

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

September 14, 2018

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

PSF No. 15KD-152
Kauai

Request to Amend License Agreement dated July 1, 2016 between the Bank of Hawaii as Trustee of the Kukuiolono Park Trust Estate, as Licensor, and State of Hawaii, by its Department of Accounting and General Services, on Behalf of the Office of Enterprise Technology Services, as Licensee, for a Transmission Tower and Radio and Microwave Communication Facility for Public Safety and Public Services, at Kalaheo Homesteads, 2nd Series, Koloa, Kauai, Tax Map Key: (4) 2-3-005:por. 002.

The purpose of the amendment is to change the License Agreement location from Tax Map Key: (4) 2-3-005:por. 002 to (4) 2-3-005:011.

APPLICANT:

Department of Accounting and General Services, on behalf of the Office of Enterprise Technology Services.

LANDOWNER:

Bank of Hawaii, as Trustee of the Kukuiolono Park Trust Estate, under that certain indenture made by and between Walter D. McBryde and Hawaiian Trust Company, Limited, dated August 20, 1918.

LEGAL REFERENCE:

Section 171-30, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of private lands at Kalaheo Homesteads 2nd Series situated at Koloa, Kauai, identified by Tax Map Key: (4) 2-3-005:011 as shown on the attached map labeled **Exhibit 1**.

AREA:

8,148 sq. ft., more or less

ZONING:

State Land Use District: Agricultural/Conservation
County of Kauai CZO: Conservation

CHARACTER OF USE:

Transmission tower and radio and microwave communication facility for public safety and public service (telecommunications facility).

LICENSE TERM:

Twenty years commencing July 1, 2016.

ANNUAL RENT:

\$45,000 per year for the first five years and a 15% increase every five years throughout the term of the license. The rent was established by negotiation between Bank of Hawaii and the Department of Accounting and General Services, on behalf of the Office of Enterprise Technology Services.

DCCA VERIFICATION:

Landowner – Bank of Hawaii, Trustee

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200-8, Hawaii Administrative Rules (“HAR”) and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 45. See **Exhibit 2**.

BACKGROUND:

On September 25, 2015, Item D-4, the Board of Land and Natural Resources (“Board”), approved entering into a license agreement with Bank of Hawaii as Trustee of the

Kukuiolono Park Trust Estate (“BOH”), as Licensor, and the State of Hawaii, by its Board, on behalf of the Department of Accounting and General Services (“DAGS”), Office of Enterprise and Technology Services (“OETS”), as Licensee, for the purpose of a transmission tower and radio and microwave communication facility on private property at the Kukuiolono site, Tax Map Key: (4) 2-3-005: 002 portion (“Parcel 2”).

On July 1, 2016, the License Agreement between BOH and DAGS was executed, and included the transfer of existing improvements to the State, including a radio tower, equipment building and above-ground fuel storage tank for the fully operational facility, which benefitted OETS’ program and the State. See **Exhibit 3**.

REMARKS:

On June 21, 2018, Land Division received a memorandum from DAGS on behalf of OETS requesting to amend the License Agreement between DAGS and BOH at the Kukuiolono site. See **Exhibit 4**. The proposed amendment would transfer all of the terms and conditions of the License Agreement from the current site on Parcel 2 to Tax Map Key: (4) 2-3-005:011 (“Parcel 11”), as shown on the attached map labeled **Exhibit 5**.

OETS has budgeted and planned to demolish and renovate the facility on Parcel 2 to improve coverage and ensure continued safe operations. In May 2018, OETS became aware that Parcel 11, which is near Parcel 2, will be available soon due to the termination of a lease of the Parcel 11 site by Insite Wireless Group (“IWG”), effective June 30, 2018. Coincidentally, BOH is the lessor of Parcel 11. OETS has inspected the site and improvements and determined that both are better suited for State purposes. The improvements are in better shape than those at Parcel 2, and would not require complete replacement for upgraded system connectivity. Additionally, this location is more accessible than Parcel 2, which will reduce the cost of future maintenance and remediation requirements.

DAGS had discussions with BOH and IWG on the proposed amendment. IWG is willing to delay its planned demolition efforts on Parcel 11 until September 30, 2018 to allow DAGS the necessary time for Board approval of the proposed license agreement amendment. BOH has agreed not to impose additional charges on IWG for the extension, and is willing to transfer the terms and conditions of the current DAGS License Agreement to Parcel 11. Also, BOH will execute a term easement or right-of-entry permit to DAGS to allow DAGS to complete demolition of the improvements at Parcel 2, as outlined in the current License Agreement, before surrendering the parcel back to BOH. A Phase I Environmental Site Assessment of Parcel 11 conducted in 2013 revealed there were no recognized environmental conditions associated with the parcel.

The Board previously found the License Agreement is exempt from the preparation of an environmental assessment at Parcel 2, and staff believes a change of location to Parcel 11

is likewise exempt. Staff solicited comments on the proposed exemption from the agencies listed below with the results indicated:

Agency	Comment
DLNR – SHPD	See Exhibit 6 .
DLNR – Engineering	No comments.
DLNR – DOFAW	No objections.
DLNR – OCCL	See Exhibit 7 .
County of Kauai – Department of Water	No response by suspense date.
County of Kauai – Planning	No objections.
County of Kauai – Public Works	No objections.
Office of Hawaiian Affairs	No response by suspense date.

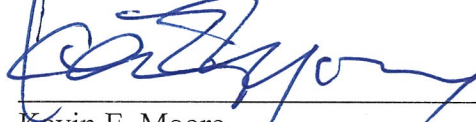
DAGS shall be required to provide survey maps and descriptions of Parcel 11, according to State DAGS standards to replace Exhibit A (Description of Property) of the Amended License Agreement. There are no other pertinent issues or concerns, and staff does not have any objection to this request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of License Agreement between the Bank of Hawaii as Trustee of the Kukuiolono Park Trust Estate, under that certain indenture made by and between Walter D. McBryde and Hawaiian Trust Company, Limited, dated August 20, 1918, as Licensor, and the Department of Accounting and General Services, on behalf of the Office of Enterprise and Technology Services, as Licensee, to transfer all terms and conditions of the License Agreement from the current site on a portion of TMK: (4) 2-3-005:002 to the new location at TMK: (4) 2-3-005:011, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - a. The standard terms and conditions of the most current amendment of license agreement form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and

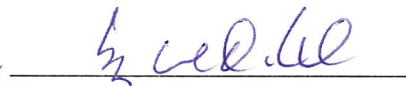
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

