STATE OF HAWAII DEPARTMENT OF TRANSPORTATION HIGHWAYS DIVISION

ADDENDUM NO. 1 KAUMUALII HIGHWAY ELEELE PEDESTRIAN OVERPASS IMPROVEMENTS PROJECT NO. 50C-01-19M

The following amendments shall be made to the Bid Documents:

A. SPECIFICATIONS

- 1. Replace Section 503 Concrete Structures dated 11/19/19 with the attached Section 503 Concrete Structures dated r10/20/20.
- 2. Replace Section 645 Work Zone Traffic Control dated 5/20/13 with the attached Section 645 Work Zone Traffic Control dated r10/20/20.

B. PLANS

1. Replace Plan Sheet Nos. 9, 11, and 19 with the attached Plan Sheet Nos. ADD. 9, ADD. 11, and ADD. 19 respectively.

C. RIGHT OF ENTRY AND RENTAL AGREEMENT

Attached is the executed Right of Entry and Rental Agreement between Eleele Associates, Inc. (Landowner) and the State of Hawaii.

- 1. Construction Parcel C2 (Parcel C2), approximately 2,954 square feet, shall be for construction staging purposes.
- 2. The Contractor shall permit the Landowner and utility companies to exercise any existing rights each may have relating to Parcel C2, including, but not limited to, access over and through Parcel C2, as long as said exercise of rights, including any exercise of said access rights, does not unreasonably delay or interfere with the Project work.
- 3. The Contractor shall include the Landowner as an additional insured on the insurance policies (Comprehensive Personal Injury and Property Damage Liability; Automobile Injury and Property Damage; and Worker's Compensation) that will be prescribed by the Project construction contract. The insurance policies shall also provide a waiver of subrogation in the Landowner's favor. The Contractor shall provide written verification of compliance in the

form of an insurance certificate prior to the start of Project construction.

- 4. The Contractor shall indemnify the Landowner against any liability, including all loss, damages, costs, expenses and attorney's fees, for any damage to real or personal property, and including environmental damage, if any, or injury to or death of persons when such damage, injury or death is caused by the negligence, gross negligence or willful action of the Contractor in the exercise of the rights granted under the Right of Entry and Rental Agreement; provided that the Contractor shall not be obligated to indemnify the Landowner if and to the extent that such damage, injury or death is caused by the negligence or any of the Landowner's officers, employees, agents, licensees, invitees, contractors, representatives, or guests.
- 5. Prior to de-mobilizing, Contractor shall, at his or her own expense, maintain, clean and restore Parcel C2 to the same or better condition as existed prior to the commencement of the Project.

D. GRANT OF EASEMENT

Attached is the executed Grant of Easement between Eleele Associates, Inc. (Landowner) and the State of Hawaii.

- 1. Construction Parcel C1 (Parcel C1), approximately 20,904 square feet, shall be for construction and public roadway purposes.
- 2. The Contractor shall include the Landowner as an additional insured on the insurance policies (Comprehensive Personal Injury and Property Damage Liability; Automobile Injury and Property Damage; and Worker's Compensation) that will be prescribed by the Project construction contract. The insurance policies shall also provide a waiver of subrogation in the Landowner's favor. The Contractor shall provide written verification of compliance in the form of an insurance certificate prior to the start of Project construction.
- 3. The Contractor shall indemnify the Landowner against any liability, including all loss, damages, costs, expenses and attorney's fees, for any damage to real or personal property, and including environmental damage, if any, or injury to or death of persons when such damage, injury or death is caused by the negligence, gross negligence or willful action of the Contractor in the exercise of the rights granted under the Grant of Easement; provided that the Contractor shall not be obligated to indemnify, defend, and hold harmless, the Landowner if and to the extent that such

damage, injury or death is caused by the negligence of the Landowner or any of the Landowner's officers, employees, agents, licensees, invitees, contractors, representatives, or guests.

4. Prior to de-mobilizing, Contractor shall, at his or her own expense, maintain, clean, and restore Parcel C1 to the same or better condition as existed prior to the commencement of the Project.

Attached is the Lead Paint Inspection Report prepared by Owen Environmental, dated October 16, 2018.

Attached are the October 14, 2020 Minutes of the Pre-Bid Meeting and attendance sheet for your information.

Please acknowledge receipt of this Addendum No. 1 by recording the date of its receipt in the space provided on page P-4 of the Proposal.

p pta

JADE T. BUTAY Director of Transportation

2 3 Make the following amendments to said Section: 4 5 **(I)** Amend **503.04 – Measurement** by revising lines 1201 to 1205 to read as follows: 6 7 8 "503.04 The Engineer will measure the various concrete Measurement. items for payment at the units specified in the proposal schedule. The concrete 9 10 for the superstructure shall be cast onto the new bridge girders prior to erecting into position. The concrete for the extension of the stairs shall be cast-in-place 11 with an expansion joint cast between the cast-in-place concrete and the precast 12 13 concrete deck." 14 15 **(II)** Amend 503.05 - Payment by revising lines 1206 to 1223 to read as follows: 16 17 18 "503.05 Payment. The Engineer will pay for the accepted quantities of 19 concrete complete in place at the pay unit listed below and contained in the 20 proposal schedule. 21 22 The contract amounts paid shall be full compensation for the concrete; for placing, curing and finishing; for furnishing materials including admixtures and 23 24 cement; for furnishing and installing premolded joint fillers, joint seals, waterproofing at construction joints, and pipes; for furnishing and installing 25 26 anchor bolts, and other similar items; form lining and falsework or centering, 27 bearing pads, structural steel bearing plates; and for equipment, tools, labor, 28 materials and incidentals necessary to complete the work. 29 30 The Engineer will pay for the following pay items when included in the 31 proposal schedule: 32 33 Pay Item Pay Unit 34 35 Concrete in Bridge Superstructure Cubic Yard 36 37 Concrete in Stair Extensions Cubic Yard 38 39 Concrete Spall Repair Type I Square Foot 40 41 Linear Foot" Concrete Spall Repair Type II 42 43 44 45

SECTION 503 - CONCRETE STRUCTURES

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END OF SECTION 503

SECTION 645 – WORK ZONE TRAFFIC CONTROL

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Make the following amendments to said Section:

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(I) Amend **Subsection 645.03(B) Construction Signs** by replacing line 162 through 169 to read as follows:

8 **"(B) Construction Signs.** Low speed undivided highway work zone regulatory 9 and warning signs pertaining to reduced speed limits shall apply to this project. 10 Signs with designations CW20-1Ad and CG20-2A shall be required at all nearby 11 intersections. Exact locations and mounting type of work zone signs are subject to 12 review and acceptance by the State representative.

