

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

October 25, 2024

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

GL S-3583

Hawai'i Island

Approval of a Development Agreement for a 20-Year Extension of Lease Term, General Lease No. S-3583, Yamada Consolidated, Inc., Lessee; Authorize the Chairperson to Approve and Execute a Lease Extension for General Lease No. S-3583, Yamada Consolidated, Inc., Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-2-037:052, 092 & 093.

APPLICANT:

Yamada Consolidated, Inc., a Hawaii profit corporation. ("Lessee")

LEGAL REFERENCE:

Sections 171-36(a)(6), -191 and -192, Hawaii Revised Statutes (HRS), as amended, and Act 149, Session Laws of Hawaii 2018 (Act 149).

LOCATION:

Lots 4, 6, 7 and 8, Block 39, and Lots 5 and 7, Block 40, Waiakea, South Hilo, Hawaii, containing 2.565 acres, more or less. TMK: (3) 2-2-037:052, 092 & 093, as shown on the attached map, in **Exhibit A**.

LEASE AREA:

2.565 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Commercial/Industrial purposes.

TERM OF LEASE:

Original term of 45 years, commencing on November 5, 1959 and expiring on November 4, 2004. Two (2) 10-year extensions commencing November 5, 2004 and expiring on November 4, 2014; and commencing November 5, 2014 and expiring on November 4, 2024, respectively.

LEASE ANNUAL RENTAL:

Current annual rent is \$85,800.00 due in equal semi-annual installments payable on the 5<sup>th</sup> day of May and November of each and every year during the term for the ten-year extension term from November 5, 2014, up to and including November 4, 2024.

RENTAL RE-OPENINGS:

Staff is in the process of ordering an appraisal to determine the fair market rent of the requested 20-year lease extension in two increments, with a determination for the first 10 years from November 5, 2024 to November 4, 2034 and a separate determination for years 11-20, from November 5, 2034 to November 4, 2044. Upon receipt, the lessee will be informed by letter to either accept or reject the proposed rental amount. The lease extension and development agreement will not be executed until the rental amount is accepted.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Lessee shall be required to:

1. comply with the applicable requirements of Sections 171-36(a) and 171-192, HRS to negotiate a development agreement with department staff, and execute the development agreement and lease extension using the Department of Attorney General current lease terms and conditions necessary to implement and conform to the requirements of Act 149, Session Laws of Hawaii 2018 ("Act 149") and current law, including but not limited to substantive provisions relating to Lease Assignments, Sublease Rents Ownership of Improvements and Removal Bond provisions, as discussed and recommended below;

2. require the closure of the cesspool and connection to an alternative wastewater system as an additional condition of the lease extension and allow the cesspool closure and septic installation (or sewer connection as the case may be); and
3. reimburse the Department for the cost of procuring an appraiser to review Lessee’s appraiser’s report regarding the value of the existing improvements on the property.<sup>1</sup>

**CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:**

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,” Part 1, Item 40 that states, “Leases of state land involving negligible or no expansion or change of use beyond that previously existing.” The proposed lease extension and improvements to existing structures are de minimis actions that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

**PROPOSED IMPROVEMENTS**

The Lessee’s current improvement proposal consists of the following:

<b>Item No.</b>	<b>Description</b>	<b>Estimated Cost</b>
1.	Re-Roof Warehouse- tear off existing metal roofing (approx. 21,500 sq. ft.) and dispose of refuse; install DuraCoat, 24 gauge zincaluminum, 4-rib roofing from HPM; secure with self-tapping stainless steel screws.	\$214,645.00
2.	Install 19 commercial turbine ventilators	\$10,433.00
3.	Re-Roof Warehouse- tear off existing metal roofing (approx. 22,306 sq. ft.) and dispose of refuse; replace approximately 25 linear feet of 8” C-channel purlins with new 14 gauge c-channel purlins; install DuraCoat, 24 gauge zincaluminum, 4-rib roofing from HPM; secure with self-tapping stainless steel screws.	\$218,512.00
4.	Install 20 commercial turbine ventilators	\$10,983.00

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<sup>1</sup> Pursuant to Section 171-192, HRS, “The applicant for a lease extension shall pay all costs and expenses incurred by the department in connection with processing, analyzing, or negotiating any lease extension request and document and of the development agreement under subsections (a) and (b).”

5.	Property Re-paving- 3” HMA pavement, State Mix IV (includes removal and disposal of existing pavement)	\$299,648.82
	Total:	\$754,221.82

The total cost of the proposed improvements is \$754,221.82 and the estimates detailing them are included as **Exhibit B**.

BACKGROUND:

At a public auction of government leases, General Lease No. S-3583 (GL S-3583) was awarded to Hilo Salvage Co., Ltd., a Hawaii Corporation on November 5, 1959, for an initial term of 45 years commencing on November 5, 1959 and expiring on November 4, 2004. By mesne conveyances, Yamada Consolidated, Inc. is the current lessee of GL S-3583.

At its meeting of November 16, 2001, under agenda item D-3, the Land Board approved a 10-year lease extension of GL S-3583, commencing November 5, 2004, and expiring on November 4, 2014, with consent to mortgage from First Hawaiian Bank. The lease extension was necessary to enable Lessee to qualify for a \$200,000 mortgage (\$100,000 roof repairs/ \$100,000 operating expense). This allowed the Lessee to re-finance the existing mortgage as required by the lender First Hawaiian Bank, and to perform improvements in the form of roof repairs to its warehouse on the property.

At its meeting of March 14, 2014, under agenda item D-6, the Land Board approved a second 10-year lease extension of GL S-3583 commencing November 5, 2014 and expiring on November 4, 2024. The lease extension was approved conditioned on the Lessee to repair and replace the roof and gutters of its office and garage in the amount of at least \$20,000.

On August 2, 2024, Lessee requested an extension of General Lease No. S-3583 for an additional 20 years, commencing on November 5, 2024, and expiring on November 4, 2044. This will result in a total aggregate term of 85 years for the initial lease and all extensions.

LEASE EXTENSION:

With the Lessee’s current lease set to expire on November 4, 2024, Lessee is requesting an additional 20-year extension pursuant to Act 149, Session Laws of Hawaii 2018 (Act 149) in order to amortize the cost of additional improvements to the property. Act 149 allows up to a 40-year extension of leases located in the Hilo Community Economic District (HCED) based on “substantial improvements” to the lease premises:

"Substantial improvements" means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of the market value of the existing

improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

The subject lease is located within the HCED as defined in Act 149. Lessees' proposed improvements include re-roofing its two (2) warehouse roofs, and installation of 19 and 20 commercial turbine ventilators respectively on each of the two warehouse roofs; and re-paving the property at a total estimated cost of \$754,221.82.<sup>2</sup> An appraisal report performed by a certified appraiser has determined that the economic life of the proposed improvements will exceed the twenty-plus (20+) year period necessary to amortize the improvements. The appraiser contracted by the Lessee determined the market value of the current improvements to be \$2,017,000.00. Lessee's proposed expenditure of \$754,221.82 represents 37.4% of the value of the existing improvements (\$2,017,000.00), and Lessee are only seeking a 20-year extension of the lease.<sup>3</sup> Accordingly, Lessee's proposed expenditure appears to justify the requested 20-year extension under Act 149.

