in such manner that allows for periodic inspection and maintenance of the facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the facility. The GRANTEE shall provide the GRANTOR with prior written notice of the GRANTEE's intent to install a facility to allow the GRANTOR ample time, as reasonably determined by the GRANTOR, to inspect the plan for installation of such a facility. Said facility shall not be installed unless and until the facility and its manner of installation are approved in writing by the GRANTOR. Within ninety (90) days of the commencement of this Agreement, or commencement of possession of the Premises by the GRANTEE, whichever first occurs, the GRANTEE shall submit a contingency plan covering the GRANTEE facilities if any, and as applicable, to control and remedy any spill, discharge, or leak from any GRANTEE facility on



the Premises during the term of this Agreement, which plan shall include the cleanup of all Hazardous Substances that may be spilled, discharged, or leaked, to the satisfaction of the GRANTOR in its sole discretion. The GRANTEE shall also submit to the GRANTOR a plan for the GRANTEE to conduct, or have conducted, regular inspections of all facilities, if any, on the Premises for the purpose of prevention of any leak, discharge, or spill from said facilities. Said contingency plan and inspection plan are subject to the prior written approval of the GRANTOR. The GRANTEE shall timely obtain and maintain in effect all required permits, licenses, and approvals for such facilities from any governmental authority.

b.8. Protection of Waters. The GRANTEE shall maintain and employ reasonable debris, pollution and contamination control measures, safeguards and techniques on the Premises to prevent debris, pollution or contamination to ocean waters, streams or waterways, groundwater, including any storm drains within and about the Premises, resulting from the activities or operations of the GRANTEE on, within, over, through, across, under or connected with the Premises.

b. 9. [Reserved].

b. 10. [Reserved]

15. [Reserved]

16. Termination. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written agreement of the parties hereto or by the GRANTOR, in its sole discretion, upon the GRANTOR's giving sixty (60) days' prior written notice to the GRANTEE by hand delivery or first-class mail, return receipt requested.

17. Removal upon Termination. Upon any full or partial termination or cancellation of this Agreement, the GRANTEE shall, at the GRANTEE's sole cost and expense, comply with the provisions of subparagraph 17.a. and, if applicable at the GRANTOR's sole option, subparagraph 17.b.

a. Remove and Restore. The GRANTEE shall surrender the Premises upon termination of this Agreement and, prior thereto, shall restore the Premises to the same condition as the Premises existed at the commencement of this Agreement, as determined by the GRANTOR in its sole discretion, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of the GRANTEE. This duty to restore the

Premises includes remediation as described in the subparagraph 14.b.6. Subject to subparagraph 17.b. (GRANTOR's option), this duty also includes, but is not limited to, the removal of any and all of the GRANTEE's improvements, including, without limitation, pipes, pipelines, tanks, containers, equipment, and appurtenances of any kind that the GRANTEE has installed or erected on the Premises.

b. GRANTOR's Option. At the GRANTOR's sole option, the GRANTEE may abandon in place the Project and any improvements, equipment, facilities, components and appurtenances relating thereto (a Memorandum of Agreement, in form and substance satisfactory to the Director of Transportation, must be executed by the GRANTEE if the Director of Transportation, approves the abandonment in place).

18. [Reserved].

19. Assignment. The GRANTEE's right under this Agreement shall not be sold, assigned, conveyed, leased, subleased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the GRANTOR which consent may be withheld by the GRANTOR in its sole discretion.

20. [Reserved].

21. Compliance with Laws. Without limiting any provision in this Agreement, the GRANTEE, at all times during the term of this Agreement, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or federal-aid highways.

22. Prehistoric and Historic Remains. Any and all prehistoric and historic remains found at, in, on, over, or under the Premises shall be and remain the property of the State, and shall not be disturbed or removed by the GRANTEE without the express written approval of the GRANTOR. Upon discovery of any prehistoric or historic remains, the GRANTEE shall immediately stop and cease any further disturbance of the remains and surrounding portion(s) of the Premises containing the remains, and promptly notify the GRANTOR of such discovery. The GRANTEE shall obtain the prior written consent of the GRANTOR prior to recommencing any work on, within, under, over, across, near or affecting the Premises.



23. GRANTOR and GRANTEE Terms. The term “GRANTOR” as and when used herein shall mean and include the GRANTOR named above and the GRANTOR’s officers, employees, agents, successors and assigns. The term “GRANTEE” as and when used herein shall mean and include the GRANTEE named above and the GRANTEE’s officers, employees, agents, contractors, guests, invitees, successors, and permitted assigns.

24. Binding Effect. All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns.

25. Singular, Plural. All words used herein in the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

26. Headings. The headings and captions herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement to which they may pertain.

27. Counterparts. This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all the signatories had executed a single instrument. Any unexecuted duplicate pages may be omitted from the assembled original document.

28. [Reserved].

29. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

30. [Reserved].

31. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

32. Nondiscrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.

33. Notices. Except as otherwise specifically provided in this Agreement, any notice, consent, request, demand, or other correspondence given under this Agreement shall be in

writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class, certified mail, return receipt requested, with postage prepaid; or overnight courier, return receipt requested, with postage prepaid; to: (a) the GRANTEE at the address as stated on page one herein; or (b) the GRANTOR at the following address: State of Hawaii, Department of Transportation, Highways Division, 869 Punchbowl Street, Honolulu, Hawaii 96813, Attn: Administrator; or (c) such other address as either the GRANTEE or the GRANTOR may designate, in writing, as its new address for such purpose by notice given to the other in accordance with this section. Any notice hereunder shall be deemed to have been given and received and effective two (2) calendar days after the date when it is mailed, if sent by first-class, certified mail, one (1) calendar day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made.

34. No Recordation. This Agreement shall not be recorded.

35. No Third-Party Beneficiaries. No third-party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

36. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth in this Agreement, and, except as specifically provided otherwise herein, there are no agreements, understandings, warranties, or representations between the parties except as set forth herein. This Agreement cannot be amended or modified except by an instrument, in writing, signed by each of the parties.

37. GRANTEE's Financial Obligation and Commitment. GRANTEE's financial obligation and commitment to make payments or reimbursements of any kind under this Agreement shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make such payment or reimbursement.

[Signatures on Next Page.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
JADE T. BUTAY  
Its Director of Transportation

GRANTOR

Approved by the Board of Land  
And Natural Resources  
at Its Meeting Held On:

\_\_\_\_\_

STATE OF HAWAII  
BOARD OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
SUZANNE CASE  
Its Chairperson and Member  
Board of Land and Natural Resources

GRANTEE

APPROVED AS TO FORM:

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_



STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

My commission \_\_\_\_\_

# EXHIBIT A

## KAMEHAMEHA HIGHWAY

### USE AND OCCUPANCY AGREEMENT No. 384-A (For Waterline Purposes)

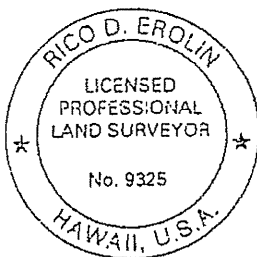
Being a portion of Kamehameha Highway

Land situated at Koolauloa, Oahu, Hawaii

Beginning at the East corner of this piece of land, on the South side of Lot 50, Map 9 of Land Court Application 1095, on the North side of Kamehameha Highway, Federal Aid Project No. 1-C and 1-D, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAIPAPAU" being 19,552.66 feet North and 5,927.62 feet West, thence running by azimuths measured clockwise from true South:

1. 54° 11' 30" 14.65 feet along the remainder of Kamehameha Highway;
2. 144° 11' 30" 10.00 feet along the same;
3. 234° 11' 30" 14.54 feet along the same;
4. Thence, along Lot 50, Map 9 of Land Court Application 1095, on a curve to the right with a radius of 1457.69 feet, the chord azimuth and distance being:  
  
323° 32' 20" 10.01 feet;  
  
to the point of beginning and containing an area of 146 square feet.

January 29, 2019  
Honolulu, Hawaii



  
Rico D. Erolin  
Licensed Professional Land Surveyor  
Certificate Number 9325

Tax Map Key: (1) 5-6-01

# EXHIBIT A

## KAMEHAMEHA HIGHWAY

### USE AND OCCUPANCY AGREEMENT No. 384-B (For Waterline Purposes)

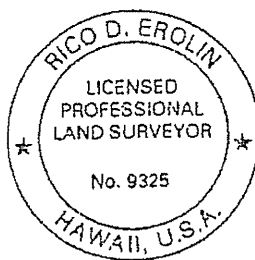
Being a portion of Kamehameha Highway

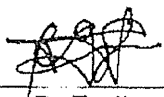
Land situated at Koolauloa, Oahu, Hawaii

Beginning at the North corner of this piece of land, on the South side of Lot 51, Map 9 of Land Court Application 1095, on the North side of Kamehameha Highway, Federal Aid Project No. 1-C and 1-D, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAIPAPAU" being 19,529.08 feet North and 5,910.68 feet West, thence running by azimuths measured clockwise from true South:

1. Thence, along Lot 51, Map 9 of Land Court Application 1095, on a curve to the right with a radius of 1457.69 feet, the chord azimuth and distance being:  
325° 04' 24" 10.01 feet;
2. 54° 11' 30" 13.42 feet along the remainder of Kamehameha Highway;
3. 144° 11' 30" 10.00 feet along the same;
4. 234° 11' 30" 13.57 feet along the same, to the point of beginning and containing an area of 135 square feet.