13

14 1) **Covers.** Use sign covers when existing signs confuse the public or 15 are in conflict with TCP signs installed. Sign covers shall be commercially 16 manufactured and accepted by the Engineer before use. Sign covers shall at all times and under all conditions not allow any portion of the sign being 17 covered to be visible. If more than one side of the sign has words or symbols 18 cover all sides of the signs until needed. 19 "Homemade" or "field made" 20 covers shall not be used. Cover both sides of the sign if both sides have symbols or words. Covering of sign identification markings are not required if 21 22 that is the only markings on that side of the sign. Sign covers shall be 23 maintained. 24

25 Removal of the existing sign in lieu of the use of sign covers may be 26 acceptable to the Engineer provided the previously removed existing sign is 27 immediately reinstalled when directed. Removal of existing post(s) and mounting hardware is required if not used by the new TCP sign. New 28 29 mounting hardware shall be used to mount the TCP signs if the existing hardware is in an unacceptable condition in the opinion of the Engineer. In 30 addition, should the sign or post during storage, in the opinion of the 31 32 Engineer, become unacceptable or lost or stolen the Contractor shall replace the sign or post with a new sign or post. Use new hardware to reinstall the 33 34 sign regardless whether it is an existing sign or new."

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(II) Amend Subsection 645.03(G) Advisory Signs by replacing line 314 to 324 to read as follows:

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"(G) Advisory Signs. Advisory signs are not required for this project."

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41 **(III)** Amend **Subsection 645.03(H)** Advertisement from lines 391 to 392 to read 42 as follows:

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44 "Place advertisement for three consecutive days and within one week
45 before traffic pattern changes, in publication as ordered by the Engineer. In
46 addition to the advertisement(s), the Contractor shall deploy two portable
47 changeable message boards and accessories at locations acceptable to the

48 Engineer, and at no additional cost for three days, for each required 49 advertisement." 50 51 (IV) Amend **Subsection 645.04** Measurement from lines 394 to 403 to read as 52 follows: 53 54 "645.04 Measurement. 55 56 Traffic control as specified in Subsection 645.03 - Construction (A) 57 including sign covers and the initial advertisement(s) will be measured on a contract lump sum basis. Measurement for payment will not apply. 58 59 60 **(B)** The Engineer will measure additional police officers, additional traffic control devices, and additional advertisements, if ordered by the Engineer, 61 62 on a force account basis, in accordance with Subsection 109.06 - Force 63 Account Provisions and Compensation." 64 65 (V) Amend **Subsection 645.05** Payment from lines 405 to 428 to read as 66 follows: 67 "645.05 68 **Payment.** The Engineer will pay for the accepted traffic control, additional police officers, additional traffic control devices, and additional advertisements at the 69 contract price per pay unit, as shown in the proposal schedule. Payment will be full 70 compensation for the work prescribed in this section and the contract documents. 71 72 73 The Engineer will pay for the following pay items when included in the 74 proposal schedule: 75 76 Pay Item Pay Unit 77 78 Traffic Control Lump Sum 79 80 Additional Police Officers, Additional Traffic Control Devices, 81 and Additional Advertisements Force Account 82 83 An estimated amount for the force account may be allocated in the proposal schedule under "Additional Police Officers, Additional Traffic Control Devices, and 84 85 Additional Advertisements", but the actual amount to be paid will be the sum shown on the accepted force account records, whether this sum be more or less than the 86 87 estimated amount allocated in the proposal schedule. 88 89 The Engineer will not pay for request submittals. The Engineer will not 90 consider claims for additional compensation of late submittals or requests by 91 Contractor." **END OF SECTION 645** 92

RIGHT-OF-ENTRY AND RENTAL AGREEMENT

THIS AGREEMENT ("Agreement"), made and entered into by and between the STATE OF HAWAII, by its Director of Transportation, hereafter called the "STATE", whose address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, and Eleele Associates, Inc., whose mailing address is 2217 Alahee

Street, Lihue, Hawaii 96766, hereafter called the "GRANTOR",

WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as **Construction Parcel C2** identified as being portion of Tax Map Key No. (4) 2-1-3:23 (Portion) containing an area of approximately 2,954 square feet; which is situated at Eleele, Island of Kauai, Hawaii, as delineated on Exhibit A, which is attached hereto and incorporated herein by reference (hereafter referred to as the "Property"), for a public purpose, to wit: the construction, preservation and protection of the highway project known as Kaumualii Highway (Route 50), Milepost 16.0, Eleele Pedestrian Overpass Repairs, Project No. 50C-01-19M, (hereafter referred to as the "Project"),

WHEREAS, the STATE desires to obtain immediate entry to and possession of the Property to commence construction of the Project without delay, it being contemplated that a construction contract will be awarded in the near future; and WHEREAS, the STATE will be using the Property for Project work; and

WHEREAS, GRANTOR is the fee owner of the Property which will be affected by the Project; and

WHEREAS, the GRANTOR desires to cooperate with the STATE to allow the construction of the Project to proceed without delay,

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

1. <u>Right of Entry and Possession</u>. The GRANTOR hereby grants to the STATE, its officers, employees, contractors, and permitted assigns, permission to enter upon and take possession of the Property as shown on Exhibit A, at the **Notice to Proceed date** for the purposes of the Project, which is admitted to be for public use. The STATE will take reasonable steps to ensure that the contractor(s) the STATE selects to construct the Project (hereafter collectively and individually called the "CONTRACTOR") will permit the GRANTOR and utility companies to exercise any existing rights each may have relating to the Property, including, but not limited to, access over and through the Property, as long as said exercise of rights, including any exercise of said access rights, does not unreasonably delay or interfere with the Project work.

