



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
560 NORTH NIMITZ HIGHWAY, SUITE 200  
HONOLULU, HAWAII 96817

\_\_\_\_\_, 2017

**SUBJECT: Right-of-Entry to Wao Kele O Puna (“WKOP”) Forest Reserve on OHA owned land located in the upper Puna area of Hawai‘i County, TMK: (3) 1-2-010:002 & 003**

At 25,856 acres (nearly forty square miles) WKOP is co-managed by the Office of Hawaiian Affairs (“OHA”) and the Department of Land and Natural Resources (“DLNR”). OHA acquired the WKOP to protect its natural and cultural resources as well as the traditional customary rights of Native Hawaiians accessing the property. As a steward of WKOP, OHA has the kuleana to protect, preserve, and perpetuate the cultural and natural resources of WKOP for current and future generations.

A nonexclusive right-of-entry (“ROE”) is being issued to [CONTRACTOR’S NAME] (“CONTRACTOR”) to enter the Property for the sole purpose to [DESCRIPTION OF SERVICE].

This nonexclusive right-of-entry is granted under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. This revocable right-of-entry shall be effective upon the date of concurrence and shall terminate upon written notification from OHA or on [DATE], (“Termination Date”), whichever is sooner. This ROE shall automatically terminate on the Termination Date, unless earlier revoked as determined by OHA.
2. The CONTRACTOR shall enter the premises no earlier than 7:45AM and must vacate the premises no later than 4:30PM. All debris resulting from the services by the CONTRACTOR must be disposed of prior to vacating the premises each day. No work is allowed on holidays, weekends and after hours.
3. Permitted Persons and Vehicles. CONTRACTOR shall allow only persons acting for or on its behalf, and its members, employees, officers, directors, representatives, agents, consultants, or contractors necessary for the Project CONTRACTOR Invitees (“Invitees”) to enter the Property. The use is limited to persons and passenger vehicles. Heavy machinery, construction type equipment, or non-passenger vehicles will require additional written authorization from OHA. CONTRACTOR shall notify OHA should

any machinery be utilized and if any ground disturbance needs to occur. Should ground disturbance occur, CONTRACTOR will be required to have an OHA representative or OHA designee present to observe all work performed related to the ground disturbance unless otherwise notified by OHA.

CONTRACTOR shall employ all necessary and appropriate measures to protect the health and safety of CONTRACTOR and its Invitees and shall be solely responsible for loss, injury or death caused to said persons and/or their property or any property belonging to CONTRACTOR arising from or related to CONTRACTOR's activities hereunder and/or entry onto the Property.

CONTRACTOR is responsible for communicating and explaining the terms and conditions of this ROE to all CONTRACTOR and its Invitees.

4. Use of Property. The ROE granted hereby shall be for the following purposes: to [DESCRIPTION OF SERVICE]
5. Acknowledgement of Use by Other Persons. CONTRACTOR acknowledges that other persons or entities have the right to enter and/or use the Property with the approval of OHA, and with the exception of the "Use of Property" identified herein, shall not otherwise interfere with other persons use and enjoyment of the Property.
6. Due Care and Diligence. CONTRACTOR will exercise due care and diligence in entering upon the Property and will not interfere with the activities customary to the operations of OHA or its agents, and CONTRACTOR shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, CONTRACTOR shall be responsible for: (a) removing any debris or trash deposited by its Invitees on the Property; (b) repairing any damage to the Property caused by CONTRACTOR's use or by its Invitees; (c) restoring the Property to its original condition; and (d) any and all permits and government approvals that are required for the work that is being performed. This provision shall survive the termination of this ROE.
7. Insurance.
  - (a) CONTRACTOR shall ensure that CONTRACTOR and its Invitees 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

Umbrella Liability: \$2,000,000 Aggregate

Worker's Compensation:

Coverage A: As required by Hawaii Laws  
Coverage B: Employer's Liability  
\$100,000 Bodily Injury by Accident Each Accident  
\$500,000 Bodily Injury by Disease  
\$100,000 Disease Policy Limit Per Employee

Automobile Automobile liability insurance in the amount of not less than \$1,000,000 per loss and in the aggregate for bodily injury and property damage combined.