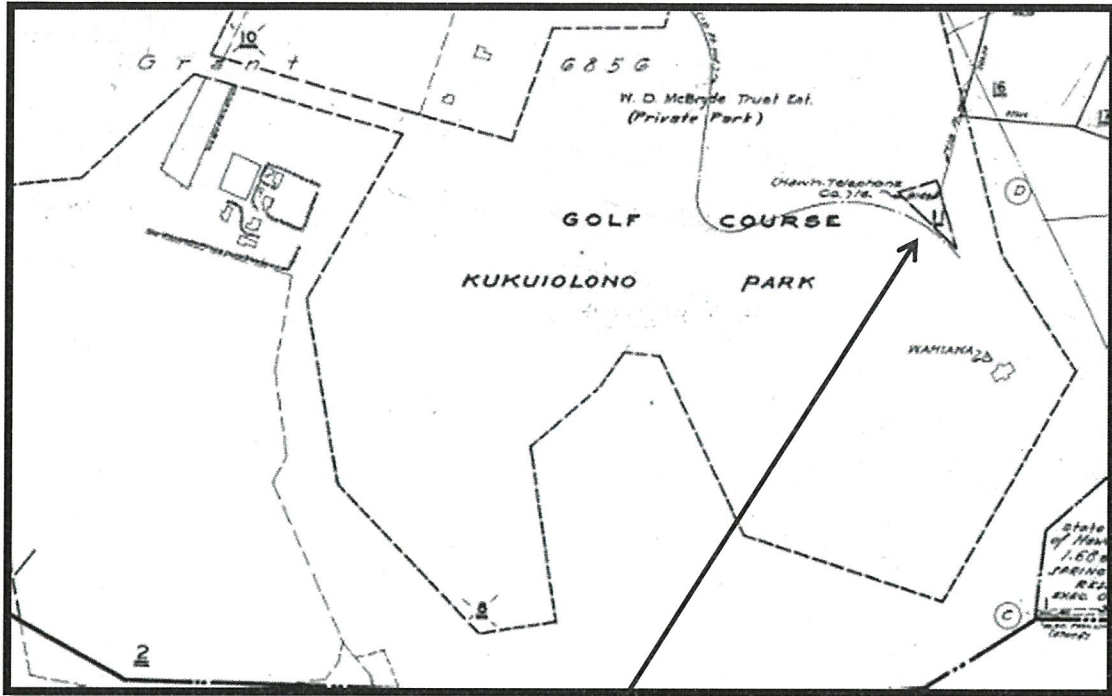
Respectfully Submittal,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (4) 2-3-005:011

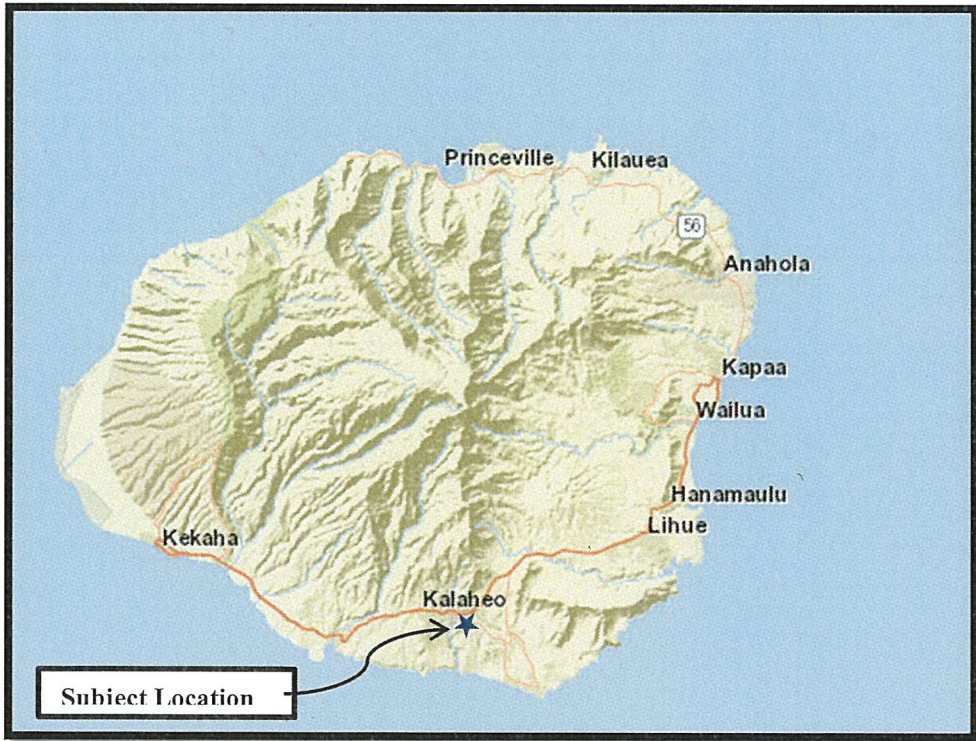
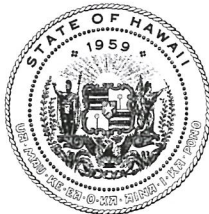


Exhibit 1



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 14, 2018

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request to Amend License Agreement dated July 1, 2016 between the Bank of Hawaii as Trustee of the Kukuiolono Park Trust Estate, as Licensor, and State of Hawaii, by its Department of Accounting and General Services, on Behalf of the Office of Enterprise Technology Services, as Licensee, for a Transmission Tower and Radio and Microwave Communication Facility for Public Safety and Public Services, at Kalaheo Homesteads, 2nd Series, Koloa, Kauai.

The purpose of the amendment is to change the License Agreement location from Tax Map Key: (4) 2-3-005:por. 002 to (4) 2-3-005:011.

Project / Reference No.: PSF No. 15KD-152

Project Location: Koloa, Kauai, TMK No. (4) 2-3-005:011

Project Description: Amendment to change the license agreement location

Chap. 343 Trigger(s): Use of State Funds

Exemption Class No.: In accordance with Section 11-200-8, Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Item No. 45 that states "Acquisition of land and interests in land."

Exhibit 2

Cumulative Impact of Planned Successive Actions in Same Place Significant? No. The telecommunication facility at the Kukuilono site has been in existence for some time and had no significant impact to the environment.

Actions may have Significant Impact on Particularly Sensitive Environment? No. The present action request will have no significant impact to a particularly sensitive environment.

Analysis: Other locations in the area have been used for telecommunication purposes for some time. Staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties:

Agency	Comment
DLNR – SHPD	See Exhibit 6 .
DLNR – Engineering	No comments.
DLNR – DOFAW	No objections.
DLNR – OCCL	See Exhibit 7 .
County of Kauai – Department of Water	No response by suspense date
County of Kauai – Planning	No objections.
County of Kauai – Public Works	No objections.
Office of Hawaiian Affairs	No response by suspense date

Declaration: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

LICENSE AGREEMENT

THIS AGREEMENT ("License") is made effective as of the 1ST day of JULY, 2016, by and between **BANK OF HAWAII**, a Hawaii corporation, successor by merger to Hawaiian Trust Company, Limited, as **Trustee of the KUKUIOLONO PARK TRUST ESTATE** under that certain indenture made by and between Walter D. McBryde and Hawaiian Trust Company, Limited, dated August 20, 1918, recorded in Liber 498 at Page 488, as amended, ("Licensor"), and **the STATE OF HAWAII**, by its **Department of Accounting and General Services**, on behalf of the Office of Enterprise Technology Services, ("Licensee"), whose principal place of business and post office address is 1151 Punchbowl Street, Honolulu, Hawaii 96813.