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2. <u>STATE's responsibility</u>. The STATE shall be responsible, to the extent permitted by law, for damage or injury caused by the STATE's officers and employees in the scope of their employment provided that the STATE's liability for such damage or injury has been determined by a court or agreed to by the STATE. The STATE shall pay for such damage and injury, provided that funds are appropriated and allotted for that purpose.

3. <u>Insurance by CONTRACTOR</u>. The STATE shall require the CONTRACTOR to include GRANTOR and the STATE as additional insureds on the insurance policies (Comprehensive Personal Injury and Property Damage Liability; Automobile Bodily Injury and Property Damage; and Worker's Compensation) that will be prescribed by the proposed Project construction contract. Said insurance policies shall also provide a waiver of subrogation in GRANTOR's favor. The STATE shall require the CONTRACTOR to provide written verification of compliance in the form of an insurance certificate to the GRANTOR prior to the start of Project construction.

4. <u>Indemnification by CONTRACTOR</u>. The STATE shall ensure that the CONTRACTOR shall execute an agreement whereby the CONTRACTOR would indemnify the GRANTOR against any liability, including all loss, damages, costs, expenses and attorney's fees, for any damage to real or personal property, and including

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environmental damage, if any, or injury to or death of persons when such damage, injury or death is caused by the negligence, gross negligence or willful action of the CONTRACTOR in the exercise of the rights granted under this Agreement; provided that the CONTRACTOR shall not be obligated to indemnify the GRANTOR if and to the extent that such damage, injury or death is caused by the negligence of the GRANTOR or any of the GRANTOR's officers, employees, agents, licensees, invitees, contractors, representatives, or guests.

5. <u>Rental</u>. The STATE agrees to pay to GRANTOR the amount of **THREE THOUSAND SEVENTY-TWO DOLLARS (\$3,072.00)** as the annual rent for the use of the construction parcel. The first annual payment will be made within sixty (60) days of Notice to Proceed for construction of the Project and each subsequent annual payment, if any, will be made on the anniversary date of the construction start date, with the final payment being prorated accordingly based on the actual period of use of the Property by the STATE. If GRANTOR does not receive any payment when due, interest will accrue on the overdue unpaid balance at the rate of one percent (1%) simple interest per month, and will stop accruing when the STATE initiates the processing of the payment.

6. <u>Excess Rent</u>. GRANTOR agrees to reimburse and pay in full to the STATE the appropriate and proper prorated amount

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(calculated daily) of any excess rent paid by the STATE for the use of the Property. GRANTOR shall fully reimburse and pay such excess rental to the STATE within sixty (60) days of the effective termination date.

7. <u>Restoration</u>. Upon the full or partial termination of this Agreement, the STATE and/or its CONTRACTOR shall remove all equipment or tangible personal property from the Property or such portion thereof not required by the STATE and shall restore the ground condition of only that portion of the Property no longer required by the STATE to the condition as mentioned in the STATE's offer letter to you.

8. <u>Term</u>. The term of this Agreement shall commence upon the Notice to Proceed date through completion of construction work for the Project unless sooner terminated by the STATE. It is estimated that the duration of construction work will be seven (7) months from project Notice to Proceed date.

9. <u>Extension</u>. This Agreement may be extended upon mutual written agreement of the parties hereto, and the monthly rental payable from the STATE to the GRANTOR for the Property during such extended term will be a prorated annual amount, and shall be further adjusted if any portion of the Property has been returned to the GRANTOR.

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10. <u>Termination</u>. This Agreement may be terminated upon thirty (30) days written notice by the STATE.

11. <u>No Unreasonable Interference</u>. The GRANTOR agrees not to unreasonably interfere with the STATE's facilities, operations and activities in, on or connected with the Property.

12. <u>Counterparts; Facsimile Signatures</u>. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document binding all of the parties hereto notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

13. <u>Headings, Captions</u>. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define or limit the paragraphs to which they may pertain.

14. <u>Singular, Plural</u>. In this Agreement, the singular shall include the plural, and the plural shall include the singular, as the case may be.

15. <u>Binding Effect</u>. The term "GRANTOR" wherever used herein shall include the GRANTOR, and the heirs, representatives,

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successors and assigns of the GRANTOR. The term "STATE" wherever used herein shall include the State of Hawaii, its representatives, successors and permitted assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns.

16. <u>Assignment</u>. The GRANTOR and the STATE may not assign or otherwise transfer any interest in this Agreement without the written consent of all parties to this Agreement.

17. <u>Amendment</u>. This Agreement shall not be amended except in writing signed by the GRANTOR and the STATE.

18. <u>GRANTOR's Responsibility</u>. In the event that the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against GRANTOR (other than condemnation proceedings), the Grantor shall pay all costs, including reasonable attorneys' fees and expenses, incurred or imposed on the STATE.

19. <u>Governing Law</u>. This Agreement shall be governed by the laws of the State of Hawaii.

20. Entire Agreement. This Agreement and the exhibit hereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereto and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded

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and merged herein. The exhibit hereto and each and every provision thereof are incorporated by this reference.

21. <u>No Waiver</u>. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be deemed a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. <u>STATE is self-insured</u>. The STATE, as a sovereignty is self-insured and therefore insurance, including but not limited to, public liability and property damage, is not required.

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IN WITNESS WHEREOF, the parties hereto have executed this Right-of-Entry and Rental Agreement this _____ day of October , 20 20.

GRANTOR:

ELEELE ASSOCIATES, INC.

