

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

December 12, 2025

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

OAHU

- (a) Authorize Closure of Portions of Makiki Ditch; and
 - (b) Authorize Chairperson to Enter into Right-of-Entry Agreement with the City and County of Honolulu for the Purpose of Posting of Signage,
- Makiki, Honolulu, Oahu, Adjacent to Tax Map Keys: (1) 2-4-024:033, (1) 2-4-025:029, (1) 2-4-029:037, 038, 066, 067.

APPLICANT:

- Department of Land and Natural Resources, Land Division ("LD").

LANDOWNER:

- City and County of Honolulu, Department of Facility Maintenance

("DFM"). LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended, Section 13-221-4, Hawaii Administrative Rules.

LOCATION:

Portion of Liholiho Street, Kewalo Street, Keeaumoku Street, and Makiki Street situated at Makiki, Honolulu, Oahu, identified by TMK: (1) 2-4-024,025, and 029: portions of City streets, as shown on **Exhibit A1** and **A2**.

AREA:

Not applicable.

ZONING:

Urban

State Land Use District:
City and County of Honolulu LUO: A-2

CHARACTER OF USE:

Posting of signages purposes.

LEASE TERM:

The City may elect to terminate this right-of-entry upon thirty (30) days' prior written notice to the other party.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 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 the following:

General Exemption Type 1: 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 35: Law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative measures.

General Exemption Type 3: Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities, including but not limited to: (A) Single family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units; (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of utility easements.

Part 1, Item 10: Construction, placement or installation of signage, pavement markings, buoys, or other similar structures.

No development or major land disturbance activities are proposed as a part of the Proposed Action. The Proposed Action is an administrative action which would facilitate enforcement against trespassers which may pose a threat to public health and safety. Closure would not result in any development of the area. Rather it would aide in ceasing illegal encampments and dumping, and hence, there may be beneficial impacts to the subject area, especially in the areas of public health and safety. Therefore, Staff recommends that the Board find that the subject request 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. (**Exhibit B**)

BACKGROUND:

LD is responsible for the maintenance and management of various open sections of the Makiki Ditch starting from Liholiho Street to Makiki Street, as shown on Exhibit A1. Along this section, there are Liholiho, Kewalo, Keeaumoku, and Makiki Streets built over the ditch. Both LD and DFM regularly receive complaints from district legislators and other community members regarding rubbish and overgrown vegetation in the ditch. Further, the homeless community tends to set up various encampments underneath the above-mentioned streets which would provide shelter from the sun and rain. The presence of encampments and the associated sanitary condition, in addition to the rubbish and vegetation issues, have consistently created a huge burden for both the State and the City on the maintenance of their respective areas.¹

The jurisdictional issue between the State and the City may create some uncertainties when enforcement, for example, asking people to leave, is needed. Following discussion with the district Senator and other State and City agencies, Honolulu Police Department (HPD) has agreed to take the lead in enforcing the trespass statutes by issuing citation or subsequent arrest, if appropriate. Nevertheless, HPD requests clear signage be posted to facilitate any enforcement actions to be taken by a police officer.

REMARKS:

LD and Engineering Division visited the subject area and suggested a few spots to post the sign. Sample of the sign language and the proposed locations are shown on **Exhibit C**. The sign, and its pole, will need to be physically attached to the City's improvements, such as a railing, or line of fencing, in order to provide the most visible locations to deter anyone from entering the open sections of the ditch and the area underneath the streets.

DFM requires LD enter into a right-of-entry agreement for the signs to indicate responsibility from each side. A sample ROE provided by DFM is attached as **Exhibit D**. A cursory review of the sample ROE provided by DFM indicates that the conditions may need to be revised, for example, State is self-insured while the template asks for certificate of insurance. Upon approval of today's request, LD will work with the Department of the

¹ While DLNR is responsible for the open sections of the ditch, the City is responsible for area directly underneath the streets/bridges.

Attorney General and DFM to reach an agreed version of ROE conditions.

Furthermore, LD recommends the Board authorize closure of the subject area pursuant to Section 13-221-4, Hawaii Administrative Rules “Closing of areas.” The board or its authorized representative may establish a reasonable schedule of visiting hours for all or portions of the premises and close or restrict the public use of all or any portion thereof, when necessary for the protection of the area or for the safety and welfare of persons or property, by posting of appropriate signs indicating the extend and scope of closure. All persons shall observe and abide by the officially posted signs describing closed area and visiting hours.”