Staff will contract for the services of a review appraiser to review and assess the appraisal submitted by the Lessee relating to the value of the existing improvements expressly referenced in Act 149 in order to ensure the Lessee's appraisal report and valuation is consistent with Uniform Standards of Professional Appraisal Practice (USPAP), consistent with industry standards and that the report's conclusions are generally supported and credible.

Staff has confirmed that there is at least one cesspool on the leased parcels. The closure of cesspools located on State land is the Department's priority. Although not included in the Lessee's proposed improvements, staff recommends that the Board require the closure of the cesspool and connection to an alternative wastewater system pursuant to the lease extension and allow the cesspool closure and septic installation (or sewer connection as the case may be) as an additional or alternate allowed improvement under for the lease extension, provided that the total value of improvements made pursuant to the development agreement is not less than \$754,221.82. Staff will ask the Lessee to provide quotes for that work to include that cost as an allowed improvement either in addition to the other improvements or as a potential substitution.

Act 149 stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The

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2 Once the requested lease extension is granted, staff understands the Lessee may seek a consent to mortgage from the Board or Chairperson, as appropriate, in order to finance improvements to the property for this extension request.

3 20 years is the maximum extension available to Lessee under Act 149 because Lessee previously received two 10-year extensions. Act 149 provides that any extension under that act cannot extend the original term of the lease by more than 40 years. In Lessee's case, the original lease has already been extended by 20 years under prior extensions approved by the Board.

minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount. The Lessee has submitted plans and specifications for the total development and staff is proposing the use of a draft development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192(a), HRS, as amended, similar to what has been used in prior lease extensions. A copy of the draft development agreement is attached as **Exhibit C**.

As part of its due diligence and review process, staff notes that the Internal Revenue Service (IRS) has provided criteria to determine what would qualify as a capital improvement, which is an improvement that adds to the value of a property, extends its useful life, or adjusts it to new uses. The property is improved whenever it experiences a betterment, adaptation or restoration. An expenditure is for betterment if it facilitates a material condition or defect in the property that existed before it was acquired or when it was produced - it makes no difference whether or not you were cognizant of the defect when you received the unit of property; results in a material addition to the property - for instance, physically broadens, grows, or extends it, or results in a material increase in the property's capacity, productivity, power, or quality.

An expenditure is for a restoration if it returns a property that has plunged into disrepair to its ordinarily efficient operating condition; rebuilds the property to a like-new condition after the end of its useful economic life; replaces a significant part or important structural component of the property; replaces a piece of a property for which the owner has taken a loss, or repairs damage to a property for which the owner has taken a basis adjustment for a casualty loss.<sup>4</sup> Generally, repairs are one-time expenditures to keep the property as currently existing in a usable and operating condition.<sup>5</sup>

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<sup>4</sup> Information can be found at this link: <https://www.irs.gov/businesses/small-businesses-self-employed/tangible-property-final-regulations#Whatisthefactsandcircumstancesanalysis>.

<sup>5</sup> The United States Supreme Court has recognized the highly factual nature of determining whether expenditures are for capital improvements or for ordinary repairs. See Welch v. Helvering, 290 U.S. 111, 114 (1933) (“[T]he decisive distinctions [between capital and ordinary expenditures] are those of degree and not of kind”); Deputy v. du Pont, 308 U.S. 488, 496 (1940) (observing that each case “turns on its special facts”). Because of the factual nature of the issue, the courts have articulated a number of ways to distinguish between deductible repairs and non-deductible capital improvements. For example:

Illinois Merchants Trust Co. v. Commissioner, 4 B.T.A. 103, 106 (1926), the court explained that repair and maintenance expenses are incurred for the purpose of keeping property in an ordinarily efficient operating condition over its probable useful life for the uses for which the property was acquired. Capital expenditures, in contrast, are for replacements, alterations, improvements, or additions that appreciably prolong the life of the property, materially increase its value, or make it adaptable to a different use.

Estate of Walling v. Commissioner, 373 F.2d 190, 192-193 (3rd Cir. 1967), the court explained that the relevant distinction between capital improvements and repairs is whether the expenditures are to “put” or “keep” property in efficient operating condition.

Based on the foregoing and upon review of Lessee's improvement plan, staff believes that the proposed expenditures exceed simple repairs and qualify as substantial improvements under Act 149.

Therefore, staff recommends that the Board approve the proposed development agreement and authorize the Chairperson to execute the development agreement as well as the lease extension document. The development agreement and the lease extension document will incorporate the following specific current lease terms and conditions for the 20-year extension in order to implement Act 149 and conform the terms of the extension period to current law. Below is a summary of four substantive provisions staff will ensure are included in the extension of this lease originally issued on November 5, 1959, and amended by that the Extension of General Lease No. S-3583, covering the term from November 5, 2004 through November 4, 2014, and Second Extension of General Lease S-3583, covering the term from November 5, 2014 through November 4, 2024:

- **Lease Assignments.** The current lease form includes an assignment of lease premium analysis that allows the State to share in the consideration paid for an assignment of a lease under some circumstances. This term is consistent with Section 171-36, HRS. GL S-3583 has similar provisions incorporated via the Extension of General Lease No. S-3583, and the requested lease extension period should also include this standard assignment of lease premium term using the most current terms and conditions.
- **Sublease Rents.** The current lease form includes language allowing the State to adjust the lease rent based on the sublease rent charged to the sublessee, which is also consistent with Section 171-36, HRS. GL S-3583 has similar provisions incorporated via the Extension of General Lease No. S-3583, and the requested lease extension period should also include this standard sublease rent participation term using the most current terms and conditions.
- **Ownership of Improvements.** The current lease form includes a provision on ownership of improvements at lease expiration giving the State the option of assuming ownership or requiring the lessee to remove them at lessee's expense. State leases have incorporated this provision since about the mid-1960s. GL S-3583 has similar provisions incorporated via the Extension of General Lease No. S-3583, and the requested lease extension period should also include this standard ownership of improvements term using the most current terms and conditions.
- **Removal Bond.** Staff recommends that the Board reserve the right to impose a removal bond or other form of security during the term of the lease extension that is sufficient

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Plainfield-Union Water Co. v. Commissioner, 39 T.C. 333, 338 (1962), the court stated that if the expenditure merely restores the property to the state it was in before the situation prompting the expenditure arose and does not make the property more valuable, more useful, or longer-lived, then such an expenditure is usually considered a deductible repair. In contrast, a capital expenditure is generally considered to be a more permanent increment in the longevity, utility, or worth of the property.

to ensure the removal of all improvements from the lease premises at lease expiration or earlier termination. The Board has added this requirement as part of its most recent approvals of lease extensions pursuant to Act 149.

At this time, staff is recommending that, in addition to the provisions reference above, the Board also require that the most current updated standard lease terms and conditions be included in the 20-year extension document that the Board, at its discretion, may approve under Act 149. Incorporating these substantive terms for the extension period is consistent with the legislative intent of Chapter 171, HRS, which allows the State to be paid its fair share of ancillary income arising from the tenant's leasehold interest.

