

Honolulu Authority for Rapid Transportation

RESOLUTION NO. 2015-27

APPROVING NOTIFICATION TO THE CITY COUNCIL OF INTENTION TO ACQUIRE THE REAL PROPERTY IDENTIFIED AS TAX MAP KEY 2-3-007-039 BY EMINENT DOMAIN AND PUBLICATION OF A RESOLUTION AUTHORIZING ACQUISITION OF SAID PROPERTY BY EMINENT DOMAIN

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (Charter); and

WHEREAS, Section 17-103.2(b) of the Charter empowers HART "to acquire by eminent domain ... all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the fixed guideway system;" and

WHEREAS, prior to such acquisition the Charter directs HART to submit a list of real property to be acquired by eminent domain to the City Council; and

WHEREAS, the City Council may approve the acquisition by eminent domain or may object by adoption of a resolution within 45 days of the notification to acquire the real property; and

WHEREAS, the acquisition by eminent domain in fee simple of the real property identified as Tax Map Key (TMK) 2-3-007-039 and more particularly described in the attached legal description marked as Exhibit A, is necessary for the Honolulu Rail Transit Project fixed guideway system, a valid public use and purpose;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That written notification to the City Council is approved, for the acquisition by eminent domain in fee simple of the real property identified above; and
2. That in the event the City Council approves or does not object to the acquisition within 45 days of notification, then HART is authorized to publish in a daily newspaper at least three days prior to Board action, the attached resolution marked as Exhibit B, authorizing acquisition by eminent domain in fee simple of the above-identified real property.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on JUN 25 2015.

Exhibit A – Legal description of TMK 2-3-007-039

Exhibit B – Resolution No. 2015__-__ Authorizing the Acquisition of the Real Property Identified as Tax Map Key 2-3-007-039 by Eminent Domain.


Board Chair

ATTEST:


Board Administrator

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

Parcel 477

Being Lot 352 (Map 1) of Land Court Application 880, Section 2.

Situate at Kewalo, Honolulu, Oahu, Hawaii

Beginning at the Northeast corner of this parcel of land, being also the Northwest corner of Lot 885-B (Map 136) of Land Court Application 880, Section 2, and on the Southerly side of Kona Street, the coordinates of which referred to Government Survey Triangulation Station "PUNCHBOWL" being 767.04 feet South and 1028.77 feet West and running by azimuths measured clockwise from true South:

- 1. 20° 42' 100.00 feet along Lot 885-B (Map 136) of Land Court Application 880, Section 2;**
- 2. 110° 42' 50.00 feet along Lot 353-A (Map 33) of Land Court Application 880, Section 2;**
- 3. 200° 42' 100.00 feet along Lot 352-A (Map 1) of Land Court Application 880, Section 2;**

4. 290° 42'

50.00 feet along the Southerly side of Kona Street to the point of beginning and containing an area of 5,000 square feet.



1320 North School Street
Honolulu, Hawaii 96817

Description Prepared By:

ENGINEERS SURVEYORS HAWAII,
INC.

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

Miles S. Horie

Exp. 4/30/16

Licensed Professional Land Surveyor

Certificate Number 10007

May 29, 2014

Revised: June 15, 2015

Tax Map Key: (1st Div.) 2-3-02: 39

14-73

Honolulu Authority for Rapid Transportation

RESOLUTION NO. 2015-

**AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY IDENTIFIED
AS TAX MAP KEY 2-3-007-039 BY EMINENT DOMAIN**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (Charter); and

WHEREAS, Section 17-103.2(b) of the Charter empowers HART "to acquire by eminent domain. . . all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the fixed guideway system;" and

WHEREAS, the City Council approved or did not object to the acquisition of the real property identified as Tax Map Key (TMK) 2-3-007-039 by eminent domain in fee simple after written notification by HART; and