- (b) Prior to first entry onto the Premise, CONTRACTOR shall provide to OHA a copy of the insurance policy which complies with the requirements of this paragraph section.
- (c) Each policy shall name the Office of Hawaiian Affairs and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (d) OHA shall be notified at least FIFTEEN (15) days prior to the termination, cancellation or material change in any insurance coverage.
- (e) The policies shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of its Invitees in connection with the use or occupancy of the Premises.
- (f) The procuring of the required policy(s) of insurance shall not be construed to limit CONTRACTOR's and/or its Invitees' liability under this ROE nor to release or relieve CONTRACTOR or its Invitees of the indemnification provisions and requirements of this ROE. Notwithstanding the policy(s) of insurance, CONTRACTOR and/or its Invitees shall be obligated for the full and total amount of any damage, injury, or loss caused by CONTRACTOR's and/or its Invitees' negligence or neglect connected with this ROE.
- (g) CONTRACTOR and each of its Invitees shall keep such insurance in effect and the certificate(s) on deposit with OHA during the entire term of this ROE. Upon request by the OHA, CONTRACTOR or its Invitees shall furnish a copy of the policy or policies.
- (h) Failure of CONTRACTOR or its Invitees to provide and keep in force such insurance shall be regarded as a material default under this ROE and OHA shall be entitled to exercise any or all of the remedies provided in this ROE for default.
- (i) OHA is a self-insured State agency. CONTRACTOR's and its Invitees' insurance or self-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 CONTRACTOR or its Invitees.

OHA shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of OHA, the insurance provisions in this right-of-entry do not provide adequate protection for OHA, OHA may require CONTRACTOR and CONTRACTOR's consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.

8. Condition of Property/Assumption of Risk. CONTRACTOR hereby agrees and acknowledges that OHA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Property, including any dangerous or defective conditions existing in or on the Property, whether or not such conditions are known to OHA or reasonably discoverable by CONTRACTOR. CONTRACTOR agrees that OHA shall not be held responsible for any injury or damage to CONTRACTOR or its Invitees due to the presence of hazardous materials or dangerous or defective conditions on or in the Property. CONTRACTOR further agrees that any personal property left on the Property during the term of this ROE shall be left there at the sole risk of CONTRACTOR.
9. Indemnification. CONTRACTOR and its Invitees shall indemnify, defend, and hold OHA harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of CONTRACTOR and its Invitees relating to CONTRACTOR's or its Invitees' use, occupancy, maintenance, or enjoyment of the right-of-entry area or Property; (2) any failure on the part of CONTRACTOR or its Invitees to maintain the right-of-entry area or Property and areas adjacent thereto in the use and control CONTRACTOR or its Invitees, and including any accident, fire, or nuisance, growing out of or caused by any failure on the part of CONTRACTOR or its Invitees to maintain the area or Property in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason CONTRACTOR or its Invitees non-observance or non-performance of any of the terms, covenants, and conditions of this ROE or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
10. Damage to Property/Personal Injury. As between OHA and CONTRACTOR, CONTRACTOR shall be solely responsible for all damages, losses, liabilities, expenses, claims or actions of any kind arising directly or indirectly from CONTRACTOR's exercise of rights under this ROE, the use of the Property pursuant to this ROE by CONTRACTOR and/or its Invitees, or any action or omission of CONTRACTOR, its Invitees or anyone else acting on CONTRACTOR's behalf, including, without limitations: personal injury, death and damage to real or personal property, including the Property. CONTRACTOR shall promptly restore property disturbed or damaged by CONTRACTOR and/or its Invitees or anyone else acting on CONTRACTOR's behalf to its original condition prior to damage or loss, at its sole expense.
11. Compliance with Laws and Regulations. CONTRACTOR, its consultants, contractors and/or persons acting for or on its behalf, at all times during the term of this ROE,

observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, shall include, but may not be limited to: Occupational Safety and Health Administration laws and regulations and the laws applicable to the use of the Property and the securing of any and all necessary governmental and other approvals and permits for use of the Property, now in force or which may be in force.

12. Prohibited Use. Any use of the Property not authorized herein shall constitute a material breach of this ROE and upon such breach, OHA may terminate this ROE forthwith without notice and pursue any other remedies to which OHA is entitled to by law or under this ROE.
13. Best Management Practices. Best management practices shall be employed to avoid having silt or dirt enter the ocean.

At all times herein, CONTRACTOR and its Invitees shall keep the right-of-entry area or Property in a strictly clean, sanitary and orderly condition.

CONTRACTOR and/or its Invitees in the exercise of this ROE shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.

14. Hazardous Materials. CONTRACTOR shall ensure that CONTRACTOR and/or its Invitees shall not cause or permit the escape, disposal or release of any hazardous materials, except as permitted by law. CONTRACTOR and/or its Invitees shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Property any such materials except to use in the ordinary course of business by CONTRACTOR and/or its Invitees, and then only after written notice is given to OHA of the identity of such materials and upon OHA's consent which consent may be withheld at OHA's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by CONTRACTOR and/or its Invitees, then CONTRACTOR and/or its Invitees shall be responsible for the cost thereof. In addition, CONTRACTOR and/or its Invitees shall execute affidavits, representations and the like from time to time at OHA's request concerning the best knowledge and belief of CONTRACTOR and/or its Invitees regarding the presence of hazardous materials on the Property placed or released by CONTRACTOR and/or its Invitees.