1. Exclusive License Granted.

1.1 In consideration of the promises of Licensee hereinafter set forth, Licensor hereby agrees to grant Licensee an exclusive license to permit Licensee: (i) to operate and maintain a radio communications facility (the "Facility") for public safety and public service, consisting of the equipment building in its entirety, antenna tower, tower guy lines and anchors, above-ground fuel storage system and mounting pad, fencing, gates, and related appurtenances on certain land located in Kalaheo, Kauai, as shown on Exhibit "A" (the "Property"), which Property is a portion of that certain real property identified by Tax Map Key (4) 2-3-005-002, and (ii) to install, maintain and operate the equipment and antennas used in the operation of the Facility, described in Exhibit "C" (the "Equipment"), in such manner as may be designated and approved from time to time by Licensor in writing. The term "Facility" as used in this License shall include the Equipment. Licensor makes no representations, warranties or promises to Licensee concerning the condition of the Property or Facilities, including but not limited to the suitability of the Property or Facilities for Licensee's use. Licensee accepts the condition of the Property and any existing Facilities in "as is" condition, with all faults and defects, if any.

1.2 Licensee will operate and maintain the Facility so as to maintain that portion of the Facility in at least the same general functional condition and appearance as existed upon commencement of this License. Should any damage occur to that portion of the Facility or Property occupied by Licensee which is a result of the activities of the Licensee such damage shall be repaired and all damage remedied at Licensee's sole cost and expense. Prior to any major alterations to the building exterior, tower, guy lines and anchors, utilities, fuel storage system or other portion of the Facility or Property, Licensee shall submit to Licensor all plans and materials required to make an informed decision concerning approval, and Licensor will, in writing, approve or disapprove the plans and materials submitted within thirty (30) days thereafter. Failing such action by Licensor, the plans and materials will be deemed approved. Approval by Licensor of the plans and materials shall be based, among other things, on appearance, lot coverage, building setbacks, spacing of structures, building elevations, grading and drainage,

fencing, landscaping, signage, parking and circulation, building materials, massing, storage and loading areas, site access, and current government regulations. Approval of any plan or material shall only constitute an acceptance by Licensor and not an indication of then compliance with governmental requirements or an endorsement of the adequacy of the plan, material or any improvement constructed in accordance with them. Licensee shall apply for all federal, state and local government permits necessary for constructing the alterations after receiving Licensor's approval such that applicable permits are issued prior to commencement of construction. Prior to commencing construction, Licensee shall also *require its contractors to* post payment and performance bonds naming Licensor as an obligee and acquire insurance in such forms and amounts as Licensor shall *reasonably* request. Provided all necessary federal, state, and local government permits have been received and that funding is available, Licensee shall commence construction of any improvements as soon after Licensor approval of the plans and materials as is practicable, and shall thereafter diligently proceed to complete construction. All such construction shall be without cost to Licensor. All construction by Licensee on the Property shall be done in accordance with accepted engineering practices for the prevention or control of land erosion and, if requested by Licensor, Licensee shall fence the Property to Licensor's reasonable satisfaction.

1.3. Any and all construction within the Property or Facility undertaken by Licensee shall be at the sole cost and expense of the Licensee. If the activities of *another* licensee to adjacent property has caused damage or obstruction to the Facility so that the operations of the Licensee is damaged, constrained, threatened, or impeded, in which case, upon receipt of written notification from Licensee and as may be limited by the terms of any applicable agreement or other instrument by which the the other licensee uses the adjacent property, Licensor shall endeavor to provide reasonably prompt notice to the third party responsible for such damage or obstruction: (a) to cease and desist from all such activities and to immediately, no later than 48 hours after notice has been given, and (b) to coordinate, begin and complete repair of such damage to the satisfaction of the Licensee. Should no remedy to such actions and/or damage occur within the prescribed period, then Licensee may, at its election, cause such damage or obstruction to be repaired and/or remedied and Licensee shall be solely responsible to obtain a reimbursement of the cost of such repair and/or remedies from the party who has caused said damage or created said obstruction.

2. Term. This License shall be in force for a period of twenty (20) years from the effective date hereof ("initial term").

3. License Fee. Starting from the effective date, Licensee agrees to pay Licensor a fee of \$45,000.00 per annum for the first five years, with a 15% increase over the amount for then expiring five year period at every subsequent five year interval during the term of this License.

3.1 Licensee shall pay Licensor quarterly on the first day of each quarter during the term hereof, in advance, in accordance with the schedule contained in Exhibit D, attached hereto; provided, however, that a first payment shall be made upon execution of this License and provided further that the first and last payments due hereunder shall

be prorated by multiplying said sum by a fraction in which the number of days in the quarter shall be the denominator and the number of days between the date of payment and the next payment date or the end of the term of this License, as applicable, shall be the numerator.

4. Utility Charges. Licensee shall be responsible for all costs for connection, use, rental, utility billing and refueling costs for commercial electric utility service and emergency generator fueling.

5. Common Area Landscaping. Licensee shall not be responsible for common maintenance on grounds or facilities outside of the fenced-in area in which the Licensee's communications Facility is located. However, the forgoing notwithstanding, Licensee shall be solely responsible for the timely removal of all debris, refuse, garbage or any other unattached and unused refuse or objects, that may originate on the Property as a result of Licensee's use and occupation of the Property. Should Licensee fail to remove said refuse, and upon proper written notice by certified mail, Licensor may cause to have said refuse removed from the Property and a bill to be submitted to Licensee for such removal, with the failure to pay such invoice within thirty (30) days of mailing, to be considered under the terms of this License a material breach of this License. Licensee shall maintain the Property and Facility as required to mitigate the Property's and the Facility's visual impact on the park and golf course.

6. Other Deposits, Fees and Taxes.

6.1 If the Federal Communications Commission (the "FCC"), any public utility or any other agency requires any deposits and/or fees in connection with Licensee's use of the Property, or if Licensor becomes liable for any additional real property taxes because of Licensee's use or improvement of the Property, Licensee shall pay said deposits, fees and/or taxes upon written notice by certified mail.

6.2 General Excise Tax. In addition to and together with each of the quarterly payments and all other charges of every description payable hereunder, as consideration, Licensee shall pay the Licensor a sum which, when added to the quarterly payments and other payments actually or constructively received by Licensor under this License, shall yield to Licensor, after payment of all taxes payable by Licensor with respect to the quarterly payments and all such other payments pursuant to Chapter 237 of the Hawaii Revised Statutes (General Excise Taxes), a net amount equal to that which Licensor would have realized from such quarterly and other payments if no such taxes had been imposed.

7. Late Charges. If any payment due hereunder shall be unpaid for a period of thirty (30) days or more after the due date of such payment, Licensee shall pay to Licensor a late charge pursuant to paragraph 15.

8. Use. Licensee's right to use the Property shall be for the purpose of installing, constructing, maintaining, and operating a transmission tower and radio and microwave communications Facility for public safety and public service, and no other

purposes. The Licensee's Facility shall be used only to house and support communication systems that are used by State agencies or other governmental agencies sponsored by the State that are not-for-profit in nature and have a defined role in assisting the government in times of disaster or emergency. Licensee shall not allow other agencies to use the Facility without first obtaining Licensor's written consent to the Memorandum of Understanding between Licensee and the other agency ("MOU"), which MOU must be in form and content satisfactory to Licensor. No commercial business will be transacted and no commercial for-profit, or fee-for-service communications services or traffic shall be supported using the Facility in any capacity.