DFM, Department of Transportation, Engineering Division of the Department of Land and Natural Resources indicated no objection to the request.

Upon approval of today’s request, staff will work with the City and send the document to the Department of the Attorney General for review and final approval. There are no other pertinent issues or concerns. Staff has no objections to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-16, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the closure of unencumbered State lands as described above pursuant to Section 13-221-4, Hawaii Administrative Rules.
3. Authorize the Chairperson execute a right-of-entry agreement with the City and County of Honolulu for signage purpose substantially under the terms and conditions cited above which by this reference are incorporated herein, and further subject to the following terms and conditions:
 - A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



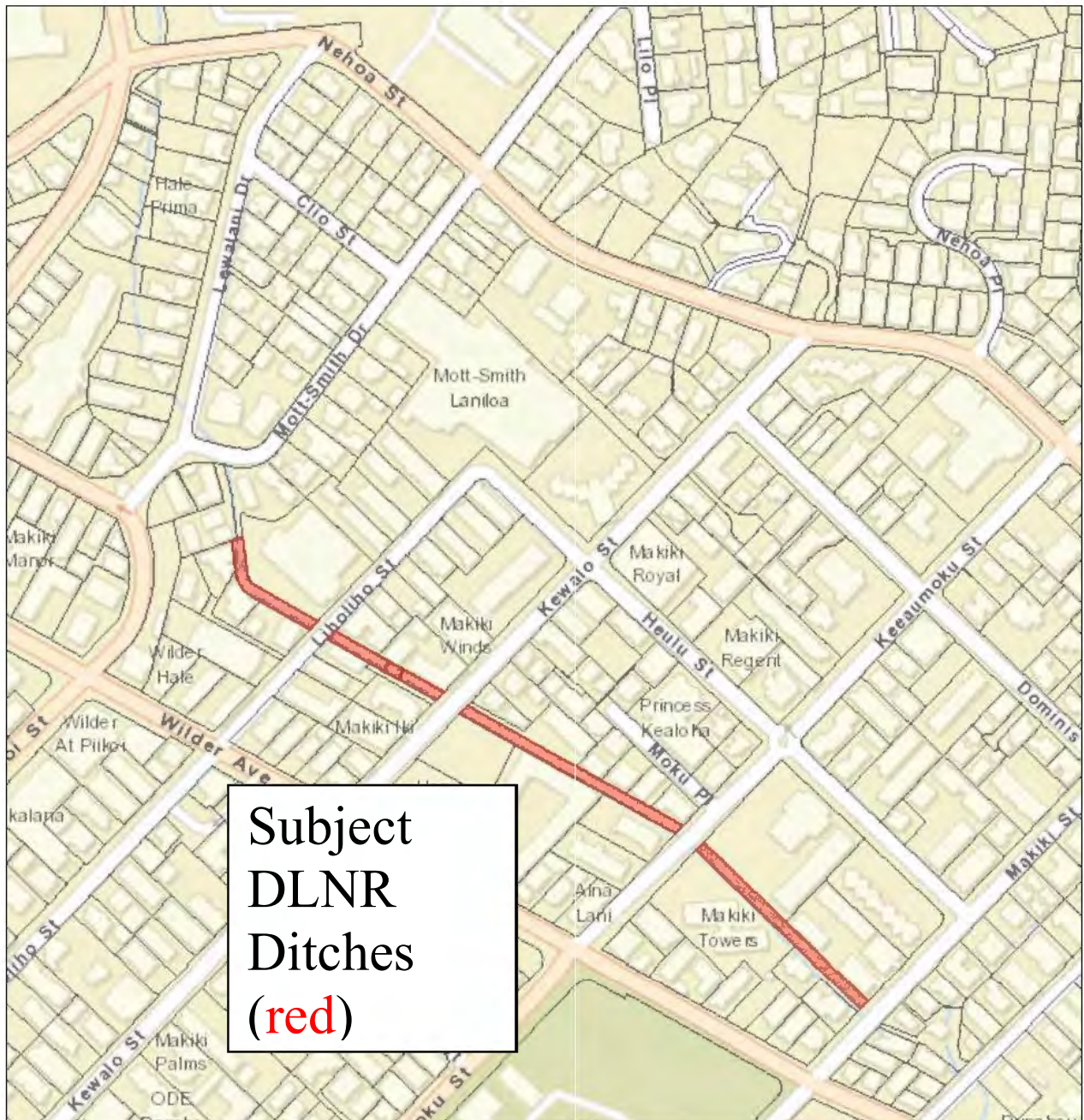
Dawn N. S. Chang, Chairperson





(1) 2-4-024:033, (1) 2-4-025:029, (1) 2-4-029:037, 038, 066, 067.

