

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

1000 Ulu`ohia Street, Suite 215, Kapolei, Hawaii 96707
Phone: (808) 768-3343 • Fax: (808) 768-3381
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KIRK CALDWELL
MAYOR



ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER

EDUARDO P. MANGLALLAN
DEPUTY DIRECTOR

IN REPLY REFER TO:
14-167

July 2, 2014

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

RECEIVED
CITY CLERK
C & C OF HONOLULU
2014 JUL -3 AM 10:13

Dear Chair Martin and Councilmembers:

SUBJECT: Request for Council Approval of Intergovernmental Agreement

We respectfully request the approval by the Council of an intergovernmental agreement between the City and County of Honolulu, Department of Facility Maintenance (DFM) and the Hawaii Community Development Authority (HCDA), for the City's use of HCDA's former Look Lab Facilities on that certain real property located at 40 Ahui Street, Honolulu, Hawaii 96813 for the DFM Road Division Sidewalk-Nuisance Ordinance and Stored Property Ordinance program and Coning Section. Attached is a proposed resolution for the favorable action of the Council.

If you have any questions or concerns, please contact Mr. Tyler Sugihara, Chief of the Division of Road Maintenance, at 768-3600.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross S. Sasamura", written over a horizontal line.

Ross S. Sasamura, P.E.
Director and Chief Engineer

Attachment

APPROVED:

A handwritten signature in black ink, appearing to read "Ember Lee Shinn", written over a horizontal line.

Ember Lee Shinn
Managing Director



RESOLUTION

AUTHORIZING THE DIRECTOR AND CHIEF ENGINEER OF THE DEPARTMENT OF FACILITY MAINTENANCE OR THE DIRECTOR AND CHIEF ENGINEER'S AUTHORIZED DESIGNEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY FOR TEMPORARY USE OF THE FORMER LOOK LAB FACILITIES AFFECTING TMK: (1) 2-1-60:001 (POR) WITHIN THE KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, requires that any intergovernmental agreement or amendment thereto, which places an obligation on the City or any department or agency thereof, receive the consent and approval of the Council of the City and County of Honolulu; and

WHEREAS, the Hawaii Community Development Authority (HCDA), within its Kakaako Community Development District, has directed efforts to reopen the portion of Auahi Street that is currently closed (Ewa side of Ward Ave; between Kamani and Koula Streets); and

WHEREAS, the Sidewalk-Nuisance Ordinance and Stored Property Ordinance Team and the Coning Branch Unit of the Department of Facility Maintenance (DFM), Division of Road Maintenance, currently occupy a section of the closed portion of Auahi Street; and

WHEREAS, the HCDA is willing to grant DFM temporary, nonexclusive use of certain real property located at 40 Ahui Street, Honolulu, Hawaii 96813, and identified by Oahu Tax Map Key Parcel No. (1) 2-1-060:001 (por.) (the "Premises"); and

WHEREAS, DFM wishes to renovate, occupy and use the Premises for its Sidewalk-Nuisance Ordinance and Stored Property Ordinance program and Coning Section—including the placement of office trailers for personnel and program administration; and the storage of vehicles, equipment, personal property, impounded items from enforcement actions, and traffic signs and cones; and

WHEREAS, DFM intends to use the entire 18,000 square feet inside the Former Look Lab Building and 29,560 square feet of the Premises on the makai side of the building; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director and Chief Engineer of the Department Facility Maintenance or the Director and Chief Engineer's authorized designee is hereby authorized to enter into an agreement with the Hawaii Community Development Authority in substantially the form attached



RESOLUTION

hereto as Exhibit A, as well as any other incidental or related agreements in connection thereto as may reasonably be required; and

BE IT FINALLY RESOLVED that the City Clerk is hereby directed to transmit a certified copy of this resolution to the Director and Chief Engineer of the Department of Facility Maintenance, 1000 Uluohia Street, Suite 215, Kapolei, Hawaii 96707; and the Hawaii Community Development Authority, 461 Cooke Street, Honolulu, Hawaii 96813, Attention: Anthony Ching, Executive Director, and to such other agencies as may be necessary.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

**MEMORANDUM OF AGREEMENT BETWEEN THE HAWAII COMMUNITY
DEVELOPMENT AUTHORITY AND THE CITY AND COUNTY OF HONOLULU
FOR USE OF THE FORMER LOOK LAB FACILITIES AFFECTING TMK: (1) 2-1-
60:001 (POR.) WITHIN THE KAKAAKO COMMUNITY DEVELOPMENT DISTRICT**

