STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 12, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 15HD-046

Hawai'i

Resubmittal: Consent to Lease Term Extension Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3622, Hiroshi Matsubara and Naoe Matsubara, Lessee; Amendment of Terms and Conditions Regarding Assignment and Sublease Provisions for General Lease No. S-3622; Lot 29, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:095.

APPLICANT AND REQUEST:

Hiroshi Matsubara and Naoe Matsubara, husband and wife, lessee.

Improvements to leasehold property financed by lessee pursuant to Act 207, Session Laws of Hawaii 2011 and Section 171-36, Hawaii Revised Statutes in an amount of approximately $37,064.00.

In order for the Lessee to amortize this expenditure, Lessee is requesting an extension of General Lease No. S-3622 of 10 years, commencing on March 20, 2016 and expiring on March 19, 2026 for an aggregate term of 65 years (initial 55 year term plus the 10 year extension).

LEGAL REFERENCE:

Sections 171-36, Hawaii Revised Statutes, as amended.
Act 207, Session Laws of Hawaii 2011

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-050:095, as shown on the attached map labeled Exhibit A.

AREA:

13,932 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Fish cake manufacturing purposes.

TERM OF LEASE:

Original term of 55 years, commencing on March 20, 1961 and expiring on March 19, 2016.

Requested extension of 10 years commencing on March 20, 2016 and expiring on March 19, 2026.

ANNUAL RENTAL:

Current rent is $15,480.00, due in semi-annual installments of $7,740.00 on March 20th and September 20th of each year.

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 20th, 30th, 40th and 50th years of the term. The last rental reopening occurred on March 20, 2011, therefore, staff is recommending the rent for the extended term be determined by an immediate appraisal that will project the rent for the extension period of March 20, 2016 through March 19, 2026. The appraiser shall be selected by the State and paid for by Lessee.

PROPOSED IMPROVEMENTS:

The lessee proposes to replace the existing metal roof with 24 gauge, zincalum, 4-rib roofing material. The lessee will also replace the existing gutter and downspout. The cost of the roof and gutter replacement is estimated to be $37,000.00

DCCA VERIFICATION:

Applicants are listed as individuals and, as such, are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Pay for an immediate appraisal of the projected rent payable during the 10-year extension, from March 20, 2016 to March 19, 2026.

Complete approximately $37,000.00 worth of improvements to the lease premises by September 30, 2016, and provide the Hawaii District Land Office (HDLO) with copies of receipts for the improvements made.

REMARKS:

General Lease No. S-3622 (GL S-3622) was initially issued to Mr. Satoru Amano, dba Amano Fish Cake Factory pursuant to Act 4, First Special Session Laws of Hawaii 1960, which provided for the direct issuance of leases to natural disaster victims who were affected by the 1960 tsunami that struck Hilo and other areas of the State. The lease was for a term of 55 years commencing on March 20, 1961 and expiring March 19, 2016.

At its meeting of August 27, 1999, under agenda D-10, the Board approved the assignment of GL S-3622 from Mr. Satoru Amano, dba Amano Fish Cake Factory "assignor" to Hiroshi Matsubara and Naoe Matsubara "assignee".

The current 55-year lease is set to expire on March 19, 2016 and the lessee is requesting a 10 year extension pursuant to Act 207, Session Laws of Hawaii 2011[1] to amortize the cost of planned improvements to the property, including roof refurbishment at a cost in excess of $37,000.00.

Applicant submitted a quote for the replacement of the metal roofing system, as well as replacing the eight (8) existing turbine vents and the installation of new seamless gutters (Exhibit B). Applicant also submitted a consulting letter from a certified real estate appraiser, Inter-Island Appraisal Co., dated January 27, 2015, which estimated that, the remaining economic life of the improvements to be in excess of 25 years.

Since the implementation of Act 207, SLH 2011, there have been a number of leases within the Kanoelehua Industrial Area that have been granted a ten year extension. Six of these leases are direct leases awarded as a result of Act 4. The other leases although in the Kanoelehua Industrial Area, are along Railroad Avenue and were awarded through a public auction.