8.1 Licensee shall abide by all present and future federal, state and local regulations pertaining to the construction, installation, maintenance and operation of the Facility, including without limitation all regulations regarding non-ionizing radiation and Electro Magnetic Radiation ("EMR"). Except in cases of emergency, Licensee shall give Licensor at least sixty (60) days' prior notice of any changes to Licensees operations of the Facility.

8.1.1 Use of Licensed Area. Licensee will use the Property and Facility only as permitted in Item 8 above. Any other activities, including other communications-related activities or the installation of other electronic or communications-related equipment, are prohibited unless previously approved in writing by Licensor, which approval may be given or withheld in Licensor's sole discretion, and which may be conditioned upon the payment of additional sums and fees to Licensor and a change in the terms of this License. Licensee shall comply with all laws, rules, regulations and ordinances made by any government authority applicable to Licensee's use of the Property and Facility. Licensee assumes all risks as to the suitability of the Property and Facility for the permitted use.

8.1.2 Licensee agrees that radio frequency emitters operating within the Property and Facility will be properly coordinated with and licensed by either the FCC or the National Telecommunications and Information Administration (the "NTIA"), as appropriate. The Licensee agrees to take all steps necessary to correct and eliminate radio interference caused by the improper operation of radio emitters within the Property and Facility.

8.1.3 Licensee shall rely solely on its rights under FCC guidelines and Federal law in the case of interference with the operations of radio systems within the Property and surrounding area. Licensee understands that Licensor does not hold itself out as having telecommunications expertise. Licensor shall have the right to locate other telecommunications equipment and service providers in the vicinity of the Property and Facility.

8.2 The Facility shall at all times be operated in such a manner as not to cause any radio interference of any kind with operations conducted in and from the Property or other nearby properties under pre-existing license agreements with Licensor (the "Operators" and each, an "Operator"). Licensee agrees that radio frequency emitters operating within the Property will be properly coordinated with and licensed by either the

FCC or the NTIA, as appropriate. In the event that harmful radio interference is caused by systems operating at the Facility or is reported by present Operators, Licensee, its successors and assigns, will make every effort to act in a proactive and cooperative way to solve the interference problem. This shall include remedial expenditures of time and money for investigation, response, and implementation of the Licensee's portion of cooperative solutions. Licensor shall be held harmless for any costs or expenditures of time involved with any such radio interference case resolution. Licensee understands and agrees that Licensor shall not have any obligation to prevent or solve any such radio interference problem. Licensee shall ensure that all radio equipment use within the Facility shall not interfere with any Operators operations as existed upon commencement of this License. Should such interference occur the Licensee shall immediately cease and desist operations until a remedy is found and deployed by the Licensee. Failure by Licensee to cease and desist from causing radio interference operations shall be a material breach of this License. In such case, Licensor may, at its discretion, require that the Licensee remove its equipment from the Facility and cease operations. In such case that the Licensee continues to operate equipment causing radio interference to any Operator's transmissions, and ignores the requests of Licensor to cease such activity, then Licensor shall upon receipt of any Operator's written statement attesting to Licensee's continuing operations causing radio interference, find that Licensee is in material breach and shall require forthwith that Licensee immediately remove its equipment from the premises. Licensee shall rely solely on its rights under FCC and/or NTIA guidelines and Federal law in the case of radio interference to the operations of radio systems within the Facility.

8.3 Licensor grants Licensee permission to communicate directly with all Operators and other licensees operating radio facilities on Licensor's land concerning Licensee's radio operations throughout the term of this License to allow for coordination and collaborative development of any adjustments necessary to ensure the proposed changes do not create interference between these other licensees and the Licensee's operations. Licensor understands that radio interference to the Licensee's operations may negatively impact radio services provided to first responders, but Licensor shall not be responsible for measuring, monitoring or preventing radio interference.

8.4 Licensee represents that it has independently ascertained that the Property and the access to the Property are adequate and proper for Licensee's operations at the Facility and for Licensee's intended use of the Property, and Licensee has entered into this License based solely upon that independent determination. Licensor makes no representation concerning the condition of the Property, access to the property, or their adequacy for Licensee's intended use. Licensor has no obligation or duty, to Licensee to improve or otherwise upgrade said Property or roads. Licensee may, after plans have been submitted to the Licensor and approved in writing, undertake the improvement and/or upgrading of site access wholly at Licensee's own expense.

9. Permits and Licenses. Licensee shall secure at its own expense all licenses and permits required by law or ordinance. Neither changes in rules or policies by agencies or persons other than Licensor that affect the operation or use of the Facility or the Property, nor revocation or suspension of any of Licensee's licenses or permits,

shall excuse Licensee from its obligations hereunder, and Licensee shall continue to perform hereunder and to make all payments when and as due. Licensee hereby represents that it will obtain the necessary licenses and permits required to operate the Facility. Licensee shall proceed to acquire and keep current all required licenses and permits with all due diligence. Licensor shall cooperate and not unreasonably withhold any consents needed to obtain said licenses and permits. Licensee will promptly forward copies of said licenses and permits and any subsequent modifications of those licenses and permits to Licensor before the construction or modifications are implemented.

10. Maintenance and Repairs. Licensee will promptly repair all damage to the Facility and Property caused by any action of the Licensee, its employees, its invitees, or any subcontractor working for or contracting with the Licensee, Licensee's agents, or Licensee's representatives. Licensee shall keep the Facility and Property in good condition and repair. Licensee shall not be responsible for any damage to the Property caused by 'Acts of God', hurricanes, the weather, or the acts of others. Licensor shall not be responsible for any repairs or damage to the Property or Facility arising from any reason whatsoever, including but not limited to damages caused by falling trees, growth of surrounding plants and foliage, erosion, 'Acts of God', hurricanes, the weather, or the acts of others. The Licensor agrees that it shall be the Licensee's decision whether to remove, repair, or replace damage to the Facility caused by 'Acts of God', hurricanes, the weather, or the acts of others; in such cases the Licensee agrees to move as promptly as State government policies and procedures permit; provided in any event that if Licensee does not repair or replace damaged property on the Property, Licensee shall remove the damaged property from the Property. Licensee shall at all times maintain all of the Facility and Property in a good, safe, and visually attractive condition and repair and in a manner not dangerous to other persons. Upon expiration or earlier termination of this License, Licensee shall remove promptly all of the Equipment and the Facility from the Property unless Licensee receives Licensor's written consent to not remove such Equipment or direction not to remove the Facility. Licensor shall not, under any circumstances, be responsible for any loss or damage to the Facility or loss of service therefrom for any reason whatsoever, including, without limitation, damage or loss caused by falling trees, the condition of adjacent property or condition or growth of plants and foliage on the Property or from adjacent property, fire, theft, vandalism, lighting, loss of power, accessibility, shutdown of the Property for necessary repairs or maintenance, loss of any FCC license or any other authorization, or radio interference by any third party.