This Memorandum of Agreement ("MOA"), effective on this _____ day of _____, 2014, by and between the Hawaii Community Development Authority ("HCDA"), a body corporate and public instrumentality of the State of Hawaii, and the City and County of Honolulu Department of Facility Maintenance (the "City") through their respective authorized representatives (collectively, the "Parties"), relate to use of HCDA's existing facilities on Oahu Tax Map Key Parcel No. (1) 2-1-60:001 (por.) within the Kakaako Community Development District in Kakaako, Oahu, provides as follows:

W I T N E S S E T H

WHEREAS, the HCDA owns an approximately 59,800 square feet open yard area and 18,000 square foot warehouse commonly referred to as the Former Look Lab Facilities on that certain real property located at 40 Ahui Street, Honolulu, Hawaii 96813 ("Premises"); and

WHEREAS, the City is interested in using the Premises to store, maintain, and administer its Sidewalk-Nuisance Ordinance ("Sidewalk-Nuisance Ordinance") under Chapter 29, Article 16 of the Revised Ordinances of Honolulu, as amended ("ROH") and Stored Property Ordinance ("Stored Property Ordinance") under ROH Chapter 29, Article 19;

NOW, THEREFORE, BE IT RESOLVED that the HCDA and the City agree as follows:

1. **Grant of Right-of-Entry.** HCDA hereby grants to City and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, "Permitted Persons") a nonexclusive Right of Entry to enter upon the Premises for the sole purpose of renovating and occupying the Premises for its Sidewalk-Nuisance Ordinance and Stored Property Ordinance program and Coning Section, which includes but is not limited to, placing office trailers for personnel and program administration, and the storage of vehicles, equipment, personal property, impounded items from enforcement actions and traffic signs and cones. The City is responsible for communicating and explaining the terms and conditions of this MOA to all Permitted Persons.

2. **Premises.** This MOA shall pertain to that certain real property located at 40 Ahui Street, Honolulu, Hawaii, identified by Oahu Tax Map Key Parcel No. (1) 2-1-060: 001 (por.). The Premises is depicted on the map attached to this MOA as Exhibit "A" and made a part hereof. The City proposes to use the entire 18,000 sq./ft. inside of

the Former Look Lab Building and 29,560 sq./ft. of the Premises on the makai side the building.

3. **Term and Duration.** The term of this MOA granted hereby shall be applicable from 8:00 a.m. on July 1, 2014 ("Commencement Date") through 11:59 p.m. on June 30, 2015 ("Termination Date"). This MOA shall automatically terminate on the Termination Date, unless earlier revoked as provided below. The City agrees to be bound by the terms and conditions of the MOA and any amendments to this MOA.

4. **Use of Premises.** The MOA granted hereby shall be for the sole purpose of renovating and occupying the Premises for its Sidewalk-Nuisance Ordinance and Stored Property Ordinance program and Coning Section, which includes but is not limited to, placing office trailers for personnel and program administration, and the storage of vehicles, equipment, personal property, impounded items from enforcement actions, and traffic signs and cones.

5. **Acknowledgement of Use by Other Persons.** The City acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of HCDA, and with the exception of the uses considered in this MOA, shall not otherwise interfere with their use and enjoyment of the Premises.

6. **Due Care and Diligence.** The City will exercise due care and diligence in entering upon the Premises and will not disrupt or disturb in any way or in any manner whatsoever the activities customary to the operations of HCDA or its agents, and the City shall exercise due care for public safety. At all times during the term of this MOA and upon the termination of this MOA, the City shall be responsible for: (a) removing any debris or trash deposited by Permitted Persons on the Premises; (b) repairing any damage to the Premises caused by its use by Permitted Persons; and (c) restoring the Premises to its original or better than original condition. This provision shall survive the termination of this MOA.

7. **Indemnity.** Except to the extent caused by the gross negligence or willful misconduct of HCDA and/or its officials, directors, members, employees, and agents, the City shall defend and hold harmless HCDA and the State of Hawaii, and their respective officials, directors, members, employees, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) City's breach of this MOA; (b) a Permitted Person's tortious conduct or violation of law; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of this MOA (collectively, "Covered Claims"). Except to the extent caused by the gross negligence or willful misconduct of HCDA and/or its officials, directors, members, employees, and agents, the City shall also reimburse HCDA for all its costs and expenses, including reasonable attorneys' fees, incurred in connection with HCDA's defense of any Covered Claims. This provision shall survive the termination of this MOA.