Staff is also recommending the Board allow a period of 24 months for Lessee to complete the improvements required under the development agreement. Staff is recommending such time for Lessee to complete the improvements required under the development agreement in order to provide Lessee the opportunity to address any labor or supply chain issues that may arise over the construction period without defaulting on the development agreement. Additionally, the 24-month period is consistent the time period granted to other Lessee seeking extensions to complete their improvements.

Upon the Board's approval of the terms and conditions of the development agreement as set forth above, staff is recommending that the Chairperson be authorized to approve and execute the development agreement once it is finalized and thereafter to execute the lease extension document.

There are no outstanding rental reopening issues. The Lessee is current with rent, insurance, and performance bond. No agency comments were solicited on the request because it involves a lease extension, not a new disposition.

RECOMMENDATION:

That the Board, subject to the Lessee fulfilling all of the requirements noted above:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Sections 11-200.1-15 and -16, HAR, the lease extension is expected to have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
2. Determine that: 1) the development proposed is of sufficient worth and value to justify the extension of the lease; 2) the estimated time to complete the improvements is approximately 24 months from the date the development agreement is signed; and 3) the minimum revised annual rent for the extension shall be based on the fair market value of the lands.
3. Authorize the Chairperson to approve and execute a development agreement with Lessee Yamada Consolidated, Inc., for a 20-year extension of General Lease No. S-

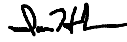


- 3583, covering the State-owned parcels identified by Tax Map Keys: (3)-2-2-037:052, 092 & 093, pursuant to Act 149, Session Laws of Hawaii 2018, under the terms and conditions cited above, which by this reference are incorporated herein, and further subject to the following terms and conditions:
- A. Incorporation of the most current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements and removal bond provisions used by the Department of the Attorney General with respect to leasing of public lands;
  - 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.
4. Approve a 20-year extension of lease term of General Lease No. S-3583, Yamada Consolidated, Inc., covering the State-owned parcels identified by Tax Map Keys: (3)-2-2-037:052, 092 & 093, pursuant to Act 149, Session Laws of Hawaii 2018, effective as of November 5, 2024, under the terms and conditions cited above, which by this reference are incorporated herein, and further subject to the following terms and conditions:
- A. Incorporation of the most current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements and removal bond provisions used by the Department of the Attorney General with respect to leasing of public lands.
  - 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.
5. Require the closure of the cesspool and connection to an alternative wastewater system as an additional condition of the lease extension and allow the cesspool closure and septic installation (or sewer connection as the case may be) as an additional or alternate allowed improvement under for the lease extension, provided that the total value of improvements made pursuant to the development agreement is not less than \$754,221.82.<sup>6</sup>

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<sup>6</sup> Staff will ask the Lessee to provide quotes for that work to include that cost as an allowed improvement either in addition to the other improvements or as a potential substitution.

Respectfully Submitted,



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FOR Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:

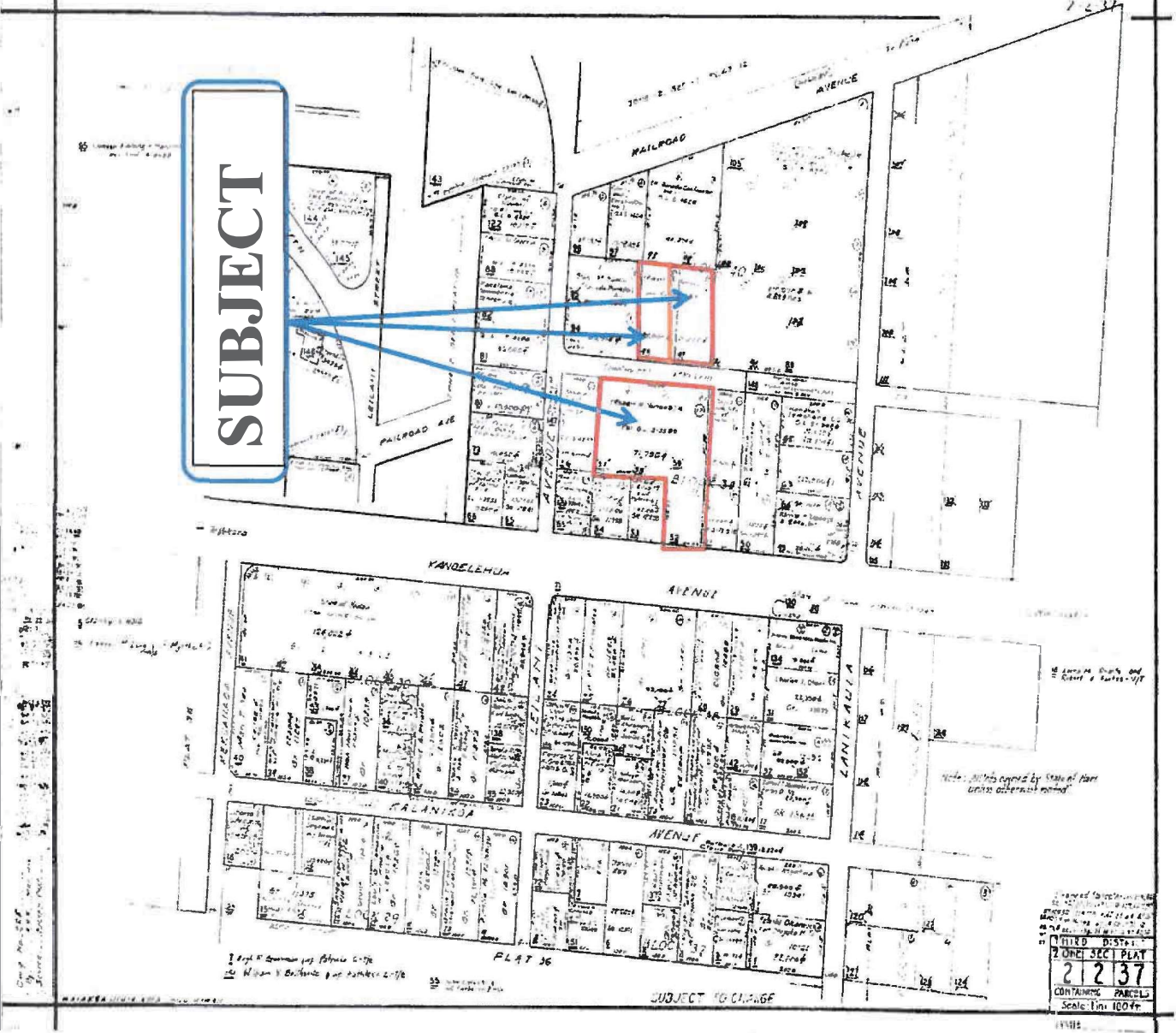


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Dawn N.S. Chang, Chairperson

*RT*

**SUBJECT**



**EXHIBIT A**

## Improvement Bid Proposals

### PROPOSAL



### YAMA'S ROOFING INC.

45 Pohaku Street / Suite #101  
Hilo, HI 96720  
Phone: (808) 961-9248/ Kona (808) 329-3044  
Fax : (808) 961-3258  
www.yamasroofing.com  
LIC # C-21133



Proposal Submitted To: Yamada & Sons	Phone: 808-960-6951	Date: 7/17/24
Street: 733 Kanoelehua Ave.	Job Name: Agriculture Supply Warehouse	
City, State and Zip Code: Hilo, Hawaii 96720	Job Location: Same	
Contact: sy@yamadasons.com	Prop#:	Fax:

We hereby submit specifications and estimates for:

#### REROOF WAREHOUSE

Tear off existing metal roofing system (approximately 21,500 sq. ft.) and dispose of refuse.