EXHIBIT A1



(1) 2-4-024:033, (1) 2-4-025:029, (1) 2-4-029:037, 038, 066, 067.

EXHIBIT A2

Project Title:	Closure of certain portions of Makiki Ditch and Enter a Right-of-Entry agreement with the City and County of Honolulu for Posting of Signage and Poles Purposes
Project / Reference No.:	Not applicable
Project Location:	Makiki, Honolulu, Oahu, Adjacent to Tax Map Keys: (1) 2-4-024:033, (1) 2-4-025:029, (1) 2-4-029:037, 038, 066, 067.
Project Description:	Close certain portions of Makiki Ditch and enter into a righty-of-entry agreement with the City and County of Honolulu to facilitate Honolulu Police Department officers prohibit trespasser for public health and safety concerns.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>General Exemption Type 1: 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.</p> <p>Part 1, Item 35: Law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative measures.</p> <p>General Exemption Type 3: Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities, including but not limited to: (A) Single family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units; (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of</p>

	utility easements.
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EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

	<p>Part 1, Item 10: Construction, placement or installation of signage, pavement markings, buoys, or other similar structures.</p> <p>No development or major land disturbance activities are proposed as a part of the Proposed Action. The Proposed Action is an administrative action which would facilitate the enforcement of trespass for public health and safety. Therefore, Staff recommends that the Board find that the subject request is a de minimis action 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.</p>
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. Staff believes there are no cumulative impacts involved.
Action May Have Significant Impact on Particularly Sensitive Environment?	No. There are no particularly sensitive environmental issues involved with the proposed use of the property.
Consulted Parties:	Agencies as noted in the submittal.
Analysis:	Based on the above-mentioned, the request is anticipated to have minimal or no significant effect on environment.
Recommendation:	It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Mott Street Drive Bridge
(One sign)



Signages shown here are for illustrational purpose only and they have not been installed yet.

EXHIBIT C

Liholiho St. Bridge
(Two signs)



Diamond Head side of bridge



Ewa side of bridge

Kewalo St. Bridge
(Two signs)



Diamond Head side of bridge



Ewa side of bridge

Ke'eaumoku St. Bridge
(Two signs)



Diamond Head side of bridge



Ewa side of bridge

Makiki St. Bridge
(one sign)



Ewa side of bridge

General Terms and Conditions

1. **Grant of Right-of-Entry.** The City hereby grants the Permittee a revocable non-exclusive license and right to enter in, on, over, and across the License Area during the Term, in accordance with the terms and conditions of this Right-of-Entry and for purposes of conducting the Permitted Activities.

2. **Permitted Activities.** The Permittee may use the License Area solely for the Permitted Activities, and for no other purposes.

3. **Termination.** The City may elect to terminate this Right-of-Entry upon thirty (30) days' prior written notice to the other party. Upon termination of this Right-of-Entry, the Permittee shall within thirty (30) days, at the Permittee's sole cost and expense: (1) remove any and all personal property placed upon the License Area by or for the Permittee; (2) remove any of the Permittee's improvements installed or constructed on, within, under, over or across the License Area and any improvements, equipment, facilities, and appurtenances relating thereto; (3) restore the License Area to a condition satisfactory to the City, which shall be as good as existed prior to the commencement of this Right-of-Entry, and if the Permittee fails to restore the License Area to a condition satisfactory to the City, the City shall have the right to charge the Permittee, and the Permittee shall be solely responsible for, any and all costs and expenses incurred by the City in completing and accomplishing such restoration, including, but not limited to, any costs the City incurs in removing and disposing of the Permittee's improvements. The obligations of the Permittee contained in this section shall survive the expiration or earlier termination of this Right-of-Entry.