WHEREAS, the acquisition by eminent domain in fee simple of the above-identified real property, which is more particularly described in the attached legal description marked as Exhibit A, is necessary for the Honolulu Rail Transit Project fixed guideway system, a valid public use and purpose;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That acquisition by eminent domain in fee simple of the real property identified as TMK 2-3-007-039 is hereby authorized and the Corporation Counsel of the City and County of Honolulu is empowered to institute eminent domain proceedings as provided by law for the acquisition thereof; and
2. That the acquisition of the above-identified property by eminent domain is determined and declared to be for a valid public use and purpose as aforesaid; and
3. That the acquisition of the above-identified property by eminent domain is determined and declared to be necessary for the aforesaid public use and purpose; and
4. That in the process of said proceedings in eminent domain, the Corporation Counsel is authorized and empowered to negotiate

terms of settlement, subject to the approval of HART and/or the Court before which such proceedings are commenced; and

5. That the Board Administrator be directed to transmit copies of this resolution to HART and the Department of the Corporation Counsel.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on

_____.

Board Chair

ATTEST:

Board Administrator

Exhibit A – Legal description of TMK 2-3-007-039

DRAFT

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

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Situate at Kewalo, Honolulu, Oahu, Hawaii

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Honolulu Authority for Rapid Transportation

STAFF SUMMARY

TITLE: RESOLUTION NO. 2015-27 APPROVING NOTIFICATION TO THE CITY COUNCIL OF INTENTION TO ACQUIRE THE REAL PROPERTY IDENTIFIED AS TAX MAP KEY 2-3-007-039 BY EMINENT DOMAIN AND PUBLICATION OF A RESOLUTION AUTHORIZING ACQUISITION OF SAID PROPERTY BY EMINENT DOMAIN	STAFF CONTACT: Elizabeth Scanlon Morris Atta	DATE: 6/25/2015
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Type:	Goal	Focus Area	Reference Notes
<input checked="" type="checkbox"/> Action/Approval	<input checked="" type="checkbox"/> Project Delivery	<input checked="" type="checkbox"/> Livability/Land Use	
<input type="checkbox"/> Information	<input type="checkbox"/> Service Delivery	<input type="checkbox"/> Partnerships	
<input type="checkbox"/> Follow-up	<input checked="" type="checkbox"/> Resource Stewardship	<input type="checkbox"/> Agency Admin.	

1. Purpose:

Review of Notification to City Council for condemnation of land for public use, identified as Tax Map Key 2-3-007-039, and situated at 1163 Kona St., Honolulu, Hawaii, 96814, which is required for guideway purposes for the Honolulu Rail Transit Project (HRTTP). This property, for which a 5,000 square-foot full take is required, is on the critical path for successful completion of the City Center Section of the HRTTP. The property is owned by Andres Nelson, Jr.

HART recommends use of eminent domain to acquire the property.

2. Background/Justification

This property (Tax Map Key 2-3-007-039) was designated as a full take in the Final Environmental Impact Statement (FEIS). As required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and FTA C5010.1D, the Owners were notified of HART's intent to acquire the property. An appraisal was conducted following URA guidelines, which took into consideration all site conditions and potential impacts of the full take.

- Owner has rejected the full take Offer and submitted a counteroffer for a partial take with cut and re-face of the building. Negotiations are ongoing.

This parcel is being referred to eminent domain in order to adhere to the project construction timeline. Access to this parcel is needed as soon as possible in order to avoid costly delays to the project schedule and timing. Negotiations with the Owner will continue during the eminent domain process.

3. Procurement Background

N/A

4. Financial/Budget Impact

The project budget includes an estimated cost for legal action associated with the eminent domain of the property.

5. Policy Impact

There is no policy impact since this action conforms to the requirement of the URA, FTA 5010.1D and Article XVII of the Charter of the City and County of Honolulu.

6. Public Involvement

N/A

7. Alternatives

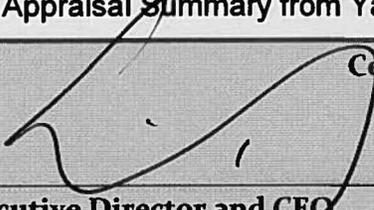
There is no feasible alternative to avoid the above-described impacts to the property.