By Ruth Hash Print Name Ruth Hashisaka Its Vice President

October 1, 2020 Date

RESERVATIONS:

STATE:

STATE OF HAWAII

APPROVED AS TO LEGALITY,

FORM, EXCEPTIONS, AND

Deputy Attorney General Name: <u>Nichael Q.Y. Lan</u> Dated: <u>Sept. P. 2020</u>

By

JADE T. BUTAY Director of Transportation

STATE OF HAWAII) CITY AND HONOLULU) SS. COUNTY OF KAUAT) poll part day of October , 20 20 , before me personally appeared Ruth Hashisaka to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



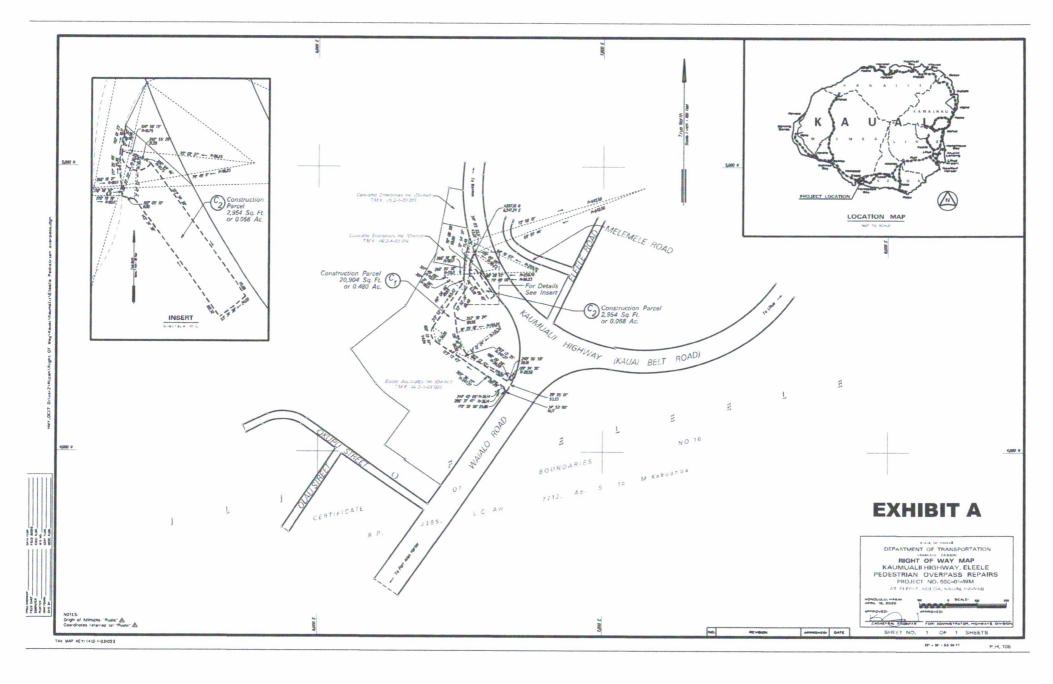
Pri/ht Name LINDY ARTITA Notary Public, State of Hawaii My commission expires: JUL 0 2 2024

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 STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION ABSTRACTING SECTION

Tax Map Key No. (4) 2-1-3:23 (Portion)

GRANT OF EASEMENT

GRANTOR: ELEELE ASSOCIATES, INC.

GRANTEE: STATE OF HAWAII Department of Transportation 869 Punchbowl Street Honolulu, Hawaii 96813

GRANT OF EASEMENT

THIS INDENTURE, made this <u>1</u>⁶⁺ day of <u>October</u>, 20<u>20</u> by and between **ELEELE ASSOCIATES**, **INC**., whose address is 2217 Alahee Street, Lihue, Hawaii 96766, hereafter called the "GRANTOR" and the STATE OF HAWAII, by its Department of Transportation, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813, hereafter referred to as the "GRANTEE".

WITNESSETH THAT:

WHEREAS, GRANTOR is the Owner in fee simple of the certain parcel of land, identified as Tax Map Key No. (4) 2-1-3:23 (Portion) ("Parcel"); and

WHEREAS, GRANTEE requires use of a portion of the Parcel for purposes of Kaumualii Highway (Route 50), Milepost 16.0, Eleele Pedestrian Overpass Repairs, Project No. 50C-01-19M, (hereafter referred to as the "Project"); and

WHEREAS, GRANTEE desires an easement over a portion of the Property being the area delineated on Exhibit A, which is attached hereto and incorporated herein by reference, and shown as **Construction Parcel C1** on the Right-of-Way Map (Map), containing an area of 20,904 square feet (hereafter referred to as the "Easement Area") in connection with the Project; and

WHEREAS, GRANTOR is willing to provide the easement for the consideration and on the terms stated herein;

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NOW, THEREFORE, IT IS HEREBY AGREED, AS FOLLOWS:

The GRANTOR, in consideration of the premises and for **TEN THOUSAND EIGHT HUNDRED SEVENTY (\$10,870.00)** as the annual rent for the use of the Easement Area and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, assign, convey, bargain, sell and set over unto the GRANTEE, its successors and assigns, and easement over the Easement Area, with the right, privilege and authority of GRANTEE to enter, access, remain in, use, and allow the use of the Easement Area as stated herein.

In consideration of the above premises, the parties hereto do further mutually covenant and agree as follows:

1. <u>Use of Easement Area</u>. GRANTEE's use of the Easement Area shall be for construction and public roadway purposes and for any purpose reasonably related to the Project, including without limitations the construction, operation, maintenance, repair and replacement of a roadway and roadway improvements, for use by pedestrians and vehicles as a public roadway. GRANTOR releases all uses and all rights and is barred from use, repair, management, and maintenance of the Easement Area during the term of this Grant of Easement, except as a member of the public using the public roadway. GRANTEE has no obligation to provide any notice to GRANTOR or obtain further permission from

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GRANTOR for any use.

2. <u>Ingress and Egress</u>. The GRANTEE shall have the right, at all times, of ingress to and egress from said Easement Area for all purposes in connection with the rights hereby granted.

3. <u>Construction Prohibited</u>. The GRANTOR shall not at any time during the term of this indenture construct or erect, or allow the construction or erection of, any building or other foundation of any kind below the surface of the Easement Area or at any time erect or allow the erection of any building or structure of any kind, including but not limited to walls, fences, walks, curbs or appurtenances thereof, above or on the surface of said Easement Area.

4. <u>Removal of Structures or Foundations</u>. GRANTEE may at its sole discretion destroy, remove or alter any building, structure, or building foundation within said Easement Area or re grade the Easement Area subject only to GRANTEE's duty to restore as stated in paragraph 7 hereof.