CONTRACTOR and its Invitees agree to indemnify, defend and hold OHA harmless from any damages and claims resulting from the release of hazardous materials on the Property occurring while its Invitees are in possession or elsewhere if caused by its Invitees. These covenants shall survive the expiration or earlier termination of this ROE.

For purposes of this ROE, "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the

Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

15. **Pollution Control.** CONTRACTOR and/or its Invitees shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from use, maintenance, repair and operation of the right-of-entry area or Property, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately notify OHA and clean the Property and its surrounding waters of such pollutant or contaminant and restore to the satisfaction of OHA, the areas affected by such pollution or contamination, all at the cost and expense of CONTRACTOR and/or its Invitees.
16. **Fire.** No open fire or burning of any kind shall be permitted on the Property.
17. **Vegetation.** The removal, trimming, cutting, or trampling of vegetation is strictly prohibited without the prior written approval of OHA.
18. **Protection of Resources.** Without limiting the foregoing, CONTRACTOR shall employ all measures necessary to prevent or, if necessary, minimize and mitigate adverse impacts from all activities undertaken pursuant to this ROE on the Property and the environment. CONTRACTOR shall comply and require its Invitees to comply with all County, State, and Federal laws, regulations, rules and guidelines (“Laws”) protecting all aspects of the Property and the environment affected by the Project under this ROE including, without limitations: all Laws relating to the protection of water resources, air resources, fish and wildlife resources, historical, archaeological and cultural resources, the disposal of waste, and sound intrusion. CONTRACTOR shall be solely responsible for controlling any dust or erosion, or other adverse conditions caused solely by CONTRACTOR and/or its Invitees entry upon and use of the Property under this ROE.
19. **Archaeological and Cultural Resources.** In performing its activities hereunder, CONTRACTOR and its Invitees shall not cause any damage to and shall otherwise take all steps necessary to prevent impacts on known archaeological and cultural sites or remains such as bone or charcoal deposits, human burials or remains, rock or coral alignments, pavings or walls, burial shelters and caves, prehistoric artifacts and agricultural sites (collectively, “Archaeological and Cultural Resources”). If any Archaeological and Cultural Resources are encountered or their presence is suspected, CONTRACTOR and/or its Invitees shall immediately stop work and report such encounters to the State Historic Preservation Division and OHA, and shall not resume work in the area until and unless permitted to do so by law.
20. **Disputes.** All disputes or questions arising under this ROE shall be referred to the Chief Executive Officer (or assigned designee) of OHA for a determination and resolution of the dispute or question. OHA’s Chief Executive Officer’s decision shall be final and binding on the parties herein.

21. Improvements and Signage. CONTRACTOR and/or its Invitees shall not construct any improvements and/or signage of any kind or nature upon the Property or any other properties of OHA without OHA's express prior written consent, which consent may be granted or withheld in OHA's sole discretion. Any unauthorized improvements, shall include, but may not limited to: structures, erected on or moved onto the Property by CONTRACTOR shall remain the property of CONTRACTOR and CONTRACTOR shall have the right, prior to the termination or revocation of this ROE, or within an additional period OHA in its discretion may allow, to remove the improvements from the Property; provided, however, that in the event the CONTRACTOR shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period allowed by OHA, OHA 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 CONTRACTOR. This provision shall survive the termination of this ROE.
22. No Lien. CONTRACTOR and/or its Invitees shall not: create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Property or any improvements thereon.
23. Revocation. This ROE is revocable and terminable at any time for any reason in the sole and absolute discretion of OHA's Chief Executive Officer or his designee.
24. Non-transferrable. This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without OHA's express prior written consent.
25. Amendment. This ROE may not be modified except in writing signed by the parties hereto.
26. OHA reserves the right to impose additional terms and conditions as it deems necessary while this ROE is in force, and such other terms and conditions as may be prescribed by OHA's Chief Executive Officer to best serve the interests of OHA.
27. 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.
28. Governing Law. This ROE shall be governed by and construed under the laws of the State of Hawai'i.
29. Counterparts. This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.
30. CONTRACTOR agrees to be bound by the terms and conditions of the ROE and any amendments to this ROE.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

OFFICE OF HAWAIIAN AFFAIRS

Date: \_\_\_\_\_, 2017

By \_\_\_\_\_

LISA A. VICTOR  
Its Ka Pou Nui, Chief Operating Officer

“OHA”

[CONTRACTOR’S NAME]

Date: \_\_\_\_\_, 2017

By \_\_\_\_\_

[NAME OF AUTHORIZED SIGNER]  
Its [TITLE]

“CONTRACTOR”

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Jonathan Ching, D. Arch.  
Its Pou Kāko‘o Mahele Mālama ‘Āina  
Land & Property Manager

APPROVED AS TO FORM:

By \_\_\_\_\_  
ALBERT TIBERI  
Its Ka Paepae Puka, Senior Legal Counsel

Date: \_\_\_\_\_, 2017