Install DuraCoat, 24 gauge zincalum, 4-rib roofing from HPM.

Secure with self-tapping stainless steel screws.

5-year warranty on labor/ 30 year warranty on roof coating

**COLOR CHOICE:**

THANK YOU FOR CONSIDERING US!

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:

**Two hundred fourteen thousand, six hundred forty-five dollars and no cents.....\$214,645.00**

**Install 19 Commercial Turbine Ventilators: An additional \$10,433.00**

Payment to be made as follows:

50% down- an additional 20% when 50% is completed- balance due upon job completion.

\*Please note that work will commence within 3 weeks to 3 months after receiving deposit

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature:

*Brian P. Peterson*

Brian P. Peterson/ RME

Note: This proposal may be withdrawn by us if not accepted WITHIN 30 DAYS.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 14 days at 1.5% per week. I/We have read and will abide by the contract terms.

Date of Acceptance: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

# EXHIBIT B

**PROPOSAL**



**YAMA'S ROOFING INC.**

45 Pohaku Street / Suite #101  
Hilo, HI 96720  
Phone: (808) 961-9248/ Kona (808) 329-3044  
Fax : (808) 961-3258  
www.yamasroofing.com  
LIC # C-21133



Proposal Submitted To: Yamada & Sons	Phone: 808 960 6951	Date: 7/15/24
Street: 733 Kanoolehua Ave.	Job Name: Same	
City, State and Zip Code: Hilo, Hawaii 96720	Job Location: Same	
Contact: sy@yamadasons.com	Prop#:	Fax:

We hereby submit specifications and estimates for:	
<b>REROOF WAREHOUSE</b>	
Tear off existing metal and fiberglass roofing system (approximately 22,306 sq. ft.) and dispose of refuse.	
Replace approximately 25 linear feet of rotten 8" C-channel purlins with new 14 gauge c-channel purlins.	
Install DuraCoat, <u>24 gauge</u> zincalum, 4-rib roofing from HPM.	
Install	
Secure with self-tapping stainless steel screws.	
5-year warranty on labor/ 30 year warranty on roof coating	
<b>COLOR CHOICE:</b>	
<b>THANK YOU FOR CONSIDERING US!</b>	

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:	
<b>Two hundred eighteen thousand, five hundred twelve dollars and no cents .....\$218,512.00</b>	
<b>Install 20 Commercial Turbine Ventilators: An additional \$10,983.00</b>	
Payment to be made as follows:	
50% down- an additional 20% when 50% is completed- balance due upon job completion.	
*Please note that work will commence within 3 weeks to 3 months after receiving deposit	
All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.	Authorized Signature:  <i>Brian P. Peterson</i> Brian P. Peterson/ RME  Note: This proposal may be withdrawn by us if not accepted WITHIN 30 DAYS.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 14 days at 1.5% per week. I/We have read and will abide by the contract terms.	Signature: _____
Date of Acceptance: _____	Signature: _____



## YAMADA & SONS, INC.

P.O. Box 4699 • 733 Kanoelehua Ave. • Hilo, Hawaii 96720-4699  
Telephone: (808) 933-8434 • Fax No. (808) 933-8415 • License #AC-1714

<b>To:</b>	Yamada Consolidated Inc.	<b>Contact:</b>	
<b>Address:</b>	733 Kanoelehua Ave. Hilo, HI 96720 UNITED STATES	<b>Phone:</b>	(808) 933-8400
		<b>Fax:</b>	(808) 933-8415
<b>Project Name:</b>	YCI Property Repaving	<b>Bid Number:</b>	
<b>Project Location:</b>	733 Kanoelehua Ave., Hilo, HI	<b>Bid Date:</b>	7/18/2024

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
	3" Thick HMA Pavement, State Mix IV (includes Removal & Disposal Of Existing Pavement)	59,691.00	SF	\$5.02	\$299,648.82

**Total Bid Price: \$299,648.82**

**Payment Terms:**

Net 30 days upon approved credit.

<p><b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p><b>Buyer:</b> _____</p> <p><b>Signature:</b> _____</p> <p><b>Date of Acceptance:</b> _____</p>	<p><b>CONFIRMED:</b> <b>Yamada &amp; Sons, Inc.</b></p> <p><b>Authorized Signature:</b> _____</p> <p><b>Estimator:</b> Shellby Yamada (808) 933-8434 sy@yamadasons.com</p>
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**DEVELOPMENT AGREEMENT**

**FOR**

**YAMADA CONSOLIDATED, INC.**

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**Department of Land and Natural Resources  
Land Division**

**State of Hawaii**

**EXHIBIT C**



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and dated effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”), by and between the **STATE OF HAWAII**, by its Chairperson of the Board of Land and Natural Resources (“**Chairperson**”) by the authority granted by the Board of Land and Natural Resources (“**Board**”) at its meeting held on October 25 \_\_\_\_, 2024, under agenda Item D-\_\_, for the Department of Land and Natural Resources, Land Division, whose principal place of business and post office address is 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96813 (“**State**”), and **YAMADA CONSOLIDATED, INC.**, a Hawaii corporation, whose business address is P.O. Box 4699, Hilo, Hawaii 96720 (“**Lessee**”).

### **RECITALS:**

- A. The State owns in fee simple that certain parcel of land, a portion of government lands, situated at Waiakea, South Hilo, Hawaii, shown on **Exhibit A** attached hereto, incorporated herein and made a part hereof. The parcel consists of approximately 2.565 acres and is identified by Tax Map Key Nos.: (3) 2-2-037:052, 092 and 093 (“**Subject Property**”).
- B. The parcel is currently leased to Lessee under General Lease No. S-3583 originally issued for a term of forty-five (45) years from November 5, 1959 to November 4, 2024, with a ten (10) year extension from November 5, 2004 to November 4, 2014, and a second ten (10) year extension from November 5, 2014 to November 4, 2024 (“**Lease**”).
- C. Act 149 Session Laws of Hawaii 2018 ("**Act 149**"), codified at Sections 171-191 and 171-192(a), Hawaii Revised Statutes ("**HRS**"), as amended, created the Hilo community economic district which includes the Subject Property. The purpose for creating the district was to allow the State to “facilitate efficient and effective improvement, and economic opportunity, in the area for lessees who commit to making substantial improvements to the existing improvements or constructing new substantial improvements.”
- D. Act 149 authorizes the Board to extend the term of leases for public lands within the Hilo community economic district for lessees who commit to substantial improvements to the existing improvements or to new substantial improvements so long as the length of the extension granted does not extend the original lease term by more than forty (40) years, and/or to extend the terms of such leases to the extent needed to qualify the lessee for loans or to amortize the cost of substantial improvements to the premises paid for by the lessee without institutional financing.
- E. Act 149 defines "substantial improvements" to mean “any renovation, rehabilitation, reconstruction, or construction of existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of the market value of the existing



improvements, that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.”