5. <u>State's Responsibility</u>. The GRANTEE shall require its contractor for the Project within the Easement Area ("Contractor") to include GRANTOR as additional insured on the insurance policies (Comprehensive Personal Injury and Property Damage Liability; Automobile Bodily Injury and Property Damage;

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and Worker's Compensation) that are prescribed by the proposed project construction contract. Additionally, the GRANTEE shall be responsible, to the extent permitted by law, for damage or injury cause by the GRANTEE's officers and employees in the scope of their employment provided that the GRANTEE's liability for such damage or injury has been determined by a court or agreed to by the GRANTEE. The GRANTEE shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.

6. <u>Insurance</u>. GRANTEE will pay no liability insurance premium covering the Easement Area as GRANTEE is self-insured.

7. <u>Removal upon Termination and Restoration</u>. Upon any full or partial termination or cancellation of this Grant of Easement, GRANTEE and/or its contractors shall, at GRANTEE's sole cost and expense, remove any and all portions of the GRANTEE facilities installed or constructed on, within, under, over or across the Easement Area and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the ground surface only of that portion of the Easement Area altered by the GRANTEE facilities from an earthwork grading standpoint (excluding any work related to tree plantings and turf establishment) to approximately the same condition as existed prior to the commencement of this Grant of

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Easement, as reasonably determined by the GRANTEE. GRANTEE shall by solely responsible for all reasonable costs and expenses incurred in completing and accomplishing such restoration. GRANTEE shall have no duty or obligation to restore other than explicitly stated herein.

8. Indemnification by Contractor. The GRANTEE shall ensure that the CONTRACTOR shall execute an agreement whereby the CONTRACTOR would indemnify the GRANTOR against any liability, including all loss, damages, costs, expenses and attorney's fees, for any damage to real or personal property, and including environmental damage, if any, or injury to or death of persons when such damage, injury or death is caused by the negligence, gross negligence or willful action of the CONTRACTOR in the exercise of the rights granted under this grant of easement ("Grant of Easement"); provided that the CONTRACTOR shall not be obligated to indemnify, defend, and hold harmless, the GRANTOR if and to the extent that such damage, injury or death is caused by the negligence of the GRANTOR or any of the GRANTOR's officers, employees, agents, licensees, invitees, contractors, representatives, or guests.

9. <u>Title to Easement Area</u>. GRANTOR hereby warrants and represents that GRANTOR has good and marketable title to the Easement Area, subject to any encumbrances of record, including

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but not limited to any existing easements to others for electricity, telephone, water service or other utilities.

10. <u>No Warranties</u>. GRANTEE accepts the Easement Area in "as is" condition, with full assumption of the risk, and consequences of such conditions. All property, vehicles, approved improvements and equipment of GRANTEE shall be kept, placed or stored at the sole risk of GRANTEE, and GRANTOR shall not be responsible or liable for any damage thereto or loss or theft thereof.

11. <u>Term of Easement</u>. The term of the easement shall commence upon the Notice to Proceed date through completion of construction work for the Project. It is estimated that the duration of construction work will be **seven (7) months** from project Notice to Proceed date.

12. <u>Termination</u>. GRANTEE may at its option and its sole discretion at any time terminate this Grant of Easement prematurely by giving GRANTOR written notice of termination at least thirty (30) days prior to the effective date of GRANTEE'S termination. Upon termination of this Grant of Easement (either prematurely or by expiration of the term) GRANTOR will accept the Easement Area "as is", subject only to paragraph 7 hereof.

13. <u>Discharge of Liens and Claims</u>. GRANTEE shall not commit or permit any act or neglect whereby the Easement Area or

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any portion thereof, shall become subject to any attachment, judgment, lien, charge or encumbrance whatsoever resulting from the acts or omissions of GRANTEE, or GRANTEE's agents, contractors or invitees.

14. <u>No Limit on eminent domain power</u>. Nothing herein contained shall be deemed to preclude, limit, restrict, waive or affect in any way the GRANTEE's right as sovereign to acquire, by its power of eminent domain, the Easement Area or any portion thereof or any interest therein.

15. <u>Hawai'i Law</u>. This Grant of Easement is made under, and shall be construed and governed in accordance with the laws of the State of Hawai'i.

16. <u>Invalid Provisions</u>. If any provision of this Grant of Easement is adjudged or otherwise determined to be unenforceable or invalid, all other terms, conditions and covenants contained herein shall nevertheless remain in full force and effect.

17. <u>No Third Party Beneficiaries; No Joint Venture</u>. No term or provision of this Grant of Easement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, form organization or corporation shall have any right or cause of action hereunder. Nothing in this Grant of

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Easement shall be deemed to create a partnership or joint venture between GRANTOR and GRANTEE.

18. <u>Amendments</u>. This Grant of Easement shall not be modified except by a written instrument signed by GRANTOR and GRANTEE.

19. <u>Titles and Headings</u>. Titles and headings to articles, paragraphs and subparagraphs herein are for the purpose of convenience and reference only, and shall in no way limit, define or otherwise affect the provision of this Grant of Easement.

20. <u>Successors</u>. The rights and obligations under this obligations under this Grant of Easement shall inure to the benefit of and be binding on the parties hereto, and their respective successors and assigns. The use of any gender shall include all genders, and the use of any numbers shall be construed as the singular or the plural, as the case may require. All terms, covenants and conditions to be observed and performed by either party shall be joint and several if entered into by more than one.

21. <u>Counterparts</u>. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the

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parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

Upon termination of this Grant of Easement, GRANTEE will execute and deliver to the GRANTOR any document reasonably necessary to evidence termination.

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IN WITNESS WHEREOF, the GRANTOR and the GRANTEE, personally or by their duly authorized officers, have caused these presents to be executed the day and year first above written.

GRANTOR:

ELEELE ASSOCIATES, INC.