The East Hawaii economic region is unique in that a majority of the available land suitable for commercial and/or industrial use is under the management of a government agency. As one of the largest stakeholders of commercial/industrial land in the Hilo area, the Department of Land and Natural Resources understands the need for a comprehensive

1 Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to: Extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

analysis of the area in order to develop an economic strategy that will encourage new enterprises in addition to supporting the established businesses.

The Land Division retained the services of the consulting firm Munekiyo & Hiraga, Inc. for the purpose of providing a feasibility study and analysis of the department's commercial leases in the Kanoelehua Industrial Area in order to determine the future direction of this very important economic area of East Hawaii.

Key elements of the study/analysis will:

- Determine the market demand for the KIAA lease properties, particularly the demand for commercial/industrial use or some other use for long-term leasing (30-years or more)
- Determine whether some properties should be consolidated and reconfigured to maximize the utility of the land in view of the results from the above findings.
- Assess the feasibility and desirability of placing management of the leasehold properties under a master lease from the State for commercial, industrial or other uses permitted by the applicable zoning.

The results of the study will be used to assist the department in determining the future of the Kanoelehua Industrial Area and create an economic region that will benefit not only the people of East Hawaii, but the State as well.

The leased premises have been used substantially for the purpose for which they were leased. There are no outstanding rental reopening issues. Staff is of the opinion that an expenditure of $37,000.00 in improvements does justify a 10-year extension, as permitted under Act 207, SLH 2011.

The Lessee is in compliance with the terms and conditions of the lease. The Lessee is current with rent, insurance and performance bond.

Because the lease was issued by direct negotiation instead of public auction, the Board has authority to amend the lease to change the character of use provision and make other amendments.

One of the provisions of the lease is that the lessee;

> "use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided, however, that the Lessee may devote or place said demised premises to a use or uses other than fishcake manufacturing in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld; provided, further, that should the Lessor consent to a change to a change in the character of the use, it shall be upon such terms and conditions as set by the Lessor."

The character of use, "fishcake manufacturing," has not changed from the initial commencement of this lease. The current Lessees have indicated they will continue their operation until the lease expires in 2026. Although other leases in the area have modified the character of use to allow for a wider range of uses,[2] staff is recommending the current character of use for GL S-3622 remain the same

Also, the lease contains language which allows the Lessee to sublease portions of the property without Board approval, consent or knowledge. Staff believes the better practice is to require prior Board consent for all subleases. Therefore, Staff is recommending the assignment/sublease provision in the lease be amended to reflect the current language for assignments and subleases.

No agency comments were solicited on the request because it involves a lease extension; not a new disposition.

Staff is recommending that the rent payable for the 10-year extension period commencing March 20, 2016 be determined by immediate appraisal. The appraiser will be selected by the State but the appraisal fee will be paid by Applicant.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Authorize the extension of General Lease No. S-3622 to Hiroshi Matsubara and Naoe Matsubara under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

    A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;

    B. Hiroshi Matsubara and Naoe Matsubara shall complete the proposed improvements as described above and submit to Land Division staff, receipts verifying payment for the improvements by September 30, 2016, or be subject to cancellation.

    C. Review and approval by the Department of the Attorney General; and

    D. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

2. Authorize the amendment of General Lease No. S-3622 to update the lease provision titled "Assignments, etc." (par. 22 of the lease) with the current language used by the Department of the Attorney General for assignment and

2 Most of the direct leases in the Kanoelehua Industrial area that have applied for extensions have changed in the "character of use" from the original lease purpose.

subleasing provisions. The amendment of the lease shall further be subject to the following:

A. The standard terms and conditions of the most current amendment of lease document forms, as may be amended from time to time;