- F. An Appraisal Report prepared for the Lessee determined the market value of the leasehold improvements on the Subject Property to be \$2,017,000.00 as of November 4, 2024. Thirty percent of this amount is \$605,000.00.
- G. Lessee initially applied for a 20-year extension, which is the maximum allowed under Act 149, and is planning to make substantial improvements to the Subject Property in an amount exceeding the minimum required to be eligible for a lease extension under Act 149, as the total cost of Lessee’s substantial improvements will be approximately \$754,221.82.
- H. Lessee’s plans and specifications for its substantial improvements to the Subject Property were presented to the Board at its meeting of October 25, 2024, under agenda Item D-\_\_, together with the State staff recommendation that the Board approve a 20-year extension of the Lease to amortize the cost of the substantial improvements. The Board reviewed the plans and specifications and statutory requirements for a lease extension Act 149 and approved the extension of the Lease.
- I. This Agreement sets forth the terms and conditions that Lessee must satisfy and successfully perform in order for the requested extension of the Lease to be issued, and for Lessee to retain the benefit of the requested extension of the term of the Lease for the Subject Property pursuant to Act 149.

#### **AGREEMENT:**

In consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, the State and Lessee hereby mutually agree as follows:

1. Term. The term of this Agreement shall commence on the Effective Date and terminate on the Completion Date as defined in Paragraph 8 herein, unless terminated sooner pursuant to the terms of this Agreement.

2. Continuation of the Payment of Lease Rental. Lessee shall continue to pay to the State, throughout the term of this Agreement, all rent and other charges due by Lessee under the Lease, or the extension of the Lease provided for under this Agreement (the “**Extended Lease**”), pursuant to the terms and conditions of the Lease or the Extended Lease, as applicable, including the Revised Annual Rent as defined in Paragraph 3.A.(iii) herein, and all other rent and other charges due by Lessee under the Lease or Extended Lease pursuant to their terms and conditions.

3. Development Plan.

A. Pursuant to Act 149, prior to entering into this Agreement, Lessee prepared and submitted to the Board the plans and specifications of its proposed

development plan for the substantial improvements to the Subject Property dated \_\_\_\_\_, 2024, a copy of which is attached hereto as **Exhibit B** incorporated herein and made a part hereof (such plans and specifications are collectively referred to as the “**Development Plan**”). All such plans and specifications of the Development Plan shall meet the requirements of and be in full compliance with this Agreement and all applicable municipal, county, state and federal regulations, rules, codes and ordinances. The Board reviewed the Development Plan at its meeting held on October 25, 2024, under agenda Item D-\_\_\_, and determined that:

- (i) The Development Plan proposed in this Agreement is of sufficient worth and value to justify the extension of the term of the Lease to November 4, 2044;
- (ii) The estimated period of time to complete the Development Plan shall be \_\_\_\_\_ (\_\_\_) months from the Effective Date of this Agreement, which is reasonable; and
- (iii) The minimum revised annual rent to be paid by Lessee shall be based on the fair market value of the lands comprising the Subject Property to be developed, as determined by independent appraisal in accordance with Section 171-17, HRS ("**Revised Annual Rent**").

B. The Board granted final approval of the Development Plan and this Agreement at its meeting held on October 25, 2024, Item D-\_\_\_.

C. Lessee shall have submitted evidence reasonably satisfactory to the Chairperson that Lessee has adequate funding and/or financing to fully develop the Subject Property in accordance with the approved Development Plan.

D. Notwithstanding anything contained in this Agreement to the contrary, no such final approval of the Development Plan by the State shall be deemed a warranty or other representation on its part that (1) Lessee will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Lessee to develop the Subject Property in accordance with the approved Development Plan; or (2) such approved Development Plan by the State and the plans and specifications of substantial improvements to the to the Subject Property described therein are legal or structurally safe or sound.

4. Condition of the Subject Property. The State makes no representations regarding the condition or suitability of the Subject Property and of the existing structures and improvements at the Subject Property for the approved Development Plan. Lessee shall, at its sole cost and expense, be responsible for conducting its own investigations and due diligence regarding the Subject Property and the existing structures and improvements at the Subject Property, and any site work necessary to implement the approved Development Agreement, including but not limited to the removal of hazardous materials, if any. Lessee acknowledges and agrees that it assumes all risks of development at the Subject Property.

5. Construction Period. Lessee shall have \_\_\_\_\_ ( ) months from the Effective Date to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan (“**Construction Period**”).

Lessee shall, at Lessee’s sole cost and expense, expeditiously and diligently seek to obtain all necessary and appropriate permits and/or other regulatory approvals from the Federal Government, State of Hawaii (including the State Legislature if applicable), and/or County of Hawaii (“**County**”) so as to enable Lessee to complete the substantial improvements to the Subject Property in accordance with the approved Development Plan. Lessee shall use diligent and all commercially reasonable efforts to obtain all required permits and/or other regulatory approvals from the Federal Government, State of Hawaii and/or County.

6. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous material in completing the approved Development Plan at the Subject Property, except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Subject Property any such materials except to use in the ordinary course of Lessee’s business, and then only after written notice is given to the State of the identity of such materials and upon the State’s consent, which consent may be withheld at the State’s sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at the State’s request concerning Lessee’s best knowledge and belief regarding the presence of hazardous materials on the Subject Property placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the Subject Property occurring while Lessee is in possession, or elsewhere if caused by the Lessee or persons acting under the Lessee. These covenants shall survive the expiration or earlier termination of this Agreement.

For the purpose of this Agreement, “hazardous material” shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

7. Bonds. Lessee shall not commence construction of the improvements until Lessee has filed with the State sufficient bonds conditioned upon the full and faithful performance of all the terms and conditions of this Agreement, including a completion bond for the full, faithful and timely completion of this Agreement, free from all liens and claims, including the completion of the substantial improvements described in this Agreement, and a labor and materialmen’s bond in the amount of \$754,221.82, in such form and upon such terms and conditions as may be approved by the State. The Lessee shall, at its own cost and expense,

within fifteen (15) days from the Effective Date of this Agreement, procure and deposit with the State and thereafter keep in full force and effect during the term of this Agreement, such bonds acceptable to the State in the amount of \$754,221.82 as aforesaid, which bonds shall name the State as obligee, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions and covenants of this Agreement, including, but not limited to, the completion of the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property on or before the date of completion, free from all liens and claims, pursuant to the approved Development Plan. Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property incorporated herein this Agreement. These bonds shall provide that in case of a breach or default of any of the terms of this Agreement, covenants, conditions and agreements of such bonds, the full amounts payable pursuant to the terms and conditions of such bonds shall be paid to the State as liquidated and ascertained damages and not as a penalty.