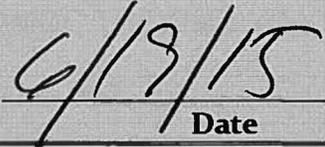
8. Exhibits

Exhibit 1 – Offer letter dated 2/24/2015

Exhibit 2 – Appraisal Summary from Yamaguchi & Yamaguchi, Inc. dated 6/30/2014

Certified and Recommended by:


Executive Director and CEO


Date

PL 1782



IN REPLY REFER TO:
CMS-APOOROW-00593

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

HAND-DELIVERED

February 24, 2015

Delivered to Larry Stenet
Received
as requested by Sonny Nelson.
Print Name Date
By. Mark Peters 2/27/15

BOARD OF DIRECTORS

Ivan M. Lui-Kwan, Esq.
CHAIR

Donald G. Horner
VICE CHAIR

George I. Atta
Robert Bunda
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Ford N. Fuchigami
William "Buzz" Hong
Keslie W.K. Hui
Damien T.K. Kim
Carrie K.S. Okinaga, Esq.

Mr. Sonny Nelson
Andres Nelson, Jr.
1163 Kona Street
Honolulu, Hawaii 96814

Dear Mr. Nelson:

Subject: Honolulu Rail Transit Project (H RTP)
1163 Kona Street
Parcel 477: Tax Map Key (TMK) 2-3-007-039
Letter of Offer

This is a follow-up to previous correspondence regarding the appraisal and acquisition of the subject property. An appraisal of your property has been completed. Based on our findings as contained in the enclosed Statement of Just Compensation, Honolulu Authority for Rapid Transportation (HART) offers to purchase your property, identified as TMK 2-3-007-039 (shown colored in yellow on the enclosed map), in fee simple, free and clear of all liens and encumbrances, for the total consideration of **\$1,700,000** (One Million Seven Hundred Thousand Dollars).

If this offer is acceptable, please sign the duplicate of this letter and return it in the enclosed envelope by **March 26, 2015**. The remaining copy is for your file. Enclosed for your information are the Appraisal Summary Statement and General Acquisition & Relocation Information Brochure. Also enclosed is a draft Right of Entry, Possession and Use Agreement for your review, consideration, and to be further discussed with your acquisition agent.

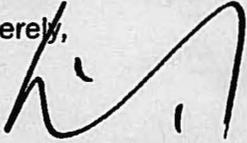
If we do not hear from you by **March 26, 2015**, this offer shall be considered rejected and HART will proceed to review options to acquire the subject property.

In accordance with federal regulations affecting real property transactions, we request your cooperation in providing us with your Taxpayer Identification Number. Please execute and return the enclosed IRS Form W-9 at the same time. The W-9 is required by our Department of Budget and Fiscal Services to release the check.

Mr. Sonny Nelson
Page 2
February 24, 2015

Please contact Mr. Jackson Blagden at 536-5900 if you have any questions regarding this matter.

Sincerely,



Daniel A. Grabauskas
Executive Director and CEO

Enclosures

ACCEPTED:

Andres Nelson, Jr.

By _____
Its

Print Name: _____

Dated: _____

STATEMENT OF JUST COMPENSATION

PROJECT: HONOLULU RAIL TRANSIT PROJECT (H RTP)
LOCATION: 1163 Kona Street, Honolulu, Oahu, Hawaii
TAX MAP KEY: 2-3-007-039
OWNER(S): Andres Nelson, Jr.
INTEREST TO BE ACQUIRED: Unencumbered Fee Simple
PARCEL TO BE ACQUIRED: Full Fee Simple Acquisition of +/- 5,000 square feet
ZONING: Central Kaka'ako (CK) PITT 4-Industrial District
IMPROVEMENTS: 2 Story Masonry Concrete Structure

PURPOSE: Under the United States and Hawaii Constitutions, private property cannot be taken for public use without payment of just compensation. In accordance with the Code of Federal Regulations, Honolulu Authority of Rapid Transportation submits a written statement of and summary of the basis for the amount it has established as just compensation for the above identified property.

