

RIGHT-OF-ENTRY 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 the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, whose mailing address is 4444 Rice Street, Lihue, Hawaii, 96766, hereafter called the "GRANTOR",

WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as Construction Parcels C-5 and C-6, identified by Tax Map Key Nos. (4) 4-1-004:001 and (4) 4-1-005:004 (portion), containing areas of approximately 69,000 and 31,800 square feet; situated at Wailua, County of Kauai, State of Hawaii, as delineated in Exhibit A (hereinafter collectively referred to as the "Property"), for a public purpose, to wit: the construction, preservation and protection of the highway project known as Kuhio Highway Emergency Shoreline Mitigation, Federal Aid Project No. ER-24(004), (hereafter referred to as the "Project"; and

WHEREAS, the STATE desires to obtain immediate entry to the Property to commence construction of the Project without delay; and

C2022-80

WHEREAS, the STATE will be using the Property for Project work; and

WHEREAS, GRANTOR is the fee owner of the Property; and

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

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

1. Right of Entry. The GRANTOR hereby grants to the STATE, its officers, employees, agents, contractors, and permitted assigns, permission to enter upon the Property as shown in Exhibit A, gratis, as of the Notice to Proceed date for the purposes of the Project, which is admitted to be for a public purpose. The STATE will take reasonable steps to ensure that the contractor(s) the STATE selects to construct the Project (hereafter collectively and individually referred to as 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.

2. STATE's responsibility. 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, to the extent permitted by law and provided that funds are appropriated and allotted for that purpose.

3. Insurance by CONTRACTOR. The STATE shall require the CONTRACTOR to include the GRANTOR and the STATE as additional insureds on the insurance policies (which policies may include, but are not limited to, Commercial Personal Injury and Property Damage Liability; Automobile Bodily Injury and Property Damage; and Worker's Compensation policies) that will be prescribed by the Project construction contract(s). Said insurance policies shall also provide a waiver of subrogation in the GRANTOR's and the STATE's favor. The STATE shall require the CONTRACTOR to provide written verification of compliance in the form of an insurance certificate to the GRANTOR and the STATE prior to the start of Project construction.

4. Indemnification by CONTRACTOR. The STATE shall require that the CONTRACTOR execute an agreement whereby the CONTRACTOR indemnifies the GRANTOR and the STATE 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 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. Term. The term of this Agreement shall commence as of 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 will be eighteen (18) months from the Project's Notice to Proceed date.

6. Termination. This Agreement may terminate upon thirty (30) days written notice to the GRANTOR by the STATE as to all or any portion of the Property. Upon any termination or expiration of this Agreement, the STATE will maintain ownership of any and all improvements constructed upon the Property for the Project.

7. Counterparts; Facsimile Signatures. 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.

8. Headings, Captions. 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.

9. Singular, Plural. In this Agreement, the singular shall include the plural, and the plural shall include the singular, as the case may be.

10. Binding Effect. The term "GRANTOR" wherever used herein shall include the GRANTOR, its representatives, 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.

11. Assignment. 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.

12. Amendment. This Agreement shall not be amended except in writing signed by the GRANTOR and the STATE.

13. GRANTOR's Responsibility. In the event that the STATE shall, without any fault on its part as determined by a court, be made a party to any litigation arising out of or related to this Right-Of-Entry Agreement, commenced by or against the GRANTOR (other than condemnation proceedings), the GRANTOR shall pay all costs, including reasonable attorneys' fees and expenses, incurred or imposed on the STATE.

14. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.

15. Entire Agreement. This Agreement and the exhibit(s) hereto constitute the entire agreement between the parties hereto pertaining to the subject matter herein and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded. Each exhibit hereto and each and every provision thereof is incorporated by this reference.

16. No Waiver. 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.

17. STATE is self-insured. 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 to this agreement hereby
make and duly execute this Agreement to be effective upon the date
signed by the Director of Transportation below.

GRANTOR:
COUNTY OF KAUAI, a political
subdivision of the State of Hawaii

Reiko Matsuyama
Reiko Matsuyama (Apr 5, 2022 15:27 HST)

By Reiko Matsuyama
Its Director of Finance

STATE:
STATE OF HAWAII

Jade T. Butay

By JADE T. BUTAY
Its Director of Transportation

APPROVED BY THE COUNCIL OF
THE COUNTY OF KAUAI

Jade K. Fountain-Tanigawa

Certified By Jade K. Fountain-Tanigawa
Its County Clerk

APPROVED AS TO LEGALITY
AND FORM:

Mark Ishimaru
Mark Ishimaru (Apr 5, 2022 14:46 HST)

Deputy County Attorney
Name: _____

APPROVED AS TO LEGALITY, FORM,
EXCEPTIONS AND RESERVATIONS:

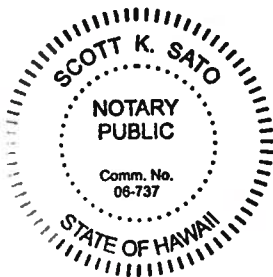
Denise Wong

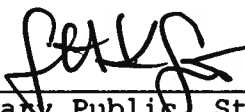
Deputy Attorney General
Name: _____
Dated: _____