B. Review and approval by the Department of the attorney general; and

C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

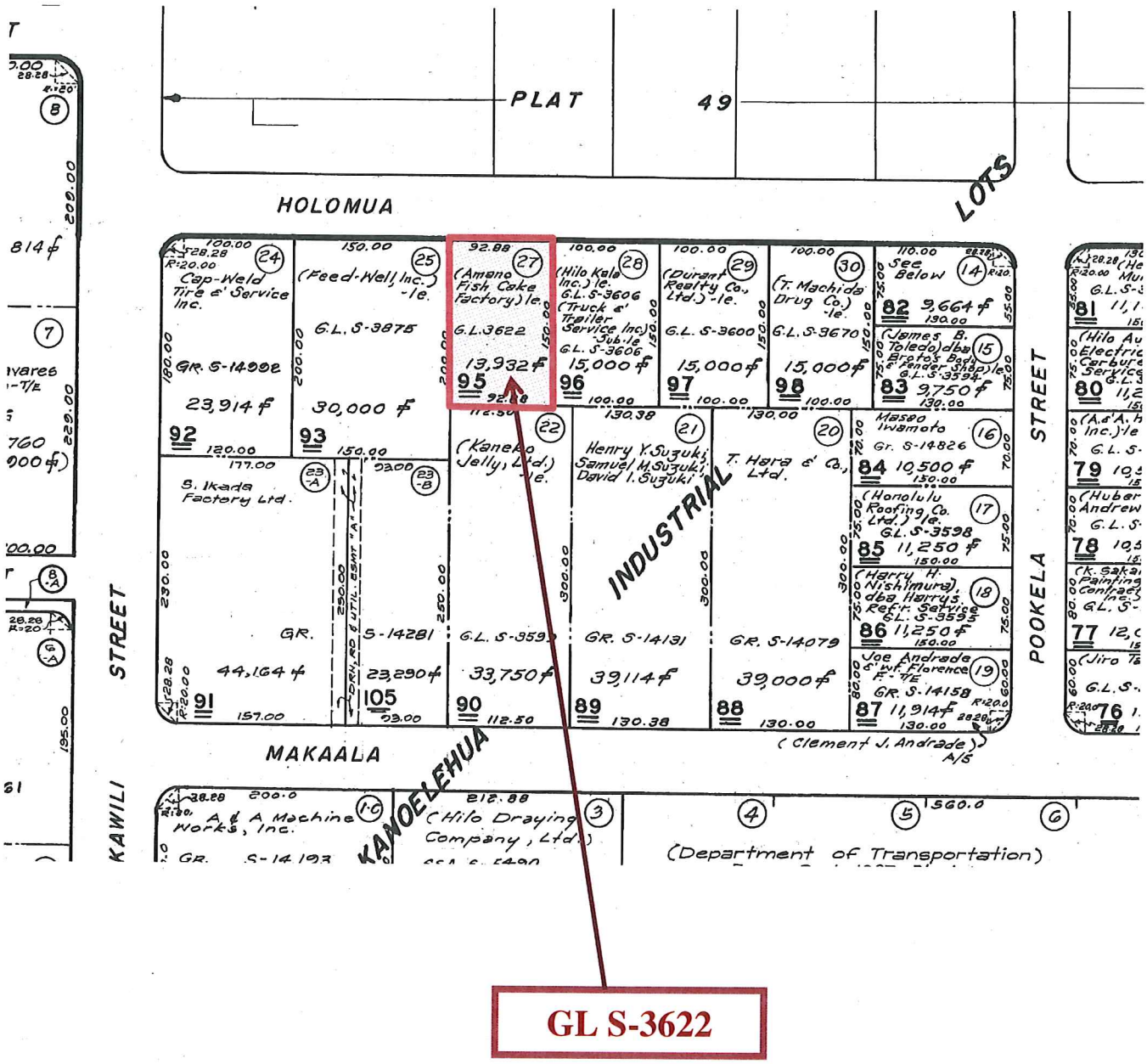
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

EXHIBIT A

TMK: (3) 2-2-050:095



PROPOSAL

YAMA'S ROOFING INC.