In estimating just compensation, an appraisal was performed by a State of Hawaii licensed appraiser. The amount established as just compensation is not less than the approved appraisal of the fair market value of the property being acquired.

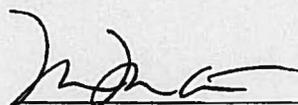
Unless otherwise stated in the attached letter of offer, the amount established as just compensation is for the real property being acquired, which includes land, buildings, structures, or improvements located on, or damaged as a result of the taking of the areas and interest described in the attached letter of offer.

The amount established as just compensation does not include items of personal property such as household furnishings, clothing and appliances.

JUST COMPENSATION: Based on the completed appraisal report and the appraisal review the just compensation amount for the property being acquired is:

Full Fee Simple Acquisition	<u>\$1,700,000</u>
TOTAL:	\$1,700,000

The original of this statement to be tendered to the above named owner has been signed in ink. If the signature is not in original ink, as opposed to duplicating, electrostatic or other media, this Statement of Just Compensation is not valid.



Morris M. Atta
Deputy Director of Right-of-Way

APPRAISAL SUMMARY STATEMENT

PROJECT: HONOLULU RAIL TRANSIT PROJECT (H RTP)
ADDRESS: 1163 Kona Street, Honolulu, Oahu, Hawaii
TAX MAP KEY: 2-3-007-039
OWNER(S): Andres Nelson, Jr.
PARCEL AREA: +/- 5,000 square feet of Full Fee Simple Taking
PROPERTY ACQUIRED: ALL: X PART: ___
INTEREST TO BE ACQUIRED: Unencumbered Fee Simple
ZONING: Central Kaka'ako (CK) PITT 4-Industrial District
HIGHEST & BEST USE: Warehouse / Office / Retail

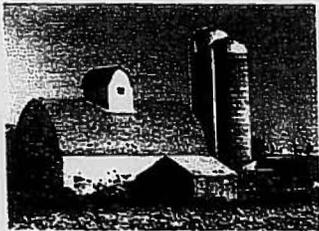
ASSESSED VALUE (2013): FOR TOTAL PARCEL	Land Value	\$ 855,000
	Building Value	\$ <u>544,400</u>
	TOTAL	\$1,399,400

	Full Fee Acquisition	<u>\$1,700,000</u>
	TOTAL	\$1,700,000

The Appraisal Estimate is: **\$1,700,000**

The value of the property being acquired is based upon an appraisal prepared in accordance with accepted appraisal practices. Full and careful consideration has been given to the highest and best use for development of the property and to all features inherent in your property in order that the highest valuation possible can be made. The Appraisal Estimate and appraisal were developed and reported in conformity with Federal regulations, State statutes, and City ordinances.

More Relocation Information



Business

A business that is relocated as a result of the project may

be entitled to benefits such as:

1. *Moving and Related Costs*
2. *Reestablishment Costs*
3. *Fixed Payment*

Statements applicable to all categories and benefits listed

Please keep in mind that there are specific benefit requirements that must be met to receive any of the funds mentioned above. Your assigned relocation agent will assist you to fully understand the payments and requirements.

No one may be displaced until adequate housing has been made available to them.

All persons required to move personal property, their home, or business must be given at least 90 days to vacate.