8. Insurance.

- (a) The City shall obtain and maintain at all times at its own expense insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

Worker's Compensation:

Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile \$500,000 per occurrence and \$1,000,000 in aggregate

- (b) The City at its sole option may self-insure any of the coverages required herein.
- (c) Prior to first entry onto the Premise, the City shall provide to HCDA a letter indicating the City's self-insurance coverage to show compliance with subsection (a) above.
- (d) The City shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees, and agents as additional insured's.
- (e) HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation, or material change in the City's insurance coverage.
- (f) The City shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of the City or Permitted Persons in connection with the City's use or occupancy of the Premises.

- (g) The procuring of such required policy or policies of insurance shall not be construed to limit the City's liability under this MOA or to fulfill the indemnification provisions and requirements of this MOA. Notwithstanding said policy or policies of insurance, the City shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this MOA.
- (h) The City shall keep such insurance in effect and the certificate(s) on deposit with HCDA during the entire term of this MOA. Upon request by the HCDA, the City shall furnish a copy of the policy or policies.
- (i) Failure of the City to provide and keep in force such insurance shall be regarded as a material default under this MOA and HCDA shall be entitled to exercise any or all of the remedies provided in this MOA for default of the City.
- (j) HCDA is a self insured State agency. The City's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by the City.

HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in HCDA's sole discretion, the above insurance does not provide adequate protection for HCDA, it may require the City to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.

9. **Condition of Premises/Assumption of Risk.** The City understands and acknowledges that the Look Lab building does not house any working restroom facilities, does not have any active utility connections (including but not limited to water and electricity), and is not equipped with any fire sprinklers or fire extinguishers. HCDA has represented and warranted that it is unaware of any dangerous or defective condition existing in or on the Premises. The City hereby agrees and acknowledges that HCDA has not made any further representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are reasonably discoverable by HCDA or the City. The City agrees that HCDA shall not be held responsible for any injury or damage to the City or Permitted Persons due to the presence of hazardous materials or dangerous or defective conditions on or in the Premises. The City further agrees that any property left on the Premises during the term of this MOA shall be left there at the sole risk of the City.

10. **Compliance with Laws and Regulations.** The City shall, at all times during the term of this MOA, observe and comply with all applicable laws, rules, and regulations, whether County, State or federal, including but not limited to, the laws

applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Premises.

11. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this MOA and upon such breach, HCDA may terminate this MOA forthwith without notice and pursue any other remedies to which HCDA is entitled to by law or under this MOA.

12. **Improvements.** The City shall not construct any improvements of any kind or nature upon the Premises or any other properties of HCDA without HCDA's express prior written consent, which consent may be granted or withheld in HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by the City shall remain the property of the City and the City shall have the right, prior to the termination or revocation of this MOA, or within an additional period HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the City shall fail to remove the improvements prior to the termination or revocation of this MOA or within an additional period HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the City. This provision shall survive the termination of this MOA.

13. **No Lien.** The City shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by HCDA.

14. **Non-transferrable.** This MOA or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without HCDA's express prior written consent.

15. **Additional Terms and Conditions.**

- (a) No one may reside on the premises, and the premises may not be accessed for any other purpose except as authorized.
- (b) The City shall furnish, at its sole expense, a minimum of six (6) fully charged and operable portable fire extinguishers which shall be placed at regular intervals along normal paths of travel within 75 feet travel distance for every 3000 square feet of space.
- (c) Animals, plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (d) If the City continues to enter or remain on the Premises after the Termination Date, the City shall pay HCDA as liquidated damages

\$500 for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date. Such damages are not a penalty, but rather are reasonable estimates of the losses that HCDA would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and are HCDA's exclusive remedy, other than equitable relief (such as an injunction barring City from entering and remaining on the Premises) or legal relief (in the form of eviction of the City from the Premises or similar legal relief, but not damages) for such entrance or use.

- (e) HCDA will issue the City one (1) entry key to the Premises and shall return the key to HCDA on the day that this MOA terminates. The City shall not make any unauthorized duplication of the key.
- (f) HCDA reserves the right to impose, by mutual written agreement between HCDA and the City, additional terms and conditions, if deemed necessary.

16. **Termination.** HCDA may terminate this MOA at any time with sixty (60) days written notice to the City in accordance with Paragraph 17 below.

17. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this MOA by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or email address given below:

Hawaii Community Development Authority
Attention: Anthony Ching, Executive Director
461 Cooke Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Facsimile: (808) 594-0299

City and County of Honolulu
Department of Facility Maintenance
Attention: Ross S. Sasamura, P.E.
Director and Chief Engineer
Kapolei Hale
1000 Uluohia Street, Suite 215
Kapolei, Hawaii 96707
Telephone: (808) 768-3343
Facsimile: (808) 768-3381

18. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

19. **Governing Law.** This MOA shall be governed by and construed under the laws of the State of Hawaii.