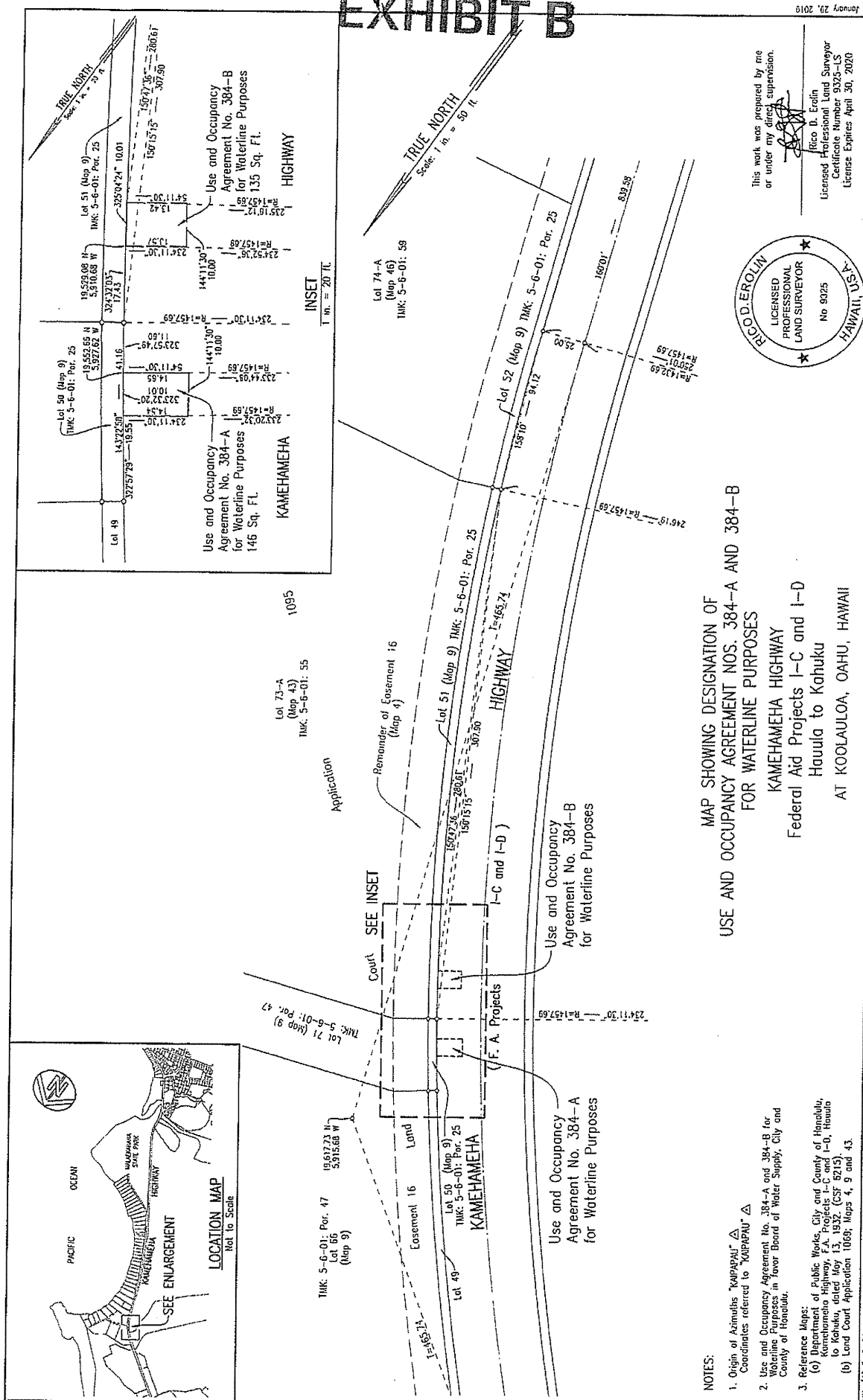
January 29, 2019  
Honolulu, Hawaii



  
Rico D. Erolin  
Licensed Professional Land Surveyor  
Certificate Number 9325

Tax Map Key: (1) 5-6-01

# EXHIBIT B



This work was prepared by me  
or under my direct supervision.

Rico D. Erolin  
Licensed Professional Land Surveyor  
Certificate Number 9325-LS  
License Expires April 30, 2020

January 29, 2019

MAP SHOWING DESIGNATION OF  
USE AND OCCUPANCY AGREEMENT NOS. 384--A AND 384--B  
FOR WATERLINE PURPOSES

KAMEHAMEHA HIGHWAY

Federal Aid Projects I-C and I-D

Hauula to Kahuku

AT KOOLAULOA, OAHU, HAWAII

CONTROLPOINT SURVEYING, INC.

**POINT SURVEYING**  
150 Piikoi Street, Suite 700



NOTES:

1. Origin of Azimuths "KAPAPAU"  $\Delta$ . Coordinates referred to "KAPAPAU"  $\Delta$ .
2. Use and Occupancy Agreement No. 384-A and 384-B for Wotaniine Pools in Javor Bond of Water Supply, City and County of Honolulu.
3. Reference Maps:
  - a. Department of Public Works, City and County of Honolulu, Kamehameha Highway, I-A. Projects I-C and I-Q, Honolulu to Kahuku, dated May 13, 1932. (CSF 5215).
  - b. Land Court Application 10689. Maps 4, 5 and 43.

TMK: (1) 5-6-01  
Job No. 16132-01