8. Completion of Construction; Inspection. Upon Lessee's completion of the substantial improvements on the Subject Property in accordance with the approved Development Plan, Lessee shall provide written notice to the State acknowledging and confirming the same. Representatives of the State and Lessee shall then conduct a final inspection and walk through of the Subject Property within fourteen (14) days of such written notice, and a "punch list" shall be mutually prepared and agreed upon by representatives of the State and Lessee within seven (7) days of such inspection and walk through of the Subject Property. Such punch list shall itemize any areas of construction that were not in accordance with the approved Development Plan, or any unauthorized construction or work not acceptable to the State or any other governmental agency having jurisdiction over such work. Lessee, at Lessee's sole cost and expense, shall immediately repair all deficiencies identified as potential safety hazards on the punch list, and all other deficiencies on the punch list shall be remedied, or the work to remedy has commenced if a remedy may not reasonably be completed within the timeframe specified herein, within fourteen (14) days of the preparation of the same.

If the State is satisfied that completion of the substantial improvements to the Subject Property has been performed in accordance with the approved Development Plan by Lessee, including any and all punch list items, and forty-five (45) days have elapsed after the filing and publication of the Notice of Final or Substantial Completion by Lessee without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such substantial improvements, being filed against the Subject Property, then the State shall confirm and notify Lessee of the same in writing ("**Completion Date**"), at which time Lessee shall have the right to terminate the bonds posted by Lessee pursuant to Paragraph 7 hereof.

9. Justification of Sureties. Any bonds required by this Agreement shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two (2) personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, HRS; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the State security in certified checks,

certificates of deposit (payable on demand or after a period the State may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the State a deed or deeds of trust of real property, all of a character which is satisfactory to State and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the State shall be determined by the State, and that the Lessee may, with the approval of the State, exchange other securities or money for any of the deposited securities if in the judgment of the State the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the State and that until this consent is granted, which shall be discretionary with the State, no surety shall be released or relieved from any obligation, except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove.

10. Waiver, Modification, Reimposition of Bond and Liability Insurance Provisions. Upon substantial completion of the improvements contemplated herein and after forty-five (45) days after the filing and publication of the Notice of Final or Substantial Completion by Lessee without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such substantial improvements, being filed against the Subject Property, and upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this Agreement on its part to be observed or performed, the State at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove, the State reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this Agreement.

11. Modifications to the Development Plan. Lessee shall be entitled to make changes or modifications to the approved Development Plan as may be required to address and satisfy any comments made or issues raised by the appropriate agencies of the Federal Government, State of Hawaii and/or County without the further consent or approval by the State, provided that: (a) Lessee provides advance written notice to the State of such changes or modifications, including a reasonably specific explanation as to why such changes or modifications are being undertaken and their anticipated effect; and (b) such changes or modifications: (i) do not materially alter or change the Development Plan as approved by the State; (ii) do not reduce the rents and all other charges to be paid by Lessee under the Lease or the Extended Lease; (iii) do not provide for uses that are not permitted by applicable laws or ordinances; or (iv) do not adversely affect or delay the Construction Period for more than one hundred and eighty (180) days.

In addition, the State recognizes that from time to time the approved Development Plan may require changes or modifications initiated by Lessee. Lessee may make any such changes or modifications to said approved Development Plan with the prior written consent of the State, which consent shall not be unreasonably withheld, provided that such changes or modifications: (a) do not materially alter or change the Development Plan as approved by the State; (b) do not reduce the rents and all other charges to be paid by Lessee under the Lease or

Extended Lease; (c) do not provide for uses that are not permitted by applicable laws or ordinances; or (d) do not adversely affect or delay the Construction Period for more than one hundred and eighty (180) days.

12. Agreement to Issue Extension of Term of Lease. Upon execution of this Agreement, the State will request the Department of the Attorney General to prepare the Extended Lease document. Pursuant to Act 149, the Extended Lease document (heretofore and hereinafter sometimes also simply referred to as the “Extended Lease”) shall reflect an extension term of twenty (20) years and shall contain the Department’s and the Department of the Attorney General’s most current lease terms and conditions for leasing of public lands to for-profit entities, including but not limited to lease assignment, sublease rent participation, ownership of improvements, and inspections. The Extended Lease document will cover the aggregate extended term between November 5, 2024 through November 4, 2044, and will provide that in the event that the Lessee fails to successfully perform, timely satisfy or fully comply with any of the terms and conditions of this Agreement and/or approved Development Plan, the Extended Lease term will be rescinded and the Lease, together with its current termination date of November 4, 2024, will be reinstated. The State and Lessee will promptly sign the Extended Lease document when the form thereof is approved by the Department of the Attorney General.

13. Default; State’s Right to Terminate Agreement and/or Rescind Lease Extension. The State may, at its option and in its sole and absolute discretion, upon written notice to Lessee without prejudice to any other remedy or right of action, terminate this Agreement and/or rescind the Extended Lease at any time for any one of the following reasons:

A. If Lessee fails to pay rent or any part thereof or any other charge, payment or amount it is obligated to pay or that is due by Lessee under the Lease or the Extended Lease, and this failure continues for a period of more than thirty (30) days after delivery by the State of a written notice of such breach or default and demand for cure, by personal service, registered mail or certified mail to Lessee that the same is past due;

B. If Lessee fails to observe or perform any of the material covenants, terms and conditions contained in this Agreement, including but not limited to, those listed in subparagraphs (i) through (iv) herein, the Lease or the Extended Lease on the Lessee’s part to be observed and performed, and such breach or default continues for a period of more than sixty (60) days after delivery by the State of a written notice of such breach or default and demand for cure, by personal service, registered mail or certified mail to Lessee of such breach or default, or if such breach or default in observance and performance of such other covenants cannot reasonably be cured within said sixty (60)-day period, then such longer time as may be required, provided that Lessee shall within said period commence such cure and thereafter diligently prosecute the same to completion within sixty (60) days thereafter;

(i) If Lessee fails to obtain any and all Federal Government, State of Hawaii (including the State Legislature if applicable), and County permits and approvals required and necessary for the completion of the approved Development Plan;

(ii) If Lessee becomes bankrupt or insolvent, or seeks protection under any provision of any bankruptcy or insolvency law or any similar law providing for the relief of

debtors, or abandons the project contemplated under the approved Development Plan, or if any assignment is made of Lessee's rights hereunder for the benefit of creditors;

(iii) If the Subject Property or any part of the Subject Property, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime; or

(iv) If the Lessee is not in compliance with Sections 171-191 and -192, HRS.

Any default under this Agreement, the Lease, or Extended Lease by the Lessee shall be cause by the State to terminate this Agreement and rescind the Extended Lease, and the State shall have all other rights and remedies provided herein, in the Lease or the Extended Lease, as applicable, or as otherwise provided by law with respect to a default by the Lessee under this Agreement, the Lease or Extended Lease. Provided further, a default under this Agreement shall cause the Extended Lease to be void ab initio.

Upon any early termination by the State under this Agreement, this Agreement shall terminate on the date as provided for in the State's written notice and shall become null and void except as to any provisions which expressly survive termination in this Agreement. The Extended Lease shall be rescinded and Lessee shall not be entitled to an extension of the term of the Lease for the Subject Property pursuant to Act 149. Upon the effective date of termination and without waiving any other remedies to which it may be entitled, the State shall be entitled to: (1) prosecute any claim against Lessee for fees, costs or other payments or charges that accrued prior to the effective date of termination, including the interest thereon; and (2) assert any claim that it may have against Lessee for any damages, costs, or expenses, suffered or incurred by the State, which obligations shall survive termination of this Agreement, the Lease and/or Extended Lease.