10.1 Liens. Licensee shall not at any time commit or suffer any act or neglect whereby the property, including improvements thereon, shall become subject to any attachment, lien, charge or other encumbrance whatsoever, and Licensee shall defend and hold Licensor harmless from the same and all expenses resulting therefrom, including reasonable attorneys' fees incurred in connection therewith, it being hereby expressly agreed that Licensee shall have no authority express or implied, to create any lien, charge or other encumbrance upon the property, including improvements thereon. Licensee shall not be deemed in default hereunder if Licensee shall cause such attachment, lien, charge or other encumbrance to be released or discharged within thirty days after demand by Licensor or within such longer period as Licensor shall permit, or if, in the case of an

attachment or lien for money claimed, the amount or justification for which is disputed by Licensee, Licensee shall, within said thirty-day period (or longer, if allowed by Licensor), file a bond in a form and with sureties satisfactory to Licensor and in an amount not less than one hundred fifty percent of the amount of such claim, naming Licensor as obligee and conditioned upon full payment of the amount of such claim, including all interest, costs and attorneys' fees incurred by the claimant and Licensor, upon a decision adverse to Licensee; provided, however, that, if a bond in such amount is not readily obtainable, the bond to be filed by Licensee shall be in the amount closest thereto which is readily obtainable.

10.2 Surrender. At the end of the term or other sooner termination of this License, Licensee will peaceably deliver up to Licensor possession of the Facility and Property. Licensee will remove all equipment, property and fixtures belonging to Licensee from the Facility and Property at Licensee's cost, and Licensee shall be responsible for the repair of any damage caused by said removal.

10.3 Hazardous Substances.

a. The term "Hazardous Substance" shall mean any flammable explosives, radioactive materials, EMRs, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, petroleum, including crude oil or any fraction thereof, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included now or in the future in the definition of "hazardous substance," "hazardous waste," "hazardous material," or "toxic substance" under the Solid Waste Disposal Act, 42 U.S.C. section 6901 et seq.; Chapters 342B through 342P, Hawaii Revised Statutes; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 et seq.; the Hazardous Materials Transportation Act 49 U.S.C. app. section 1801, et seq.; the Clean Water Act, 33 U.S.C. section 1251, et seq. ; the Clean Air Act, 42 U.S.C. section 7401, et seq. ; the Toxic Substances Control Act, 15 U.S.C. sections 2601 through 2655; the Safe Drinking Water Act, 42 U.S.C. sections 300f through 300j; and any similar federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Substances on, under or about the Property, now in effect or hereafter adopted, published and/or promulgated.

b. Licensee shall not allow the presence, use, generation, manufacture, treatment, handling, refining, production, processing, storage, discharge, releases, or disposal of any Hazardous Substance on, within or under the Property, except for the professional use of those station batteries, petroleum products, and cleaning fluids that are integral to Licensee's use of the Facility and Property and not in violation of federal, state or local law.

c. Licensee shall comply with all governmental requirements applicable to its business or to its use or occupation of the Facility and Property, including without limitation, all governmental requirements relating to human health, the environment, and the prevention, investigation and remediation of soil or groundwater

contamination, waste disposal, air or wastewater emissions, occupational safety and health, and the handling of Hazardous Substances (“Hazardous Substance Laws”). If any of said requirements shall be inconsistent with each other, Licensee shall comply with the most stringent requirement. Licensee shall document all actions taken to achieve such compliance and shall make such documentation available for inspection by Licensor. Licensee shall provide Licensor with a copy of the applicable Hazardous Substance Laws giving rise to such action.

d. Prior to the commencement of any environmental remediation work to be performed on the Property, Licensee shall communicate with Licensor concerning the work to be performed which communication shall include, but not be limited to, Licensee providing Licensor with (i) a written description of the work to be performed, and (ii) a narrative summary of the work actually performed.

e. If Licensor receives a notice, claim, demand, or complaint (“Claim”) against Licensor from any governmental agency with jurisdiction for the payment of damages, costs, or expenses for the presence of; or the escape, seepage, leakage, spillage, discharge, emission or release from the Property into or onto the Property, adjacent land, or any watercourse, body of water, or wetland, of; any Hazardous Substance which violates applicable law and which was caused by Licensee’s use or occupancy of the Property or remedial action pursuant to any of the Hazardous Substance Laws, Licensee will proceed immediately and diligently after receipt of notice of the Claim to remediate the Property in full compliance with all applicable laws and regulations, within such time period as the appropriate governmental agency having jurisdiction thereover shall require. If Licensee, in good faith, believes that the Claim has not in fact originated from Licensee’s use and occupancy of the Property and no applicable law was violated by Licensee, Licensee shall have the right to challenge such Claim in an appropriate forum. In the event action is taken against Licensor regarding a Claim, or commenced by Licensee to challenge at Claim, Licensor shall, at no cost or expense to Licensor, cooperate with Licensee in the defense thereof.

f. Licensee shall defend, and shall be responsible for damage or injury arising out of or connected with the Claim, that is caused by the State’s officers or employees acting in the course and scope of their employment, to the extent that the State’s liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damage and injury to the extent the funds for such purpose have been appropriated and released.

g. The obligations of the Licensee under this Section 10.3 shall survive the termination of this License and shall continue in full force and effect.

11. Access. Licensee, its employees, invitees, agents, contractors, and representatives shall have access to the Facility and Property at any time or hour. Licensor shall issue three sets of keys to the Licensee for said access, however, the Licensor reserves the right to approve all persons authorized by Licensee to have access to the Property, and Licensee shall keep Licensor duly informed in writing as to the names and proper means of identifying the persons who are from time to time authorized

by Licensee to have such access. Before allowing contractors and other invitees other than State of Hawaii agencies to have access to the Property, Licensee shall require that the contractor or other invitee execute a right of entry agreement in form and content satisfactory to Licensor, which right of entry may include indemnity, waiver and insurance provisions in favor of Licensor. Licensor shall have access to the Facility or Property upon reasonable notice (24 hours excepting emergency) to Licensee for purposes of determining Licensee's compliance with this License and for emergencies. Licensor shall have the right to reasonably relocate Licensee's route of access to the Property from time to time.

12. Liability and Insurance.

- a. Licensee's Responsibilities. The Licensee shall be responsible, to the extent permitted by law, for damage or injury caused by the Licensee's officers and employees in the course and scope of their employment by Licensee and arising from Licensee's presence on, or use or occupancy of the Facility and Property.
- b. Insurance. Licensee, as a sovereignty, is self-insured, and is not required to procure and maintain insurance relating to its use and occupancy of the Property or its operations.
- c. Licensee's Prohibited Articles. Licensee agrees that it will not engage in any activity, or keep or use any article, in or about the Facility and Property, which may be prohibited by the standard form of commercial liability insurance policy.
- d. Survival. The Licensee's obligations under this Article shall survive the expiration, termination or cancellation of this Lease.

13. Waiver and Release. Licensee hereby waives and releases all present and future claims relating to loss, cost, damage, liability or claims, including attorneys' fees, arising from or related to injury or damage to persons or property, including wrongful death, arising out of or in connection with the acts, omissions, or exercise of Licensee's rights hereunder, by Licensee or its employees, agents or representatives or any others authorized by Licensee to enter and remain on the Facility and Property. Without limiting the generality of the foregoing, such waiver and release includes claims against Licensor relating to or arising with respect to any interference by others with Licensee's radio operations. Licensee's waiver and release under this paragraph shall survive expiration or earlier termination of this License.