4. **Costs.** The Permittee shall be solely responsible for all costs and expenses incurred by the Permittee in connection with this Right-of-Entry. The Permittee shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of the Property, including, but not limited to, the License Area, all costs and expenses incurred by the Permittee in connection with its use of the License Area. The Permittee hereby acknowledges and agrees that if any lien is filed against the License Area or any other portion of the Property as a result of this Right-of-Entry or the Permittee's use of the License Area, this Right-of-Entry shall automatically terminate, and the City shall have the right to exercise all of its remedies pursuant to this Right-of-Entry, at law and in equity.

5. **No Other Rights.** This Right-of-Entry shall not be construed to constitute or include the granting of any permanent rights, possessory or leasehold interests, ownership, title, or easements in the License Area.

6. **Subordinate.** This Right-of-Entry shall be subject to existing easements for public roads and highways, public utilities, railroads, and pipelines as applicable. This Right-of-Entry and the license and right of entry granted herein are subject and subordinate to all ground and underlying leases affecting the Property, and to all mortgages which may now or hereafter affect such leases or the Property.

7. Compliance with Law. The Permittee shall observe and fully comply with all laws, statutes, ordinances, rules and regulations of the Federal, State, or County governments affecting and/or applicable to the License Area, as well as any rules and regulations provided to the Permittee by the City (if any), including, without limitation, regulations applicable to use, storage and disposal of hazardous substances and waste and other environmental matters, security policies and procedures, with respect to the use of and access to the License Area.

8. Reservation of Rights. The City, its successors and assigns, reserve all right, title, interest and privilege as may be used and enjoyed over and within the License Area, except to the extent that the City's exercise of such right, title and/or privilege will unreasonably interfere with or abridge the Permittee's rights under this Right-of-Entry.

9. Debris. The Permittee agrees that at all times during the Term, the Permittee shall remove and properly dispose of any debris or trash from the Licensed Premises and repair any damage to the Property, including, but not limited to, the License Area, caused by the Permittee's use of the License Area. In addition to the foregoing, the Permittee shall perform necessary maintenance so as to keep the License Area at all times in good, safe and clean condition, and at minimum, in the same or better condition, as the License Area existed as of the Effective Date. Upon the expiration of this Right-of-Entry, the Permittee shall vacate the License Area and restore the License Area to the same or better condition, than it was in as of the Effective Date.

10. Safety. The Permittee shall at all times exercise due care for public and private safety. The Permittee shall not damage, undermine, or otherwise destroy any portion of the Property. The Permittee shall, at its sole cost and expense, repair, restore, and reconstruct any portion of the Property the Permittee damages, undermines or destroys, including any and all affected facilities, improvements, equipment, and appurtenances.

11. Indemnity. To the fullest extent permitted by law, the Permittee shall indemnify, defend, (with legal counsel subject to reasonable approval by the City), and hold harmless the City, its officers, employees and agents, from any and all costs, claims, liens, damages, expenses, fees, fines, penalties, proceedings, actions, lawsuits, arbitrations, mediations, demands, causes of action, liability and suits of any kind and nature, including but not limited to attorney's fees, arising out of or resulting from, to any extent, implicitly or explicitly, any actions or inactions of any sort of Permittee, its officers, employees, agents, consultants, contractors, or invitees in conjunction with this Right-of-Entry; provided that the Permittee shall not be required to indemnify, defend, or hold harmless, the City, its officers, employees, and agents, from any claims of liability for any damages to real or personal property or injury to or death of any persons, when such damage, injury or death arises out of the negligence of the City, and/or its officers, employees, agents, consultants, contractors, or invitees. This provision shall not be read or interpreted to create any liability on the part of the Permittee to any person or

entity, other than the City. This provision is not intended to and shall not be interpreted to benefit any third person, or to benefit or create any third-party beneficiary.

12. No Liability. The City shall not be liable for any loss, liability, claim, or demand for property damage, property loss, personal injury, including, but not limited to, death, arising out of any injury or damage caused by or resulting from the negligence of the Permittee or its contractors in connection with the Permittee's entry onto and occupancy of the License Area or arising out of damages or losses occurring on sidewalks, roadways, and other areas adjacent to the License Area, during the Term.