14. Non-Waiver. The waiver by the State of any breach by the Lessee of any term, covenant, or condition of this Agreement or the Lease, nor of the State's right of re-entry for breach of covenant, nor of the State's right to declare and enforce a forfeiture for any breach, nor of the failure of the State to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

15. Liens. Lessee will not commit or suffer any act or neglect whereby the Subject Property or any improvements thereon or the estate or interest of the State therein shall at any time during the term of this Agreement become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will indemnify, defend and hold the State harmless from and against all loss, cost or expense with respect thereto (including reasonable attorney's fees). If any lien for work, labor, services or materials done for or supplied to the Subject Property by, on behalf of, or through Lessee is filed against the Subject Property, Lessee shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit, bond or other reasonably satisfactory alternative approved by the State, as the case may be. The foregoing covenants of Lessee shall survive expiration or any early termination of this Agreement.

16. Expenses to be Paid by Lessee. Pursuant to Act 149, Lessee shall pay all costs and expenses incurred by the State in connection with the processing, analyzing and negotiating of any request for a lease term extension and document, and this Agreement.

17. Observance of Laws, Ordinances and Regulations. Each party hereto, and their respective officers, agents, assigns, employees, consultants and/or contractors, or persons acting for or on its behalf, shall at all times observe and comply with all applicable laws, ordinances, rules and regulations of the federal, state, county and municipal governments, now in force or which may be in force.

18. Archaeology; Historic Preservation. Lessee, including any agent or contractor, upon encountering any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human remains, or any historic properties or burials, on the Subject Property, will immediately stop all work and contact the State DLNR Historic Preservation Division in compliance with Chapter 6E, HRS.

19. Recordation. This Agreement shall not be recorded. However, upon request by either the State or Lessee, a short form memorandum of this Agreement shall be prepared by the State and shall be duly executed and acknowledged in proper form and may be placed of record so as to give public notice as to the existence of this Agreement.

20. Notices. Any notice or demand to the State or Lessee provided for or permitted by this Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally within the respective County as applicable, the State or to any officer of Lessee, or (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to the other. Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, or receipt of Fax, or at 4:00 p.m. on the third business day after being deposited with the United States mail as aforesaid, as follows:

If to the State: Board and Department of Land and Natural Resources  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Attention: Chairperson  
Fax No.: (808) 587-0390

And a copy to: Department of the Attorney General  
Attention: Land/Transportation Division  
Kekuanaoa Building  
465 South King Street, Suite 300  
Honolulu, Hawaii 96813  
Fax No.: (808) 587-2999



If to Lessee: Yamada Consolidated, Inc.  
P.O. Box 4699  
Hilo, Hawaii 96720  
Attention: Shelby Yamada  
Fax No.: (808) \_\_\_\_\_

And a copy to: \_\_\_\_\_

21. Status Reports; Lessee Cooperation. Lessee acknowledges that the State's staff may be required to periodically report to the Board during the term of this Agreement on the status of Lessee's progress of the approved Development Plan incorporated in this Agreement. Lessee agrees to reasonably assist and meet with the State's staff in making such reports, including without limitation, upon commercially reasonable advance written notice, having a representative available to answer questions at any meetings of the Board at which such reports are given, providing information that State's staff reasonably requests for the purposes of making such reports, and being available to meet with the State's staff prior to the time such reports are made.

22. Costs and Attorney's Fees. Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants, terms and conditions of this Agreement, including, but not limited to, recovering possession of the Subject Property, or in the collection of delinquent fees, taxes, assessments, and any and all other amounts or charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.

23. Construction and Amendment. This Agreement has been negotiated extensively by Lessee and the State with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of this Agreement or any Exhibit attached hereto shall be effective unless incorporated in a written instrument executed by and between the State and Lessee; provided however, this Agreement may only be amended or modified with the approval of the Chairperson. The State and Lessee agree to execute such other documents and instruments as may be reasonably requested by the other party and as may be necessary to effectuate the terms and conditions of this Agreement.

24. Governing Law. This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii.

25. Ratification. To the extent of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall govern and control to the extent only where there is any conflict or inconsistency with regard to the terms and conditions that Lessee must satisfy and successfully perform in order for it to be issued an extension of the term of the Lease by the State for the Subject Property pursuant to Act 149.

26. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Agreement.

27. Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect which is not material to the transactions contemplated hereunder, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

28. Assignment. Any and all rights under this Agreement granted to Lessee may not be sold, assigned, conveyed or transferred in any manner by Lessee to any other person or entity. Notwithstanding the foregoing, however, Lessee may assign this entire Agreement and the development rights provided for herein to an institutional lender or lenders providing financing for the development of all or any portion of the Subject Property as security for the repayment of such loan or loans, with the prior written consent of the State.

29. State's Right to Assign. It is specifically understood and agreed that the State (through the Board) may convey or otherwise transfer the Subject Property subject to the terms and conditions of this Agreement, and assign this entire Agreement (including, but not limited to the assignment of any lease issued or to be issued under this Agreement) to any other department or agency of the State of Hawaii, subject to such department or agency affirmatively agreeing to accept such Subject Property subject to the terms and conditions of this Agreement and assuming all undertakings and obligations under this Agreement and/or the extension of the term of the Lease or Extended Lease issued or to be issued under this Agreement. Upon any such assignment, Lessee agrees to attorn to the assignee on the terms and conditions of this Agreement, the lease, or any other lease that is part of this Agreement.

30. Development Rights. Upon the expiration or any early termination of this Agreement by the State for whatever reason, all development rights, permits, approvals, plans, specifications, etc. prepared by or for Lessee in connection with Lessee's efforts relating to the proposed development and improvements to be constructed at the Subject Property or under this Agreement shall, to the extent owned by and/or assignable by Lessee, vest with and become a part of the Subject Property of the State. At the request of the State, Lessee shall do all things reasonably necessary to assign to the State, all such development rights, permits, approvals, plans, specifications, etc.

31. DLNR. Notwithstanding anything herein to the contrary, it is specifically understood and agreed by the parties that: (a) the "State" as used herein means the Department of Land and Natural Resources, State of Hawaii, and the "Chairperson" as used herein means the Chairperson of the Board of Land and Natural Resources; (b) whenever action is taken, or required to be taken by the "State" under this Agreement (e.g., approve, disapprove, consent or otherwise), it shall be deemed to be an act of only the Board of Land and Natural Resources, and shall not be construed to be the act of any other department or agency of the State of Hawaii. Lessee acknowledges and accepts the responsibility for obtaining all entitlements and

governmental approvals from the other applicable governing boards, agencies and departments of the State, County and Federal Government.

32. 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.

33. Nondiscrimination. The use of the Subject Property shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or a physical handicap.

34. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

35. Time is of the Essence. Time is of the essence in all provisions of this Agreement.

36. Exhibits. The following exhibits are attached to this Agreement and deemed incorporated herein this Agreement by reference:

Exhibit A: Map of Subject Property

Exhibit B: Lessee's Development Plan dated \_\_\_\_\_.