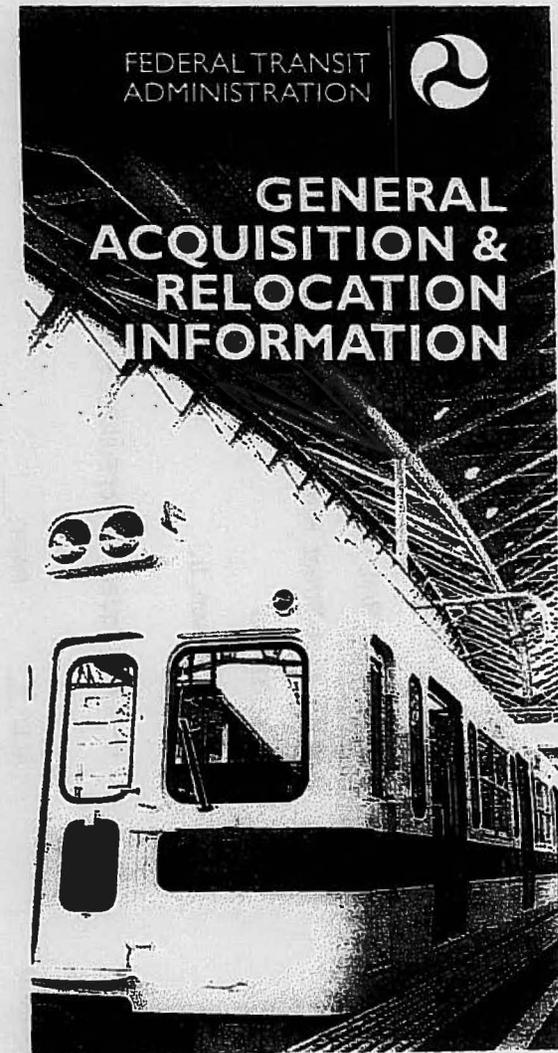
Your Local Transit Agency will establish an appeal process should you be aggrieved by a denial of benefits or if you feel the benefits are inadequate.

A message from the FTA and your local transit agency

It is sometimes necessary to acquire private property and displace persons and businesses in order to build a transit facility that will benefit the entire community. However, we will work with you to minimize the inevitable disruption that this causes. Please feel free to contact the agency and person listed below should you have any further questions.

Revised rules for the Uniform Act were published in the Federal Register on January 4, 2005. The rules are reprinted each year in the Code of Federal Regulations, Title 49, Part 24. All Federal, State and local government agencies, as well as others receiving Federal financial assistance for public programs and projects, that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act and the regulation.

For further information, please contact:



FTA | U.S. DEPARTMENT OF TRANSPORTATION 
FEDERAL TRANSIT ADMINISTRATION

SEE THE BACK PANEL OF THIS BROCHURE FOR
INFORMATION ON CONTACTING YOUR LOCAL AGENCY.



GENERAL INFORMATION

Your local transit agency may need to purchase property from you with funding from the Federal Transit



Administration (FTA) in order to benefit the general public. To assure fair and consistent treatment of all

persons, the FTA will require your local transit agency to follow the Uniform Relocation Assistance and Real Property Policies Act of 1970, as amended. The Uniform Act is a law passed by Congress to promote uniformity and fairness when a local transit agency must acquire property or displace persons. There are two main parts of this process:

1. *Acquisition, which is the purchase of your real estate.*
2. *Relocation which offers additional benefits should you or your business be displaced.*

Acquisition of Real Property

The purchase of real estate by a transit agency begins with the appraisal of your property. An appraiser will inspect your property to determine the value. The property owner should accompany the appraiser while making this inspection. A second appraiser will then review and approve the work of the first appraiser and will recommend a value to the local transit agency.

You should then receive a written offer to purchase your property. You will have sufficient time to consider the offer or make any counter offers that you believe is fair.

If you elect to sell your property to the local transit agency, you will be paid the full amount less any encumbrances (mortgage, lien, etc.) owed on that property. Possession of vacant property may be taken the day of closing by the local transit agency; possession of occupied property will be at an agreed future date.



Relocation



Advisory Assistance will be offered to every displaced person. A Relocation Agent will visit you to explain all of the benefits and services that you may be eligible to receive.

Below is a very brief outline of the various types of financial benefits available if you or your business are required to move.