13.1. Expenses of Enforcement. If either Licensor or Licensee shall, without any fault on its part, be made a party to any litigation commenced by or against the other or otherwise, without fault, incur expense because of litigation arising out of this license or Licensee's occupancy of the Property (other than condemnation

proceedings), then the other party hereto shall and will be responsible for all costs and reasonable attorneys' fees incurred by or imposed on the one so made a party or otherwise incurring expense in connection with such litigation. Each party will also be responsible for all costs and reasonable attorneys' fees that may be incurred or paid by the other party in enforcing any of the covenants and agreements of this license, including, without limitation, costs of collecting delinquent monthly payments, taxes and other charges.

13.2 Responsibility. Licensee shall defend against, and shall be responsible for, claims for damage or injury caused by the acts or omissions in the exercise of Licensee's rights under this Agreement by its officers, employees, agents, contractors, or invitees who are authorized by Licensee to be present on the Property or Facility, to the extent that Licensee's liability for such damage or injury has been determined by a court or otherwise agreed to by Licensee. Licensee shall pay for such damage and injury to the extent the funds for such purpose have been appropriated and released.

14. Default. If any payment due hereunder remains unpaid for a period of thirty (30) days after becoming due, or if Licensee makes an assignment for the benefit of creditors, becomes insolvent, or becomes involuntarily or voluntarily bankrupt or otherwise in default or in violation of any term or provision of this License, and fails to correct the default within thirty (30) days of written notice by Licensor, Licensor may, at Licensor's option, (i) declare the entire unpaid balance payable for the remainder of the State fiscal year thus affected within the term of this License immediately due and payable, with interest thereon at the maximum legal rate, and/or (ii) terminate this License. Additionally, if Licensee is in default of any term or condition herein, Licensor may, no earlier than thirty (30) days after notice to Licensee, the PUC and the FCC, disconnect the Property and otherwise prevent its use until Licensee cures the default and pays Licensor the actual costs incurred in disconnecting and reconnecting the Property, but not less than ONE HUNDRED DOLLARS (\$100.00). Such disconnection shall not cause a reduction in the amounts due under this License. In the event suit is brought to enforce any term or provision hereof, the prevailing party shall be entitled to costs of suit and attorneys' fees.

15. Interest and Costs of Collection. Whenever any sum shall be owed by Licensee to Licensor under the terms of this License remains unpaid for thirty days after becoming due, in addition to any other rights and remedies Licensor may possess, Licensor shall be entitled to interest on such delinquent sums at 1% per month or the maximum rate allowed by law from the due date (whichever is less) to and including the date of payment, plus costs of collection, including, without limitation, attorneys' fees.

16. No Assignments or Sublicensing. Licensee shall not, whether voluntarily, involuntarily or by operation of law, assign, transfer, mortgage, sublicense or otherwise encumber all or any part of Licensee's interest in this License, any rights hereunder, or in the Facility or the Property without the prior written consent of Licensor in each instance (which consent may be reasonably withheld), and any attempted assignment, transfer, mortgage, sublicense, or encumbrance without such consent shall be wholly void and

shall, at the option of Licensor, terminate this License. Licensor may require: (i) full disclosure of the terms and conditions of the assignment, transfer, mortgage, sublicense or other encumbrance, (ii) proof of the financial responsibility, previous experience and intended use of the assignee, transferee or sublicensee, (iii) an increase in the license fees payable hereunder upon such assignment, transfer, mortgage, sublicense or other encumbrance, and (iv) the payment of a reasonable cost of such approval. In the case of an assignment, transfer or sublicense, Licensor may additionally require renegotiation of any term or provision hereof. It shall not be deemed unreasonable for Licensor to refuse to consent based upon the financial responsibility, previous experience, personal reputation and intended use of the proposed assignee, transferee or sublicensee.

17. Condemnation of Property. Should all or any part of said Property be taken by any public or quasi public agency or entity under the power or threat of eminent domain during the term of this License making it physically unfeasible for the Property to be used in the manner intended by this License:

a. Either Licensor or Licensee may terminate this License by giving the other ninety (90) days' written notice of termination, whereupon Licensee shall not be responsible for payment of the License fee for the balance of the Term once it vacates the Property;

b. Any and all damages and compensation awarded or paid because of the taking or acquisition shall belong to the Licensor, except that so long as Licensor is compensated in full for the property of Licensor acquired by the condemning authority, Licensee shall have the right to pursue its claims, if any, against the condemning authority for amounts incurred by Licensee for moving expenses or for damage to any personal property or trade fixtures owned by Licensee, loss of business goodwill, and the value of the unexpired term of this License;

c. Should only a portion of said Property be taken by eminent domain and neither Licensor nor Licensee terminates this License, the rent thereafter payable under the License shall be abated proportionally as to the portion taken which is then not usable by Licensee.

18. Damage or Destruction:

a. Licensor acknowledges and agrees that it is extremely important that Licensee maintain continuous operation of its systems on the Property. Therefore, in the event of any damage to or destruction of the Facility or Property, or any condemnation of them, which renders Licensee's systems inoperable or unusable, Licensee, as hereinafter provided, shall have the right (subject to any requirements of law or governmental authority) to repair the Facility or Property, or to construct or install temporary facilities without interfering with any other licensed communications, including temporary or replacement antenna, if necessary, on the Property, in such locations as may be reasonably acceptable to Licensor and in a manner which will not interfere with any repair or reconstruction efforts, in order to continue operation of the Facility. Licensor shall allow Licensee to install such substitute building and fixtures,

including antennae(s), cables and wires, and shall permit Licensee such access, repair and maintenance rights as may be necessary to allow Licensee to operate and maintain such temporary facilities until the Property have been sufficiently repaired to permit Licensee to use the Facility on the Property, or until a substitute permanent location acceptable to Licensor and Licensee has been agreed upon, and construction of such substitute permanent facility has been completed. Licensee agrees to begin repairs as soon as possible and to diligently proceed with such repairs to completion. All of the foregoing is subject to Licensee obtaining applicable permits and approvals and the written consent of Licensor to any long term change in the appearance of the Facility.

b. If the Property is repaired, Licensee shall thereafter have the right to repair the Facility or to construct or install a replacement Facility, including all antennae(s), cables, conduits, poles, wires and electronic or building, in and on the repaired Property, in substantially the same location and manner as prior to the occurrence of the damage, subject to obtaining applicable permits and approvals and the written consent of Licensor to any change in the long term appearance of the Facility. It is the intention of the parties hereto that Licensee shall be able to maintain continuous operation and use of the Facility throughout the entire term of this License, including all extensions, at the same or substantially the same site where the Property is currently located.

19. Quiet Possession. Upon Licensee paying the license fee for the Property and observing and performing all of the covenants, conditions and provisions on Licensee's part to be observed and performed hereunder, Licensee shall have possession of the Property for the entire term hereof free from interference by Licensor, but subject to all of the provisions of the License.

20. No Recording. This License shall not be placed on record.

21. Paragraph Headings. Paragraph headings used herein are for convenience only, and do not limit the scope or meaning of the provisions hereof, or otherwise affect the construction thereof.