By Ø tashisaka si Just Its:

GRANTEE:

STATE OF HAWAII

By

JADE T. BUTAY Director of Transportation

APPROVED AS TO LEGALITY, FORM, EXCEPTIONS, AND RESERVATIONS:

Deputy Attorney General Name: Durne M. Kikash Dated:

STATE OF HAWAII CITYAND HONOLULY) SS. COUNTY OF KAUAI) 10/112020 On this ' day of October , 20 20, before me personally appeared Ruth Hashisaka to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

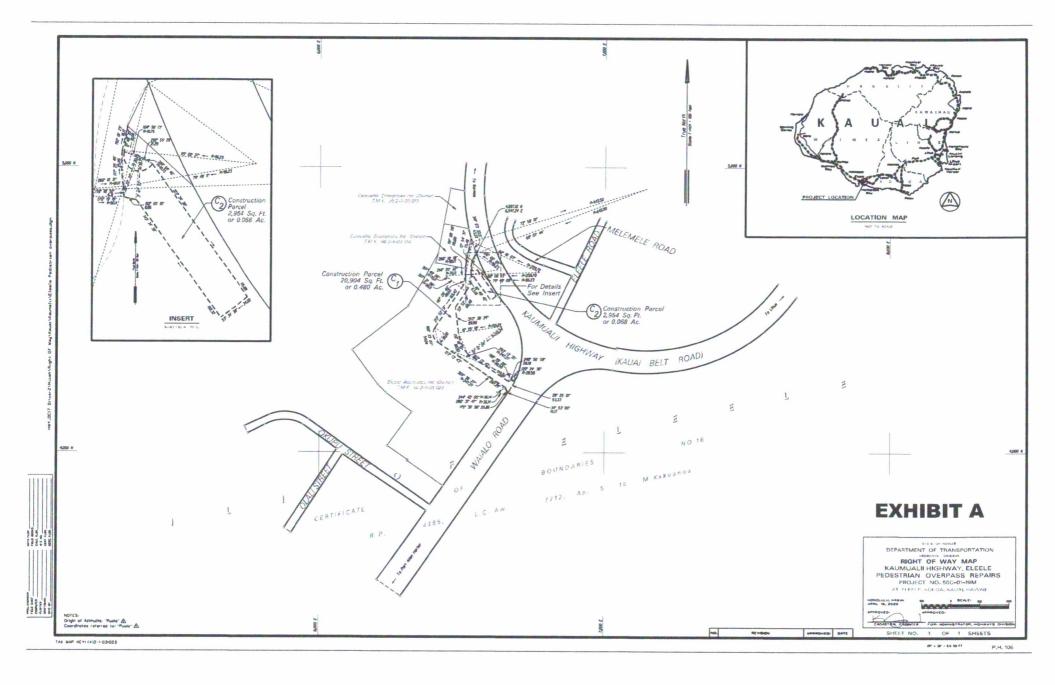


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LEAD PAINT INSPECTION REPORT

ELE'ELE SHOPPING CENTER PEDESTRIAN BRIDGE

Hawaii State Department of Transportation – Highways Division Ele'ele, Kauai

October 16, 2018

PREPARED BY:

Owen Environmental P. O. Box 1989 Lihue, HI 96766

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SECTION 1: INTRODUCTION

This report presents the results of an inspection conducted to evaluate exposed, painted surfaces on the damaged pedestrian bridge overpass at the Ele'ele Shopping Center in Ele'ele, Kauai for the presence of lead-containing or lead-based paints. This inspection was performed by Benjamin Owen of Owen Environmental on behalf of the State of Hawaii Department of Transportation – Highways Division. Mr. Owen is a Statecertified Lead Risk Assessor, a certification that includes lead paint inspections.

1.1 Scope of Work

The limited inspection detailed herein consisted of the following steps:

- Visual inspections to identify painted coatings and surfaces on the pedestrian bridge structure;
- Sampling and laboratory analysis of painted coatings for total lead content;
- Preparation of this report.

This report has been prepared to document the successful completion of these steps. Methodologies used during the inspections are documented in **Section 2.0**. Results are documented in **Section 3.0**.

SECTION 2: METHODS

The methods used during these limited inspections were selected to meet the stated objectives of this survey. Visual and physical inspections were performed on October 10, 2018 by Benjamin Owen of Owen Environmental. Mr. Owen is a State-certified Lead Based Paint Risk Assessor (State Certification # PB-0573). Documentation of Mr. Owen's current certification is included in **Appendix C**.

This section outlines the methods used to perform inspections lead based paint. Paint sampling methods are described in **Section 2.1**. Laboratory analytical methods are described in **Section 2.2**.

2.1 Paint Sampling Methods

Visual inspections were conducted to identify all exposed painted coatings and/or surfaces on the damaged pedestrian bridge. Photographs taken during visual inspections are included in **Appendix A**. Paint chip samples were then collected to represent each of the painted surfaces identified. Two paint chip samples were collected from each painted area. Where multiple component types appeared to be painted with the same color and type of paint, two paint chip samples were taken from each structural component or type of structural component.

For each paint sample collected, a small quantity of the painted coating was collected and placed in a small plastic bag labeled with a unique sample identification code. All paint samples were submitted along with chain-of-custody documentation to an analytical laboratory accredited to conduct the analysis of paint samples for total lead content.

2.2 Laboratory Analytical Methods

All samples collected during this inspection were submitted to EMC Laboratories in Phoenix, AZ for analysis. EMC is fully qualified and accredited to perform the analysis of paint chip samples for bulk lead content.

Lead paint samples were analyzed using EPA SW846 Method 7420. This method involves acid digestion of the sample, followed by analysis of the extract using flame atomic absorption spectroscopy (Flame AAS).

SECTION 3: RESULTS

A summary of the various surfaces from which paint samples were collected and the results from the analysis of these samples is presented below in **Table 1**. Sample results exceeding 0.5% lead by weight (i.e., exceeding 5,000 ppm) are highlighted in bold text. A complete copy of the laboratory report documenting results from the analysis of paint samples collected for this survey, as well as chain of custody documentation, is included in **Appendix B**.

Sample ID:	Location	Paint Color	Lead Concentration (Percent by weight)
1010-01	Hand rails (metal)	Light green	3.71 %
1010-02		Light green	2.42 %
1010-03	Bridge supports (metal)	Light green	5.96 %
1010-04		Light green	1.3 4%
1010-05	Main beams (metal)	Light green	18.7 %
1010-06		Light green	4.89 %
1010-07	Underside of bridge deck (concrete)	Light green	0.013 %
1010-08		Light green	0.012 %
1010-09	Stairs (concrete)	White	0.011 %
1010-10		White	< 0.010 %

Table 1: Results from Analysis of Paint Samples

These results indicate that lead levels in painted coatings on all metal surfaces (including hand rails, bridge supports and the main structural beams of the bridge) contain lead in concentrations exceeding 0.5% lead by weight. Lead concentrations in samples collected from concrete surfaces are considered negligible.

