

## 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 **Helios Hanalei, LLC**, whose mailing address is 3350 Riverwood Parkway, Suite 425, Atlanta, Georgia 30339, hereafter called the "GRANTOR",

### WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as **Construction Parcel C-1** identified as being portion of Tax Map Key No. (4) 5-4-004:032 (Portion) containing an area of approximately 135,040 square feet; which is situated at Hanalei, 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 Kauai Emergency Flood Repairs and Cleanup at Various Locations, March 2021, Project No. ER-24(003), (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. Right of Entry and Possession. 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.

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, provided that funds are appropriated and allotted for that purpose.

3. Insurance by CONTRACTOR. 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. Indemnification by CONTRACTOR. 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 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. Rental. The STATE agrees to pay to GRANTOR the amount of **SIX THOUSAND THREE HUNDRED TWENTY DOLLARS (\$6,320.00)** 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 pro-rated 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. Excess Rent. GRANTOR agrees to reimburse and pay in full to the STATE the appropriate and proper prorated amount (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. Restoration. 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. Term. 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 **six (6) months** from project Notice to Proceed date.

9. Extension. 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.

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

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

12. 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.

13. 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.

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

15. Binding Effect. The term "GRANTOR" wherever used herein shall include the GRANTOR, and the heirs, 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.

16. 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.

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

18. GRANTOR's Responsibility. 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. Governing Law. 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

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

21. 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.

22. 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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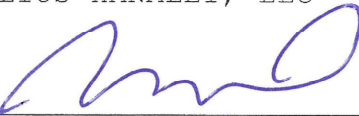


IN WITNESS WHEREOF, the parties hereto have executed this  
Right-of-Entry and Rental Agreement this 30<sup>th</sup> day of  
November 30<sup>th</sup>, 2021.

GRANTOR:

HELIOS HANAIEI, LLC

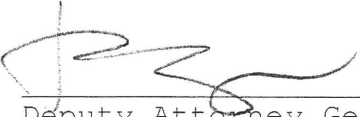
11/30<sup>th</sup>/21  
Date


By   
Print Name Michael Gentor  
Its \_\_\_\_\_

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

STATE:

STATE OF HAWAII

  
Deputy Attorney General  
Name: REUEL S. TOYAMA  
Dated: Nov. 1, 2021

By   
JADE T. BUTAY  
Director of Transportation

0 100 200 Feet



Hanalei Plantation Road

Construction Parcel C-1  
Owner: Helios Hanalei LLC  
3.1 acres / 135,040 square feet

Kuhio Highway

Kuhio Highway

TMK (4)5-4-004:032  
Owner: Helios Hanalei LLC  
14.11 acres / 614,590 square feet

Kuhio Highway

**Exhibit A**  
**Kuhio Highway: Route 56, Milepost 27.3 to Milepost 28.11 and**  
**Kuhio Highway: Route 560, Milepost 0.0 to Milepost 1.5**  
**Kauai Emergency Flood Repairs and Cleanup at Various Locations, March 2021**  
**Hanalei, Kauai, Hawaii**  
**Project No. ER-24(003)**

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community