Residential Homeowner Occupants, are those that have owned and occupied their home for at least 180 days. Typical benefits include:

1. *Moving Costs*
2. *Price Differential Payment*
3. *Increased Mortgage Interest*
4. *Incidental Closing Costs*

90 day Occupant or Tenant, is either a tenant or a homeowner that has occupied their home for less than 180 days but at least 90 days. Relocation benefits include:

1. *Moving Costs*
2. *Rental Assistance Payment/Down Payment*

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL (X) PICK UP ()

Tax Map Key No.: _____

Total Pages: []

RIGHT OF ENTRY, POSSESSION AND USE AGREEMENT

THIS RIGHT OF ENTRY, POSSESSION AND USE AGREEMENT (the "Agreement") is dated _____, 2014, and entered into by and between the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous agency of the City and County of Honolulu, whose business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813, and _____, whose mailing address is _____ ([collectively,] "GRANTOR"). HART and GRANTOR are collectively referred to as the "Parties," and individually, a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, GRANTOR is the owner of the real property located at _____ Honolulu, Hawaii _____, and legally described in the attached Exhibit "A" (the "Property");

WHEREAS, although HART is seeking to acquire the Property for the construction and operation of the Honolulu Rail Transit Project (the "Project"), the acquisition of [an easement over] the Property is pending;

WHEREAS, HART requires immediate possession and use of the Property to construct the Project;

WHEREAS, HART and GRANTOR agree that any delay in the start of construction of the Project is contrary to the public interest;

WHEREAS, the purpose of this Agreement is to allow HART to proceed with construction of the Project without delay; and

WHEREAS, pursuant to Hawaii Revised Statutes ("HRS") § 101-3, GRANTOR agrees to grant HART an irrevocable right to entry, possession and use of the Property on the terms and conditions set forth below;

AGREEMENT

NOW, THEREFORE, in consideration of the sum to be paid to GRANTOR which is set forth in Section 2 below, and in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises, covenants, terms, conditions and restrictions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, HART and GRANTOR hereby agree as follows:

1. Possession and Use. GRANTOR hereby irrevocably grants to HART the right of entry and exclusive possession and use of the Property for the purpose of constructing the Project and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archaeological studies and mitigation measures, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Project. This Agreement will extend to HART, its contractors and assigns, owners of any existing utilities on the Property and those who may be lawfully permitted on the Property by HART in the future, and all others deemed necessary by HART for the purpose of the Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.

2. Payment. In full consideration for this irrevocable grant of entry, possession and use and other GRANTOR covenants, warranties, and obligations under this Agreement, HART will tender to GRANTOR the sum of _____ AND NO/100 DOLLARS (\$_____). GRANTOR agrees that this sum represents adequate and full compensation for the possession and use of the Property. HART will be entitled to enter, take possession and use the Property upon tender of payment. The Parties agree that the sum tendered represents _____ percent of HART's approved appraisal of the fair market value of the Property, which assumes no adverse environmental conditions affecting the value of the Property. The approved appraised value is HART's determination of the just compensation owed to GRANTOR for the real property interest to be acquired by HART in the Property, encumbered with the improvements thereon, if any, and damages to the remainder of GRANTOR's interest in any larger tract of which the Property is a part (the "Remainder"), if any. The Parties agree that the sum tendered to GRANTOR will be deducted from any final settlement amount voluntarily negotiated by the Parties or from any court judgment. In the event the amount of the final settlement or judgment for acquisition of [an easement over] the Property is less than the amount HART has paid for the possession and use of the Property, then GRANTOR agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from HART, GRANTOR will promptly refund the overpayment to HART.

3. Term. The effective date of this Agreement will be the date on which payment pursuant to Section 2 above is tendered to GRANTOR by HART, or disbursed to GRANTOR by a title company acting as escrow agent for the transaction (the "Effective Date"). This Agreement shall continue to remain in effect until [an easement over] the Property is acquired either by negotiation or final court judgment.