SECTION 4: CONCLUSIONS AND RECOMMENDATIONS

This report documents the results from a lead paint inspection performed by Benjamin Owen of Owen Environmental on behalf of the State of Hawaii Department of Transportation – Highways Division (DOT-H). This inspection was conducted to evaluate painted surfaces on the damaged pedestrian overpass at the Ele'ele Shopping Center in Ele'ele, Kauai for the presence of lead-containing or lead-based paints.

A total of 10 paint chip samples were collected from 5 separate painted surfaces. Laboratory analysis of the samples collected has confirmed that all metal surfaces on the pedestrian bridge are coated with lead-based painted coatings. These metal surfaces include bridge hand railings, bridge supports, and the main structural beams of the bridge.

Based on these results, Owen Environmental strongly recommends that DOT-H incorporate planning for the disturbance and/or removal of lead paint into their planning for repair and maintenance of the Ele'ele Shopping Center Pedestrian Bridge. If project specifications are prepared, these should include a section on lead paint removal and management of any related waste materials.

Based on the construction plans developed for renovation and/or repair of the bridge, a written plan should be prepared to ensure that all applicable regulations are followed by DOT-H personnel as well as any contractors working on this site. Applicable regulations include: OSHA regulations covering lead disturbance and exposure, air monitoring requirements, medical monitoring requirements, and respiratory protection requirements; as well as EPA regulations covering characterization, storage, labeling, transportation, and disposal of characteristic hazardous wastes. Other State and Federal regulations apply to storage, transportation and disposal of non-hazardous wastes that include lead paint debris or contain debris coated with lead-containing or lead-based paints.

The written Lead Paint Removal (or Disturbance) Plan should be prepared by a qualified environmental professional with extensive experience managing lead exposure, lead-containing waste, and waste disposal during lead paint removal projects. If this plan is to be prepared by a painting or paint removal contractor, DOT-H should hire an independent consultant with the qualifications listed above to review and approve the plan.

Air monitoring and waste characterization will be required during any disturbance or removal of lead-based paints. Air monitoring should be conducted by an independent environmental professional to be hired either by the State or by the contractor. If the contractor hires the monitor directly, the roles and responsibilities of the monitor should be clearly laid out in project specifications, and the State should hire its own consultant to independently verify the quality and accuracy of any data produced by the contractor or on the contractor's behalf.

It is likely that any disturbance of the painted coatings on the metal surfaces of the Ele'ele Shopping Center Pedestrian Bridge will generate characteristic hazardous waste. The State should take this into account during planning for bridge repair work.

SECTION 5: SIGNATURE

This report documents inspections performed by Benjamin Owen of Owen Environmental. Mr. Owen in a State-certified Lead Based Paint Risk Assessor (which also encompasses the role of Lead Based Paint Inspector).

Benjai Que

Signature:

Benjamin Owen HI Lead Paint Certification # PB-0573

Date:

October 16, 2018 .

APPENDIX A:

PHOTOGRAPHS



Photo 1: View of closed stairway leading to pedestrian bridge as seen from parking lot of Ele'ele Shopping Center.



Photo 3: View of light green paint on hand railings leading to pedestrian bridge.



Photo 2: View of damaged Ele'ele Shopping Center pedestrian bridge crossing highway.



Photo 4: Close-up view of damaged section on metal hand railing.



Photo 5: View of light green paint on steel bridge supports and overhead walkway on Ele'ele Shopping Center pedestrian bridge.



Photo 7: View of paint sample location on steel bridge support showing light green paint over red primer.



Photo 6: View of light green paint on concrete underneath damaged Ele'ele Shopping Center pedestrian bridge.



Photo 8: View of paint sample location on steel bridge support showing light green paint over red primer.

APPENDIX B:

LABORATORY RESULTS



9830 South 51st Street, Suite B-109 / PHOENIX, ARIZONA 85044 / 480-940-5294 or 800-362-3373 / FAX 480-893-1726 emclab@emclabs.com

LEAD (Pb) IN PAINT CHIP SAMPLES EMC SOP METHOD #L01/1 EPA SW-846 METHOD 7420

EMC LAB	#:	L71833		DATE RECEIVI	ED:	10/12/18
CLIENT:		Owen Environmental		REPORT DATE:		10/15/18
				DATE OF ANAI	LYSIS:	10/15/18
CLIENT A	DDRESS:	PO Box 1989 Lihue, HI 96766		P.O. NO.:		
PROJECT	NAME:	Ele'ele Shopping	Center Pedestrian Bridge PROJECT NO.:			
EMC # L71833-	SAMPLE DATE /18	CLIENT SAMPLE #	DESCRIPTION		REPORTING LIMIT (%Pb by weight)	%Pb BY WEIGHT
1	10/10	1010-01	Light Green Paint – Hand Rails 1		0.10	3.71^
2	10/10	1010-02	Light Green Paint – Hand Rails 2		0.10	2.42^
3	10/10	1010-03	Light Green Paint – Bridge Support 1		0.10	5.96^
4	10/10	1010-04	Light Green Paint – Bridge Support 2		0.010	1.34
5	10/10	1010-05	Light Green Paint – Main Beams 1		1.0	18.7^^
6	10/10	1010-06	Light Green Paint – Main Beams 2		0.10	4.89^
7	10/10	1010-07	Light Green Paint – On Concrete 1		0.010	0.013
8	10/10	1010-08	Light Green Paint – On Concrete 2		0.010	0.012
9	10/10	1010-09	White Paint – On Concrete 1		0.010	0.011
10	10/10	1010-10	White Paint – On Concrete 2		0.010	BRL

A = Dilution Factor Changed * = Excessive Substrate May Bias Sample Results **BRL** = Below Reportable Limits # = Very Small Amount Of Sample Submitted, May Affect Result

This report applies to the standards or procedures identified and to the samples tested only. The test results are not necessarily indicative or representative of the qualities of the lot from which the sample was taken or of apparently identical or similar products, nor do they represent an ongoing quality assurance program unless so noted. Unless otherwise noted, all quality control analyses for the samples noted above were within acceptable limits.