45 Pohaku Street / Suite #101
Hilo, HI 96720
Phone: (808) 961-9248/ Kona (808) 329-3044
Fax :(808) 961-3258
www.yamasroofing.com
LIC # C-21133

Proposal Submitted To: Amano Fish Cake	Phone: 935-5555	Date: 11/12/14
Street: 30 Holomua	Job Name: Same	
City, State and Zip Code: Hilo, Hawaii 96720	Job Location: Same	
Contact: Same	Prop#:	Fax:

We hereby submit specifications and estimates for:

REROOF MAIN DWELLING

Tear off existing metal roofing system (approximately 5880 sq. ft) and dispose of refuse.
Install DuraCoat, 24 gauge, zincalum, 4- rib roofing system from HPM.
Includes replacing existing vents with (8) eight 14" turbine vents.
Apply peel & seal tape under ridge caps.
Secure with self-tapping stainless steel screws.

5-year warranty on workmanship / 35-year limited warranty on roofing panels from HPM.

COLOR CHOICE:

THANK YOU FOR CONSIDERING US!

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:
Thirty-four thousand, three hundred fifty-two dollars and no cents.....$34,352.00

Payment to be made as follows: 65% down / Balance due upon job completion.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature:

Brian P. Peterson/ RME

Note: This proposal may be withdrawn by us if not accepted WITHIN 30 DAYS.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 7 days at 1.5% Per Month which is equal to 18% Per Annum. I/We have read and will abide by the contract terms.

Date of Acceptance: _____

Signature: _____

Signature: _____

2015 MAR -5 A 10:05
RECEIVED
LAND DIVISION
HILO, HAWAII

EXHIBIT B

YAMA'S ROOFING

" We've got you covered "

License #C-21133

45 Pohaku Street /Suite 202 Hilo, Hawaii 96720

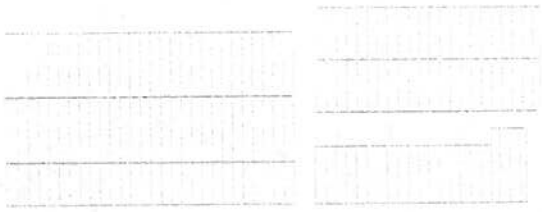
Phone / Fax: (808) 961-9248 Kona (808) 329-3044

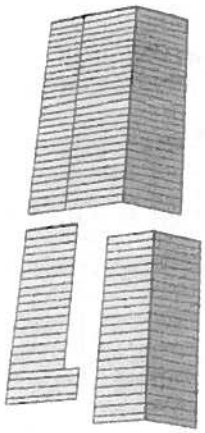
********** ESTIMATE **********

PATTERN # 7 26 GAUGE PRE-PAINTED ZINC/ALUM

GRAND TOTAL

Total Surface Area = 5880.34 SQR FT





JOB: AMANO FISH MARKET

November 04, 2014

ESTIMATE ACCEPTED BY : _____

DATE ACCEPTED : _____

PROPOSAL

YAMA'S ROOFING INC.

45 Pohaku Street / Suite #101
Hilo, HI 96720
Phone: (808) 961-9248/ Kona (808) 329-3044
Fax :(808) 961-3258
www.yamasroofing.com
LIC # C-21133

Proposal Submitted To: Amano Fish Cake	Phone: 935-5555	Date: 1/12/15
Street: 30 Holomua	Job Name: Same	
City, State and Zip Code: Hilo, Hawaii 96720	Job Location: Same	
Contact: Same	Prop#:	Fax: 961-2154

We hereby submit specifications and estimates for:

SEAMLESS GUTTERS

Supply and install approximately 316 ft. of 6" seamless gutters and 10 downspouts using 3"white PVC pipes.

1-year warranty on workmanship / Lifetime limited warranty on gutters

COLOR CHOICE:

THANK YOU FOR CONSIDERING US!

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:
Two thousand, seven hundred twelve dollars and no cents.....$2,712.00

Payment to be made as follows: 65% down / Balance due upon job completion.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature:

Brian P. Peterson/ RME

Note: This proposal may be withdrawn by us if not accepted WITHIN 30 DAYS.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 7 days at 1.5% Per Month which is equal to 18% Per Annum. I/We have read and will abide by the contract terms.

Date of Acceptance: _____

Signature: _____

Signature: _____