4. Warranties. GRANTOR warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. GRANTOR further warrants that GRANTOR has the full right and authority to enter into this Agreement and grant HART the rights described, and that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify HART from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

5. Valuation Date. The Parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.

6. Acquisition of [an Easement over] the Property. HART and GRANTOR agree that HART will acquire [an easement over] the Property, in the name of the City and County of Honolulu, either by negotiated settlement by the Parties or by condemnation and that this Agreement is made pursuant to HRS § 101-3. GRANTOR reserves all rights of compensation for the title and interest in and to the Property which GRANTOR holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice GRANTOR's rights to receive full and just compensation as allowed by law for all of GRANTOR's interests in and to the Property to be acquired by HART, encumbered with the improvements thereon, if any, and damages, if any, to the Remainder, if any; all as the Property exists on the Effective Date of this Agreement. HART's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to GRANTOR in the eminent domain proceedings, if any. There will be no project impact upon the appraised value of the Property. This grant will not prejudice GRANTOR's rights to any relocation benefits for which GRANTOR may be eligible.

- a. Acquisition [of an Easement] by Negotiated Settlement. In the event [an easement over] the Property is acquired by negotiated settlement by the Parties, HART will not be liable to GRANTOR for interest upon the negotiated settlement amount, except as provided by HRS § 101-3. Payment of any interest will be on the difference between the amount of the payment in Section 2 above and the amount of the negotiated settlement.
- b. Acquisition [of an Easement] by Condemnation. In the event HART institutes or has instituted eminent domain proceedings to acquire [an easement over] the Property, HART will not be liable to GRANTOR for interest, including blight of summons damages, upon any award or judgment as a result of such proceedings,

except as provided by HRS § 101-3. Payment of any interest, including blight of summons damages, will be on the difference between the amount of the payment in Section 2 above and the amount of the judgment.

7. Non-Transferability. GRANTOR shall not assign, sell, encumber, or otherwise transfer all or any portion of the Property without first obtaining HART's written consent.

8. Public Purpose of the Project. The purpose of this Agreement is to allow HART to proceed with its Project without delay and to allow GRANTOR to have the use, at this time, of a percentage of the estimated compensation for HART's acquisition of a real property interest in the Property. GRANTOR expressly acknowledges that the proposed Project is for a valid public use and voluntarily waives any right GRANTOR has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of [an easement over] the Property related to the Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of [an easement over] the Property is not necessary for the public use.

9. Parties' Intent to Be Bound. HART and GRANTOR intend that this Agreement, including, without limitation, the right of entry, possession and use provisions set forth above, constitutes a binding contract. In particular in this regard, GRANTOR acknowledges and agrees that it is important for HART to have assurances that the Project may be constructed in a timely manner, and that the rights granted to HART in this Agreement are crucial to the Project's success. In the event of any dispute concerning the right of entry, possession and use provisions set forth above, GRANTOR and HART agree that monetary damages will not be adequate to make them whole, and intend for the terms of such right of entry, possession and use provisions to be specifically enforceable.

10. Entire Agreement. This Agreement reflects the entire agreement between the Parties and shall supersede all prior or contemporaneous oral or written understandings, statements, representations or promises between the Parties concerning the matters contained herein.

11. Governing Law. This Agreement is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced and governed under the laws of said state. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

12. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the heirs, devisees, successors in trust, personal representatives, successors and assigns of the Parties.

13. Understanding of Agreement. This Agreement has been negotiated in good faith and each Party warrants and represents that in executing this Agreement, they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

14. Fees and Costs. Each Party shall bear its own costs and attorneys' fees incurred in connection with negotiating the matters described in this Agreement.

15. Severability. In case any part, term, portion or provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable, and in full force and effect.

16. Amendment to Agreement. This Agreement may only be amended by written agreement, executed by the Parties.

17. Recordation of Agreement. It is agreed HART will record this document.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, HART and GRANTOR have executed this Agreement.