[THE NEXT PAGE IS THE SIGNATURE PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Approved and Executed by the Chairperson pursuant to authority granted by the Board of Land and Natural Resources at its meeting held on October 25, 2024

**STATE OF HAWAII**

By \_\_\_\_\_  
DAWN N. S. CHANG  
Chairperson of the Board of Land and Natural Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_

Deputy Attorney General

Dated: \_\_\_\_\_

**YAMADA CONSOLIDATED, INC.**  
a Hawaii corporation

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Lessee

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of **YAMADA CONSOLIDATED, INC.**, a Hawaii corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors, and the said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

\_\_\_\_\_

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**TMKs: (3) 2-2-037:052, 092 & 093**



**EXHIBIT B**  
**LESSEE’S DEVELOPMENT PLAN DATED AUGUST 2, 2024**

The Project currently entails the following work which will be done concurrently as a single construction project (subject to availability of materials):

<b>Item</b>	<b>Estimated Cost</b>
1. Reroof Warehouse 1. Remove existing metal roofing system (approx. 21,400 sf) and dispose. Install DuraCoat, 24 gauge, zincaluminum, 4-rib roofing from HPM. Secure with self-tapping stainless-steel screws. Install 19 commercial turbine ventilators.	\$225,078.00 (See Exhibit 1)
2. Reroof Warehouse 2. Remove existing metal and fiberglass roofing system (approx. 22,306 sf) and dispose. Replace approximately 25 linear feet of rotten 8” c-channel purlins with new 14-gauge c-channel purlins. Install DuraCoat, 24 gauge, zincaluminum, 4-rib roofing from HPM. Secure with self-tapping stainless-steel screws. Install 20 commercial turbine ventilators.	\$229,495.00 (See Exhibit 2)
3. Repave parking lot and driveways with 3” thick HMA pavement, State Mix IV (includes removal and disposal of existing pavement).	\$299,648.82 (See Exhibit 3)
<b>Total:</b>	<b>\$754,221.82</b>

The total estimated cost for the Project is \$754,221.82, which is 37.39% of the market value of the existing improvements (based on Lessee’s appraisal) and exceeds the 30% threshold required under HRS Section 171-192.

**PROPOSAL**



**YAMA'S ROOFING INC.**

45 Pohaku Street / Suite #101  
 Hilo, HI 96720  
 Phone: (808) 961-9248/ Kona (808) 329-3044  
 Fax : ( 808) 961-3258  
 www.yamasroofing.com  
 LIC # C-21133



Proposal Submitted To: Yamada & Sons	Phone: 808-960-6951	Date: 7/17/24
Street: 733 Kanoelehua Ave.	Job Name: Agriculture Supply Warehouse	
City, State and Zip Code: Hilo, Hawaii 96720	Job Location: Same	
Contact: sy@yamadasons.com	Prop#:	Fax:

We hereby submit specifications and estimates for:

**REROOF WAREHOUSE**

**Tear off existing metal roofing system (approximately 21,500 sq. ft.) and dispose of refuse.**

**Install DuraCoat, 24 gauge zincalum, 4-rib roofing from HPM.**

**Secure with self-tapping stainless steel screws.**

**5-year warranty on labor/ 30 year warranty on roof coating**

**COLOR CHOICE:**

**THANK YOU FOR CONSIDERING US!**

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:  
**Two hundred fourteen thousand, six hundred forty-five dollars and no cents.....\$214,645.00**  
**Install 19 Commercial Turbine Ventilators: An additional \$10,433.00**

Payment to be made as follows:  
 50% down- an additional 20% when 50% is completed- balance due upon job completion.  
 \*Please note that work will commence within 3 weeks to 3 months after receiving deposit

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.	Authorized Signature: <i>Brian P. Peterson</i> Brian P. Peterson/ RME  Note: This proposal may be withdrawn by us if not accepted WITHIN 30 DAYS.
---	---

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 14 days at 1.5% per week. I/We have read and will abide by the contract terms.  Date of Acceptance: _____	Signature: _____  Signature: _____
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**EXHIBIT B-1**



**PROPOSAL**



**YAMA'S ROOFING INC.**

45 Pohaku Street / Suite #101  
Hilo, HI 96720  
Phone: (808) 961-9248/ Kona (808) 329-3044  
Fax : ( 808) 961-3258  
www.yamasroofing.com  
LIC # C-21133



<b>Proposal Submitted To: Yamada &amp; Sons</b>	<b>Phone: 808-960-6951</b>	<b>Date: 7/15/24</b>
<b>Street: 733 Kanoiehua Ave.</b>	<b>Job Name: Same</b>	
<b>City, State and Zip Code: Hilo, Hawaii 96720</b>	<b>Job Location: Same</b>	
<b>Contact: sy@yamadasons.com</b>	<b>Prop#:</b>	<b>Fax:</b>

We hereby submit specifications and estimates for:

**REROOF WAREHOUSE**

**Tear off existing metal and fiberglass roofing system (approximately 22,306 sq. ft.) and dispose of refuse.**

**Replace approximately 25 linear feet of rotten 8" C-channel purlins with new 14 gauge c-channel purlins.**

**Install DuraCoat, 24 gauge zincaluminum, 4-rib roofing from HPM.**

**Install**

**Secure with self-tapping stainless steel screws.**

**5-year warranty on labor/ 30 year warranty on roof coating**

**COLOR CHOICE:**

**THANK YOU FOR CONSIDERING US!**

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:

**Two hundred eighteen thousand, five hundred twelve dollars and no cents .....\$218,512.00**

**Install 20 Commercial Turbine Ventilators: An additional \$10,983.00**

Payment to be made as follows:

50% down- an additional 20% when 50% is completed- balance due upon job completion.

\*Please note that work will commence within 3 weeks to 3 months after receiving deposit

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.	Authorized Signature:  <i>Brian P. Peterson</i> Brian P. Peterson/ RME  Note: This proposal may be withdrawn by us if not accepted WITHIN 30 DAYS.
---	---

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 14 days at 1.5% per week. I/We have read and will abide by the contract terms.  Date of Acceptance: _____	Signature: _____  Signature: _____
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**EXHIBIT B-2**



## YAMADA & SONS, INC.

P.O. Box 4699 • 733 Kanoelehua Ave. • Hilo, Hawaii 96720-4699  
Telephone: (808) 933-8434 • Fax No. (808) 933-8415 • License #AC-1714

<b>To:</b> Yamada Consolidated Inc.	<b>Contact:</b>
<b>Address:</b> 733 Kanoelehua Ave. Hilo, HI 96720 UNITED STATES	<b>Phone:</b> (808) 933-8400 <b>Fax:</b> (808) 933-8415
<b>Project Name:</b> YCI Property Repaving	<b>Bid Number:</b>
<b>Project Location:</b> 733 Kanoelehua Ave., Hilo, HI	<b>Bid Date:</b> 7/18/2024

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
	3" Thick HMA Pavement, State Mix IV (includes Removal & Disposal Of Existing Pavement)	59,691.00	SF	\$5.02	\$299,648.82

**Total Bid Price: \$299,648.82**

**Payment Terms:**

Net 30 days upon approved credit.

# EXHIBIT B-3