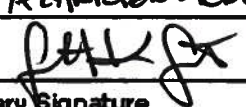
STATE OF HAWAII
COUNTY OF KAUAI

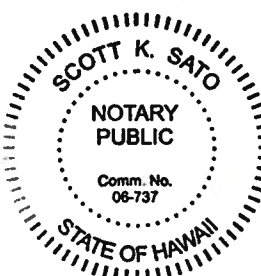
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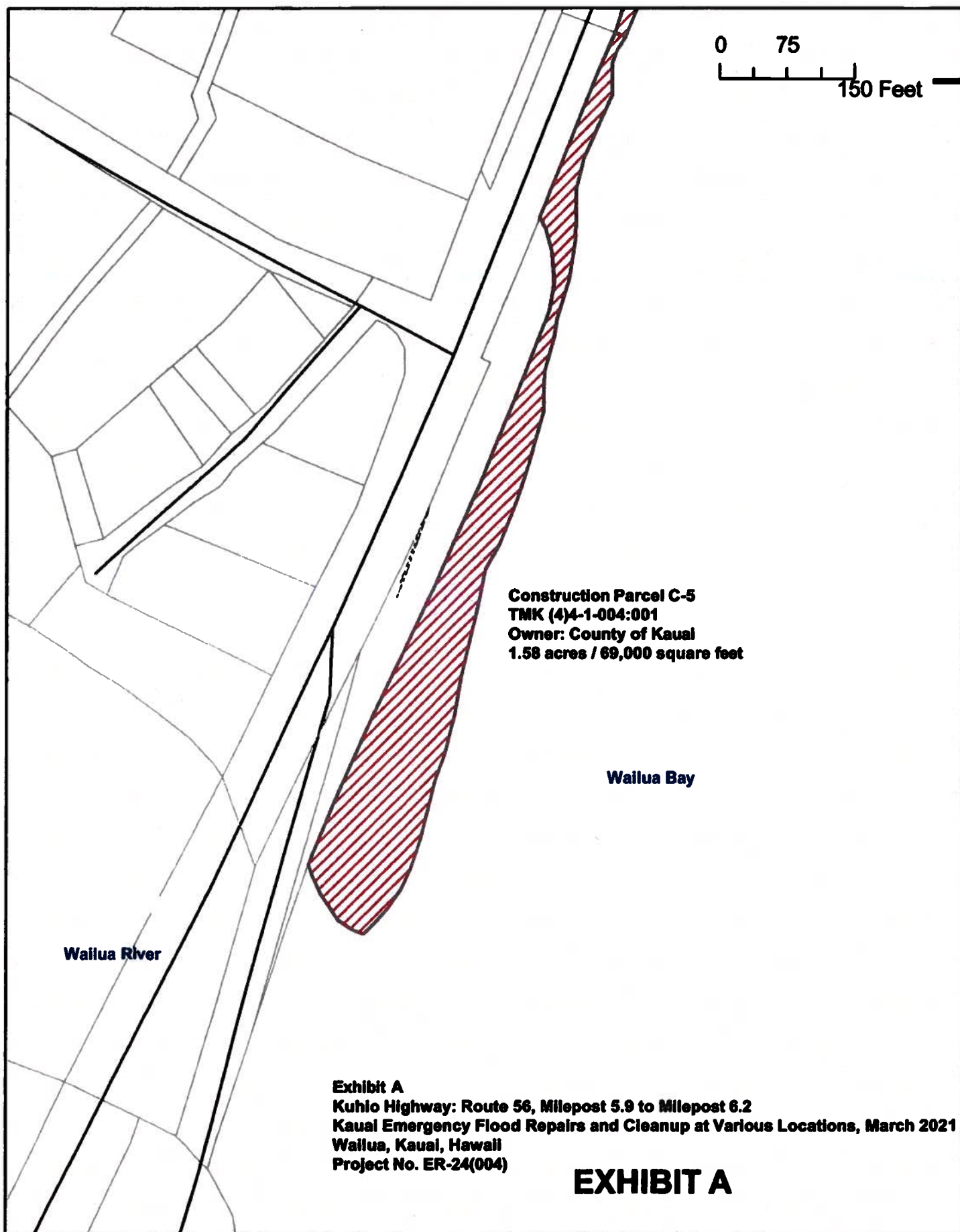
On this 20TH day of APRIL, 2022 before me
personally appeared JADE K. FOUNTAIN-TANIGAWA, to me
personally known, who, being by me duly sworn or affirmed, did
say that such person executed the forgoing instrument as the
free act and deed of such person, and if applicable in the
capacity, shown, having been duly authorized to execute such
instrument in such capacity.



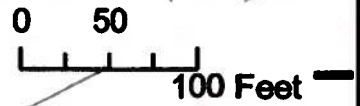

Notary Public, State of Hawaii
Print Name: SCOTT K. SATO
My commission expires: NOVEMBER 19, 2022

Document Date :	<u>UNDATED</u>	# Pages :	<u>14</u>
Notary Name :	<u>SCOTT K. SATO</u>	<u>Fifth</u>	Circuit
Doc. Description :	<u>RIGHT-OF-ENTRY</u>		
	<u>AGREEMENT</u>		
Notary Signature		Date	<u>04/20/2022</u>





07022-86



TMK (4)4-1-005:004
Owner: County of Kauai
2.86 acres / 124,700 square feet

Construction Parcel C-6
TMK (4)4-1-005:004
Owner: County of Kauai
0.73 acres / 31,800 square feet

Wailua Bay

Exhibit A
Kuhio Highway: Route 56, Milepost 5.9 to Milepost 6.2
Kauai Emergency Flood Repairs and Cleanup at Various Locations, March 2021
Wailua, Kauai, Hawaii
Project No. ER-24(004)