"HART"

"GRANTOR"

HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION

By: Daniel A. Grabauskas
Its: Executive Director and CEO

APPROVED AS TO CONTENT:

Morris M. Atta
Deputy Director, Right-of-Way

APPROVED AS TO FORM AND
LEGALITY:

Deputy Corporation Counsel

[Add notary pages]

PARCEL MAP EXHIBIT
LINK 2-2007-002

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for ...	THEN the payment is exempt for ...
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if Item 1, below, and Items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in Items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out Item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out Item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ³ The actual owner ⁴
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor ⁴
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-368-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



**Yamaguchi &
Yamaguchi, Inc.**
Real Estate Appraisal &
Consulting Services

June 30, 2014

Mr. Todd Salvatore
Project Manager
Paragon Partners Ltd.
5762 Bolsa Avenue Suite 201
Huntington Beach, California 92649

Re: Honolulu Rail Transit Project
Whole Parcel Acquisition
Parcel Designation: (1) 2-3-007-039
HART RW Parcel: 477
1163 Kona Street, Honolulu, Hawaii 96814

Dear Mr. Salvatore,

At your request, we have completed a re-appraisal of the real property interest for the above real estate. Our objective was to form one or more opinions about the market value for a 100% ownership interest in the subject property's fee simple estate assuming no liens or encumbrances other than normal covenants and restrictions of record.

The purpose of this appraisal report is to assist the Honolulu Authority for Rapid Transportation in the whole parcel *Eminent Domain* acquisition proceeding of the subject parcel as part of the Honolulu Rail Transit Project.

As a preview, the subject property physically consists of a mostly rectangular, non-corner parcel constituting 5,000 square feet. It is improved with a 31-year old masonry-concrete warehouse structure encompassing most of the entire site.

This valuation contains analyses, opinions, and conclusions along with market data and reasoning appropriate for the scope of work detailed later herein. It was prepared solely for the intended use and intended user(s) explicitly identified in the attached report. Unauthorized users do so at their own risk. The appraisal is communicated in the attached Summary report, and conforms to the version of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on this report's preparation date of June 30, 2014.

Previously, our client had informed us that the owner of the subject property would not grant the appraiser physical access to the interior of the subject property. At the request of Paragon Partners Ltd. we completed an appraisal of the subject property without an interior inspection on May 10, 2014 and incorporated an Extraordinary Assumption that included: "Should a physical inspection that includes a professional cost estimator result in improvement components and cost differences, the appraisal valuation may be invalid and require a re-appraisal".

Subsequently, the owner contacted HART and Paragon Partners Ltd. and requested a meeting and physical inspection to be conducted by HART and the appraiser. Therefore, this report is a re-appraisal of the subject property that includes a physical inspection by the appraiser and our professional cost estimator.

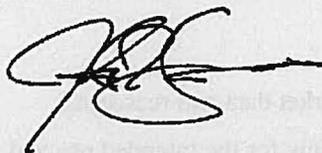
For purposes of this appraisal report, the definition of market value from the fifth edition of the *Uniform Appraisal Standards for Federal Land Acquisitions* was utilized and is defined in the Market Value Criterion section of this report.

This letter is not an appraisal report hence it must not be removed from the attached 140-page report. If this letter is disjoined from the attached appraisal report, then the value opinions set forth in this letter are invalid because the analyses, opinions, and conclusions cannot be properly understood.

In general, valuation of the subject property involves no atypical issues. All value opinions are affected by all the information, extraordinary assumptions, hypotheses, general limiting conditions, facts, descriptions, and disclosures stated in the attached appraisal report. After careful consideration of all factors pertaining to and influencing value, the data and analysis thereof firmly supports the following final value opinion(s) for the subject property as of June 20, 2014:

\$1,700,000 Fair Market Value "As Is" (Whole Parcel Acquisition)

Thank you for your business. Let us know how we may further serve you.



Jon F. Yamaguchi, CRE, FRICS, SRPA, SRA
President / CEO
Certified General Appraiser
Hawaii License CGA 31
License Expiration Date: 12/31/2015