Where it is noted that a sample with excessive substrate was submitted for laboratory analysis, such analysis may be biased. The lead content of such sample may, in actuality, be greater than reported. EMC makes no warranty, express or implied, as to the accuracy of the analysis of samples noted to have been submitted with excessive substrate. Resampling is recommended in such situations to verify original laboratory results.

These reports are for the exclusive use of the addressed client and are rendered upon the condition that they will not be reproduced wholly or in part for advertising or other purposes over our signature or in connection with our name without special written permission. Samples not destroyed in testing are retained a maximum of sixty (60) days.

Jason Thompson

ANALYST:

QA COORDINATOR:

Kurt Kettler

Page <u>l</u>	of [98	AIN OF CUSTODY EMC Labs, Inc. 330 S. 51 st St., Ste B-109 Phoenix, AZ 85044 62-3373 Fax (480) 893-1726	LAB#: X TAT:) Rec'd:/7	71833 2 day 0 112/18
COMPANY NAM	ME: QUELS EN	vironmend	BILL TO:	(If	Different Location)
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CONTACT:	Ben aver	4	· · · · · · · · · · · · · · · · · · ·		
Phone/Fax:	(808) 482 .				·
Email:	ben-owen e	Dowen 80			
Now Accepti	ng: VISA – MASTERC	ARD	Price Quoted: \$	/ Sample	\$/ Layers
COMPLET	E ITEMS 1-4: (Failure	to complete a	ny items may cause a delay in pro	cessing or ana	lyzing your samples)
****Additional cl ****Laboratory a 2. TYPE OF	AL INSTRUCTIONS: (If you do not	e call marketing d y if credit terms a ·PLM] [Air-P([Dispose of s indicate preferen	re not met [Lead] [Point Count] [Fur samples at EMC] / [Return sample nce, EMC will dispose of samples 60 day	es to me at <u>my e</u> / <u>s from analysis.)</u>	expense]
1 -		Color Fr.		4 ~	
P.O. NU EMC SAMPLE #	CLIENT SAMPLE #	DATE & TIME SAMPLED	Project Number: LOCATION/MATERIAL TYPE	Samples Accepted Yes / No	AIR SAMPLE INFO / COMMENTS ON OFF FLOW RATE
1	1010.01	10/10/18	Light agen paint - hard raily	DON	
2	1010 . (12		M " IL . u u	2 1 × N	1 1
3	1010.03		11 " " bridar stage	LI Y N	
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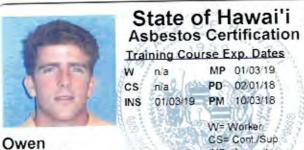
** In the event of any dispute between the above parties for these services or otherwise, parties agree that jurisdiction and venue will be in Phoenix, Arizona and prevailing party will be entitled to attorney's fees and court costs.

Rev. 09/01/08

APPENDIX C:

INSPECTOR QUALIFICATIONS





Owen Benjamin D. Owen Environmental, Inc. HIASB-0904 State Exp. Date 09/25/2019 W= Worker CS= Cont /Sup INS= Inspector PD= Project Designer MP= Mgmt. Planner PM= Project Monitor

MINUTES OF THE PRE-BID MEETING

PROJECT:	Kaumualii Highway, Eleele Pedestrian Overpass Improvements			
PROJECT NO.:	50C-01-19M			
LOCATION:	Microsoft Teams video conference			
DATE & TIME:	October 14, 2020 at 9:00 A.M.			
IN ATTENDANCE:				
	Fred Reyes,	HDOT-HWY-K		
	Eric Fujikawa	HDOT-HWY-K		

Fred Reyes,	HDOT-HWY-K
Eric Fujikawa,	HDOT-HWY-K
Mike Hunnemann,	KAI Hawaii, Inc.
Wesley Lum,	Kiewit Infrastructure West
Marc Simmons,	Kiewit Infrastructure West
James Hasenyager,	Cushnie Construction Company, Inc.

The meeting began at 9:05 A.M. Project Engineer, Fred Reyes began the meeting with selfintroduction of attendees, and gave a brief overview of the project. He mentioned that 210 calendar days has been allocated to complete the project as stated on page P-1 of the Special Provisions.

Anything said at this meeting is for clarification purposes only, the bid documents shall govern over anything said today, and discrepancies shall be clarified via addendum.

All questions that resulted from this meeting are advised to be submitted via HIePRO. and will be formally answered in the addendum.

The following questions were raised at the meeting:

Question #1: About when is the expected Notice to Proceed (NTP) date?

Response: Opening of bids is October 30. The State has up to 60 calendar days to evaluate bids and award the project to the viable low bidder. We are expecting to issue NTP sometime in February 2021.

Question #2: What is the amount, per day, for liquidated dames if incurred on this project?

Response: Subsection 108.08 of the Special Provisions sets liquidated damages at \$3,500.00 per working day. See 108.08 for more explanation.

With no further questions or comments, the pre-bid meeting was adjourned at 9:32 A.M.

The minutes of the meeting will be distributed in Addendum No. 1 on the Contract Plans. Contractors will be notified via HIePRO when the addendum will be available online.

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	Meeting started 8:57 AM		
	🛱 🛛 Fujikawa, Eric I added James Hasenyager (Guest) to the	e meeting.	
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6	MH Mike Hunnemann (Guest) 9:05 AM Mike Hunnemann		
	KAI Hawaii, Inc.	⊿ ♥ ☎ ፡ ፡ ፡ : · · ·	
(JH James Hasenyager (Guest) 9:06 AM James Hasenyager, Cushnie Construction Con	npany, Inc., (808) 332-9000, james@cushniecci.com	
(Reyes, Fred 9:06 AM Fred Reyes, HDOT Highways, Kauai		
	Wesley.Lum (Guest) 9:06 AM Wesley Lum, Marc Simmons, Kiewit Wesley.Lum@kiewit.com		
	Marc.Simmons@kiewit.com		
		Sending Eric Fujikawa, HDOT, eric.i.fujikawa@hawaii.gov, 808-2	241-3015
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