22. Prior Negotiations. This instrument constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.

23. Amendment. No revision of this License shall be valid unless made in writing and signed by the parties hereto.

24. Governing Law. This License shall be governed by the laws of the State of Hawaii.

25. Parties. This License shall inure to the benefit of and be binding upon Licensor, Licensee, their respective heirs, personal representatives, permitted successors, successors in trust and permitted assigns.

26. Notices. All notices, requests, demands, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by certified or registered mail, return receipt requested, postage prepared, addressed as follows:

If to Licensor:

Bank of Hawaii
Trust Real Estate #722
P. O. Box 3170
Honolulu, Hawaii 96802

If to Licensee:

Department of Accounting and General Services
Attn: Comptroller
1151 Punchbowl Street, Room 412
Honolulu, Hawaii 96813

or, in each case, to such address as may hereafter have been designated in writing most recently.

27. Time is of the Essence. The parties agree that time is of the essence of this License.

28. No Waiver. The waiver of any term, provision, or default under this License shall not constitute the waiver of any other term, provision or default.

29. Severability. If any part of this License shall be adjudged contrary to law, the remaining provisions hereof shall remain in full force and effect.

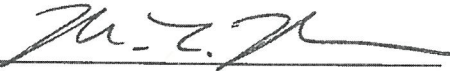
30. Exhibits. All exhibits attached hereto and referenced herein are part of this License.


31. In accordance with Section 560:7-306(a) of the Hawaii Revised Statutes (1993), as amended, said Pacific Century Trust is executing this instrument solely in its capacity as Trustee as aforesaid and is not assuming any personal liability in its corporate capacity hereunder. Any recovery against Licensor based on this instrument shall be limited to the assets of the Trust referred to above.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date set forth above.

BANK OF HAWAII, Trustee of the
Kukuioolono Park Trust Estate

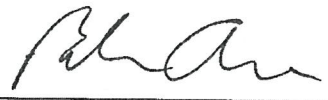
By: 
Its: VICE PRESIDENT

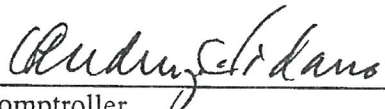
By: 
Its: VICE PRESIDENT

"Licensor"

APPROVED AS TO FORM

STATE OF HAWAII, by its Department of
Accounting and General Services


Deputy Attorney General
Date 6/22/14

By: 
for Comptroller

"Licensee"

DESCRIPTION OF PROPERTY

A parcel of land to be used for the site of a communications facility situated at Kukuiolono, Island of Kauai, State of Hawaii, its location described as follows:

Being a portion of Grant 6856 to Walter D. McBryde.

Beginning at the south corner of this parcel of land, the coordinates of which referred to Government Survey Triangulation Station "WAHIAWA" being 12.42 feet north and 587.86 feet west and running by azimuths measured clockwise from true south:

- a. 119° 54' 173.73 feet along the remainder of Kukuiolono Park;
- b. 240° 06' 173.73 feet along the remainder of Kukuiolono Park;
- c. 360° 00' 173.20 feet along the remainder of Kukuiolono Park to the point of beginning and containing an area of 13,043 square feet or 0.30 acres, more or less.

Together with nonexclusive use and undefined access rights over land from time to time designated by the Lessor and the right to use and to keep clear of vegetative growth or other obstructions the aerial right-of-way described on **Exhibit B**, attached hereto, and hereby made a part hereof.

EXHIBIT A

SIGHT CLEARANCE

Sight clearance masking surface easement across portion of Grant 6856 for microwave tower at Kukuiohono Park, Kalaheo, Kauai, Hawaii.

Being a strip of land twenty-five (25.00) feet wide and extending twelve and one-half (12.50) feet on each side of the following described center line, with sight clearance masking surface easement requirements, level datum being mean sea level:

Beginning at the west end of this easement at a point on the base of the tower, the coordinates of said point of beginning from Government Survey Triangulation Station "WAHLAWA" being 99.02 feet north and 637.76 feet west, with an assumed ground elevation of 800.00 feet, sight clearance masking elevation of 839.00 feet and clearance of approximately 39.00 feet above ground, thence by azimuth measured clockwise from true south:

287° 06' 03"	800.00 feet to the east end of this easement, with sight clearance masking elevation of 839.00 feet, said strip of land containing an area of 0.46 acre, more or less
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EQUIPMENT

Ownership of the following equipment now located at the Property is being donated by the former Lessee, the United States of America, Department of the Air Force, to the current Licensee to maintain full operational use of the Facility as located on the Property.

Maintenance, upgrade, replacement, and additions to this equipment may be implemented on an as-needed basis by the Licensee in accordance with the License.

The equipment consists of the roughly 96 SF equipment building in its entirety that holds electrical boxes and other communication devices, an approximately 100 ft. tall lattice communication tower, tower guy lines and anchors, antennae, an above-ground propane fuel storage system and mounting pad, and related appurtenances

LICENSE FEE

LICENSE FEE SHALL BE PAID QUARTERLY IN ADVANCED AS FOLLOWS:

<u>Initial Term</u>	<u>Annual Fee</u>	<u>Quarterly Installment</u>
Year 1 – 5 from 7/1/2016 to 6/30/2021	\$45,000.00+GET	\$11,250.00+GET
Year 6 – 10 from 7/1/2021 to 6/30/2026	\$51,750.00+GET	\$12,937.50+GET
Year 11 – 15 from 7/1/2026 to 6/30/2031	\$59,512.52+GET	\$14,878.13+GET
Year 16 – 20 from 7/1/2031 to 6/30/2036	\$68,439.36+GET	\$17,109.84+GET

EXHIBIT D

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
COMPTROLLER

AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

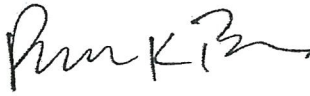
(P)1439.8

JUN 20 2018

RECEIVED
LAND DIVISION
2018 JUN 21 AM 10:47
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

MEMORANDUM

TO: Suzanne Case, Chair
Board of Land and Natural Resources

FROM: Roderick K. Becker
Comptroller 

SUBJECT: Request to Amend Land Use License Agreement for Change of Location
ICSD Kukuioolono Telecommunications Facility
Kukuioolono, Kauai

We request assistance and approval for the Department of Land and Natural Resources (DLNR) to amend a license agreement between the Department of Accounting and General Services (DAGS) and the Bank of Hawaii (BOH) on behalf of the Office of Enterprise and Technology Services (OETS) for a telecommunications site at Kukuioolono, Kauai. The proposed amendment would transfer all terms and conditions of the current license agreement from the current site on a portion of TMK: (4) 2-3-005:002, to a new location at TMK: (4) 2-3-005:011.

Background:

- On September 25, 2015, the Board of Land and Natural Resources (BLNR) approved the action for DAGS to enter into a license agreement with BOH on behalf of OETS for the telecommunications site at Kukuioolono, Kauai, on a portion of TMK: (4) 2-3-005:002 (Agenda Item D-4, PSF No. 15KD-152). The attached license agreement with BOH was executed on July 1, 2016, and included the transfer of existing improvements (radio tower, equipment building, and fuel storage tank) for the fully operational facility, which immediately benefitted OETS' program.
- OETS has since budgeted to demolish and upgrade the facility to improve coverage and ensure continued safe operations. The work includes demolition of the existing communications equipment shelter and lattice tower with guy-wires, and replacement with a new pre-fab shelter and 4-legged tower.