20. **Counterparts.** This MOA may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

IN WITNESS WHEREOF, HCDA and the City have caused this MOA to be executed as of the day and year first above written.

Hawaii Community Development Authority

By: _____
Anthony J.H. Ching
Executive Director

APPROVED AS TO FORM:

Deputy Attorney General

City and County of Honolulu, Department of
Facility Maintenance

By: _____
Ross S. Sasamura, P.E.
Director and Chief Engineer

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

Exhibit A
Look Lab Building
Ground Floor

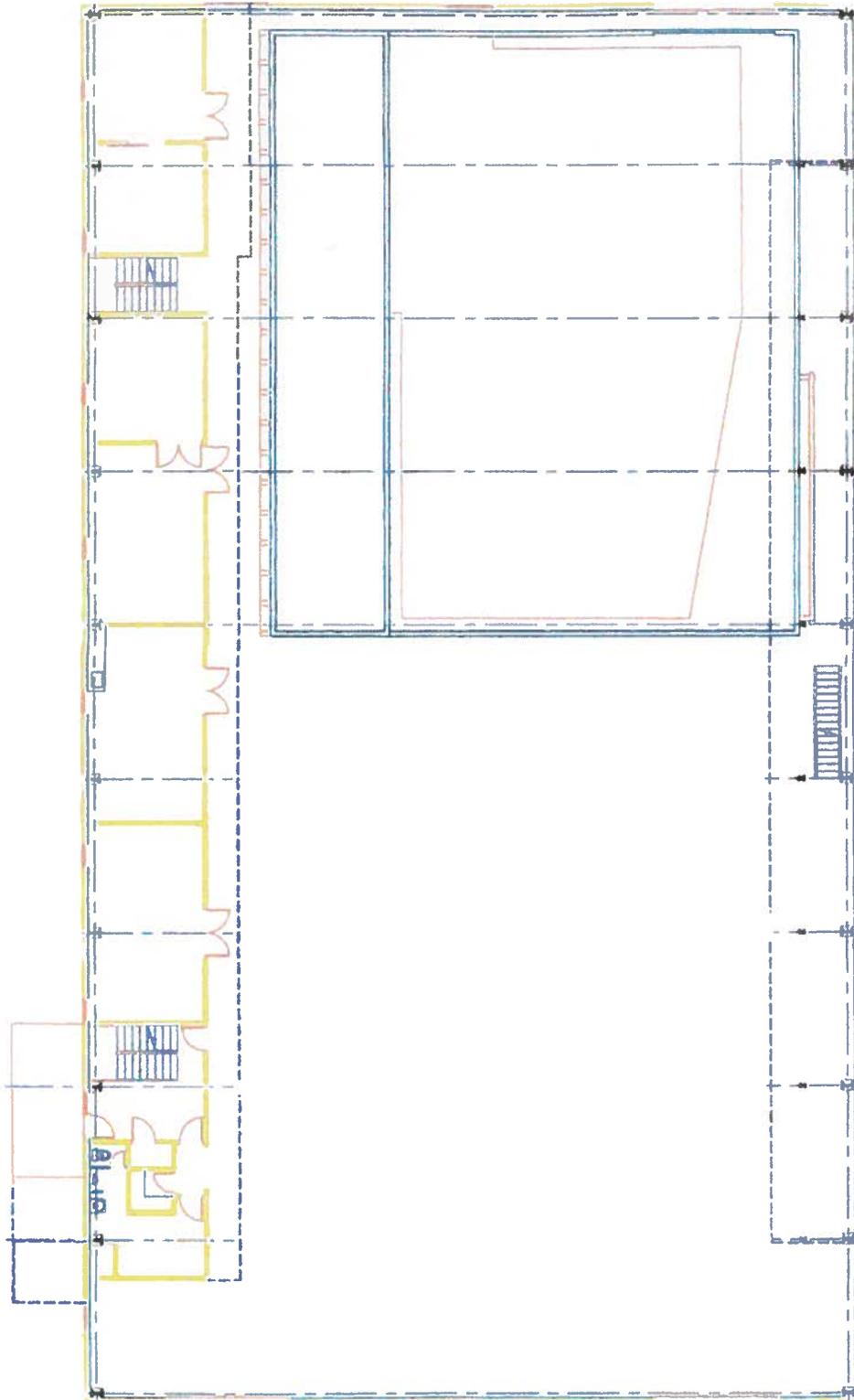


Exhibit A
40 Ahui Street
TMK: (1)-2-1-60-1 (por.)
Site Plan