13. Breach. The failure by the Permittee to observe or perform any of the covenants or provisions to be observed or performed by the Permittee under this Right-of-Entry, where such failure continues for a period of five (5) days or more after written notice thereof from the City to the Permittee, shall constitute a breach by the Permittee under this Right-of-Entry. In the event of a breach by the Permittee, the City may exercise any of the following rights and remedies, which shall be additional and supplemental to all other rights or remedies which the City may have under laws in force when the default occurs, without further notice or demand of any kind to the Permittee or any other person, except as required by applicable law: (a) the City may elect to terminate this Right-of-Entry and the license and right of entry granted to the Permittee with respect to the License Area and bring an action for damages, and the Permittee shall have no further claim hereunder; (b) the City may elect to continue this Right-of-Entry in effect after the Permittee's breach, and bring an action for damages, and recover the Fees as they become due; and/or (c) the City may elect to perform any act the Permittee is obligated to perform under the terms of this Right-of-Entry (and enter upon the License Area in connection therewith if necessary), in the Permittee's name and on the Permittee's behalf, without being liable for any claim for damages therefor, and the Permittee shall reimburse the City on demand for any expenses the City may incur in effecting compliance with the Permittee's obligations (including collection costs and legal expenses), plus interest thereon at the lesser of 12% per annum or the maximum rate permitted by applicable law. In addition to the other remedies provided in this Right-of-Entry, and anything contained herein to the contrary notwithstanding, the City shall be entitled to restrain any default or violation, or attempted or threatened default or violation of any of the terms, covenants, and conditions of this Right-of-Entry, by injunction, order of specific performance or other appropriate equitable relief. The remedies provided to the City hereunder are intended to be cumulative, and may be exercised by the City in any order, or simultaneously, without such exercise being a waiver by the City of its right to exercise any other remedy granted to the City hereunder (or under applicable laws) with respect to the same default.

14. No Assignment. This Right-of-Entry shall not be assigned, sold, or transferred by the Permittee to any other party.

15. Permittee's Insurance.

a. The Permittee shall acquire and maintain in full force and

effect, through the Term, at its sole cost and expense, the following types of insurance coverage for not less than the limits shown:

General Liability	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Automobile Liability	
Bodily Injury — Per Person	\$1,000,000
Bodily Injury — Per Accident	\$1,000,000
Property Damage — Each Accident	\$1,000,000
Excess/Umbrella Liability	
Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

b. The City shall be included as an additional insured under the Permittee's commercial general liability policy and excess/umbrella liability policy. The Permittee's insurance will apply as primary insurance and the City's insurance will be in excess and not contributory with insurance afforded by the Permittee's policies. The Permittee agrees to require its workers' compensation carrier to waive its right of subrogation against the City.

c. The Permittee shall furnish the City with a certificate of insurance reflecting all of the coverage's and provisions required herein.

d. The Permittee shall arrange for the insurance companies providing the insurance coverage's required under this Right-of-Entry to provide the City with at least thirty (30) days' prior written notice of any cancellation, non-renewal or material modification of the Permittee's insurance coverage. In addition, the Permittee shall also bear the responsibility and obligation to provide the City with such written notice.

16. Condition. The Permittee has inspected the License Area and agrees to accept the License Area "AS-IS", "WHERE-AS" and "WITH ALL FAULTS" as of the Effective Date. THE CITY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS RIGHT-OF-ENTRY, THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE LICENSE AREA), OR THE REAL PROPERTY OR PROPERTY INTERESTS RELATED TO THE SAME, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17. Mitigation. The Permittee shall use its best efforts to minimize and mitigate the occurrence of traffic, dust, and noise originating from its use of the License Area.

18. **No Utilities.** The City is not obligated to provide water, electricity, sewer connections or any other utilities to the Permittee for the purposes of this Right-of-Entry.

19. **Hazardous Materials.** The Permittee expressly agrees to be solely responsible for and shall indemnify, defend and hold harmless the City, and its respective officials, employees and agents from and against any loss, damage, cost, expense, or liability arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on the Property (including, but not limited to, the License Area) caused by the Permittee and/or its employees, officers, representatives, agents, invitees, guests and independent contractors, including without limitation those resulting from the removal or construction of improvements on, under, or about the License Area, including the costs of any required or necessary removal, repair, cleanup, or remediation of the Property (including, but not limited to, the License Area), and the preparation and implementation of any closure, removal, remedial, or other required plans, and all reasonable costs and expenses incurred by the City in connection therewith, including without limitation reasonable attorneys' fees. Except to the extent caused by the gross negligence or willful misconduct of the City and/or its employees, officers, representatives, agents, invitees, guests and independent contractors, the Permittee further expressly agrees to waive and release any and all claims it may have against the City with respect to any losses, damages, liabilities, costs and expenses, property damage, personal injury or wrongful death based upon or arising out of or in connection with the presence of hazardous materials or dangerous or defective conditions on or in the Property (including, but not limited to, the License Area). Except as otherwise provided herein, the Permittee hereby agrees and acknowledges that the City has not made any representation or warranty, implied or otherwise, with respect to the condition of the License Area, including any dangerous or defective conditions existing in or on the License Area, whether or not such conditions are reasonably discoverable by the City or the Permittee. The Permittee further agrees that any property placed on the License Area during the Term shall be left there at the sole risk of the Permittee. This provision shall survive the expiration or earlier termination of this Right-of-Entry.

20. **No Alterations.** The Permittee may not make any alterations, installations, additions, or improvements in or to the License Area without the prior written consent of the City, which consent may be withheld or conditioned in the City's sole and absolute discretion. Unless the City permits otherwise, any permitted alteration must be removed and the License Area restored, at the Permittee's sole cost and expense, when this Right-of-Entry terminates.

21. **Inspections.** Physical inspections that include drilling, boring, or other invasive techniques shall be subject to the City's prior written consent, and in any event, shall be conducted in accordance with standards customarily employed in the industry and in compliance with applicable law. Following each entry by the Permittee for and/or in connection with inspections or tests on the License Area, the Permittee shall restore the License Area to a condition which is as near to its original condition as

existed prior to any such inspections or tests.

22. Repairs. Throughout the Term, the Permittee shall take good care of the License Area. The Permittee shall also be responsible for the cost to repair any damage to the License Area caused by the Permittee, its employees, officers, representatives, agents, invitees, guests and independent contractors. The Permittee shall not be responsible for the cost to repair any damage to the License Area arising directly out of the acts or omissions of the City, or its agents or employees. The repair obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this Right-of-Entry.

23. No Waste. No earthmoving, stockpiling, material or equipment storage, or disposal of materials of any kind will be allowed on the License Area.

24. No Structures. No permanent or temporary structures will be allowed on the License Area, except with the City's prior written consent, which consent may be withheld and/or conditioned by the City in its sole and absolute discretion.

25. No Waiver. No consent by the City to any entries, surveys, tests, investigations or the like shall be deemed to constitute a waiver by the City or assumption of liability or risk to the City.

26. Costs and Attorneys' Fees. If there is a dispute between the parties to this Right-of-Entry and either party institutes a lawsuit, arbitration, mediation, or other proceeding to enforce, declare, or interpret any provision(s) of this Right-of-Entry, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

27. Entire Agreements/Amendments. This Right-of-Entry constitutes the entire agreement and understanding of the parties hereto and supersedes all offers, negotiations, and other agreements. There are no other representations or understandings of any kind. Any amendments of this Right-of-Entry must be in writing and executed by both parties hereto.

28. Binding Effect. All provisions contained in this Right-of-Entry shall be binding upon and inure to the benefit of the respective parties hereto, their successors, officers, agents, and employees or any person acting for and on their behalf.

29. Counterparts. This Right-of-Entry may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Right-of-Entry, it shall not be necessary to produce or account for more than one such counterpart.

30. Governing Law. This Right-of-Entry shall be governed by and construed in accordance with the laws of the State of Hawai'i, and the parties hereto

irremovably consent to the jurisdiction of such state and, unless prohibited by applicable law, to the venue of the courts of such state.

31. Section Headings. The section titles herein are for convenience only and do not define, limit, or construe the contents of such sections.

32. Attachments and Exhibits. All attachments and exhibits to this Right-of-Entry are hereby made a part hereof as if fully set out herein.

33. Severability. If any provision or provisions in this Right-of-Entry is/are found to be in violation of any law or otherwise unenforceable, all other provisions remain unaffected in full force and effect.

34. Time is of the Essence. Time is of the essence with respect to all provisions of this Right-of-Entry.

35. No Partnership, etc. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

36. Facsimile and Electronic Delivery. The parties hereto agree that this Right-of-Entry may be executed and the signature pages transmitted by facsimile or other electronic transmission. The delivery of such facsimile or electronic copies of the executed signature pages to this Right-of-Entry shall constitute effective execution and delivery hereof. If so executed and delivered by one or both parties hereto, the effectiveness of this Right-of-Entry shall not be affected by the non-delivery of any manually-signed signature page.

[The rest of this page is intentionally left blank. Signatures appear on the next page.]