Exhibit 4

- Last month, OETS became aware of a nearby parcel currently leased by BOH, on behalf of the same land-owner, to Insite Wireless Group (IWG), also for telecommunications purposes. IWG has requested to terminate their lease, effective June 30, 2018, which would require that they remove all improvements except for the existing building, per their agreement. OETS has inspected the improvements and site and determined that both are better suited for State purposes. The improvements are in much better shape and would not require complete replacement to provide better system connectivity. In addition, this location is more accessible than the current lease area, which will reduce the cost of future maintenance and renovation efforts. Thus, both immediate savings from eliminating current renovation costs at the existing site, and future potential savings due to easier access may be realized by the State at the new site.

Our discussions with BOH and IWG on the proposed amendment have yielded the following:

- IWG has indicated their willingness to delay demolition efforts until September 30, 2018, to allow DAGS the necessary time to request DLNR approval for the proposed license agreement amendment. BOH has agreed not to enforce additional charges on IWG for the extension.
- BOH is willing to transfer the terms and conditions of the current DAGS license agreement to the newly identified parcel (in its simplest essence, swapping out the TMK's). BOH would also execute a termed easement or right-of-entry (ROE) to DAGS to allow DAGS to complete demolition of the improvements at the current lease location, as per the current agreement, before surrendering the property back to BOH. DAGS would not be charged any lease rent for the termed easement/ROE.

Approval of this request is required by August 15, 2018, to ensure sufficient time to process the necessary transfer of ownership of the improvements at the new site to DAGS/OETS prior to the September 30, 2018, IWG extension deadline.

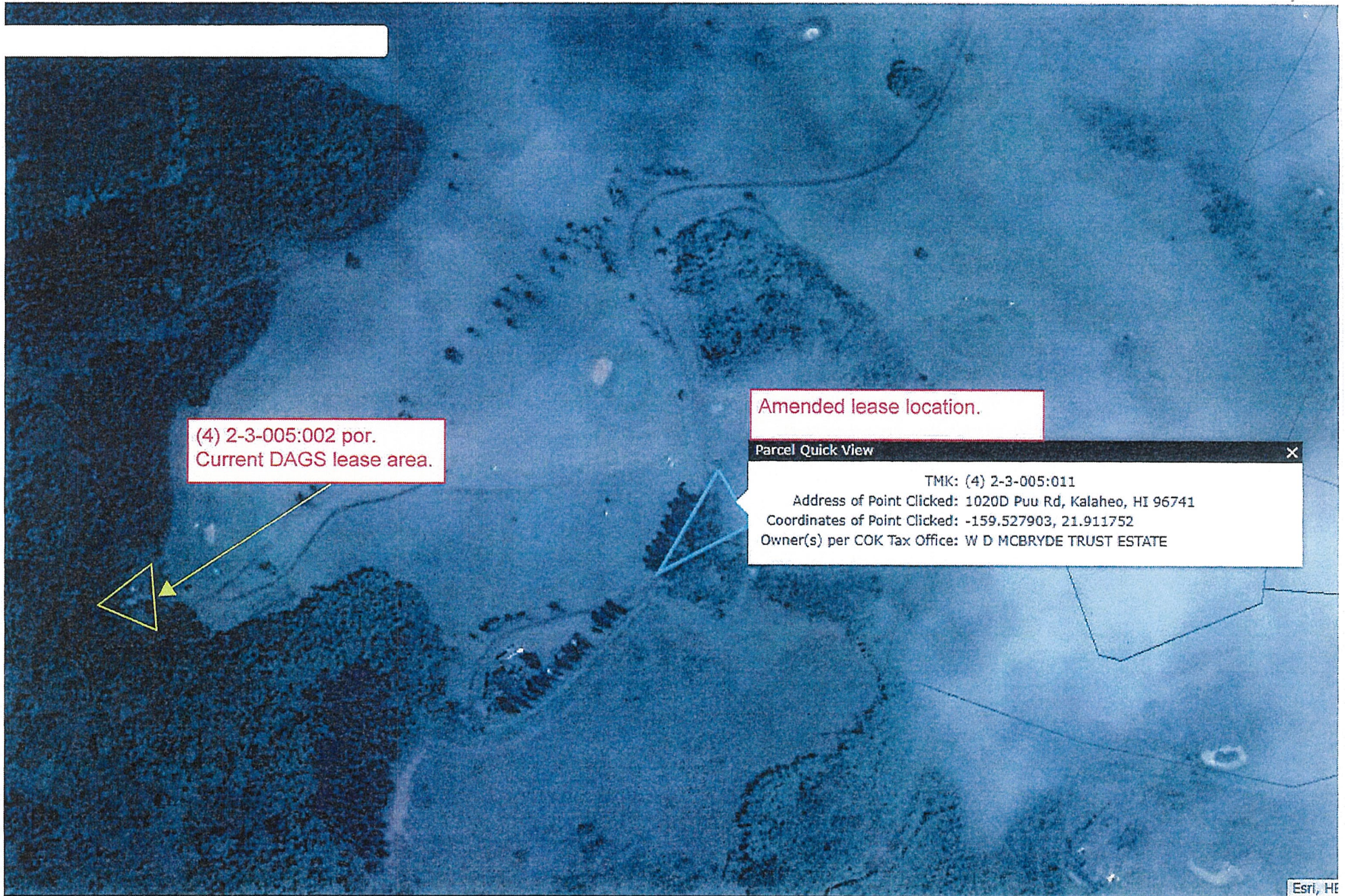
We are submitting this request concurrent to finalization of the proposed amendment language as time is of the essence for approval and execution. It is in the State's best interest for DAGS/OETS to transfer its current lease to this site and assume the existing assets. The facilities are well-maintained and in good condition to provide immediate, continuous operations. This location will be suitable to provide communications coverage to link to DLNR sites in Kukui which, in turn, will help provide coverage for the west coast of Kauai.

Suzanne Case, Chair
(P)1439.8
Page 3

If you have any questions, have your staff may call Mr. David DePonte of the Public Works Division at 586-0492.

Attachments

c: ● Mr. Russell Tsuji, DLNR Land Division
DLNR Land Division Kauai
Ms. Sharon Wong, DAGS ETS
Mr. Eric Agena, DAGS Kauai



(4) 2-3-005:002 por.
Current DAGS lease area.

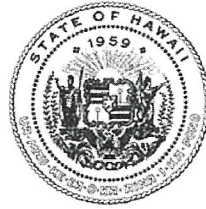
Amended lease location.

Parcel Quick View

TMK: (4) 2-3-005:011
Address of Point Clicked: 1020D Puu Rd, Kalaheo, HI 96741
Coordinates of Point Clicked: -159.527903, 21.911752
Owner(s) per COK Tax Office: W D MCBRYDE TRUST ESTATE

Exhibit 5

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 30, 2018

Russell Y. Tsuji, Administrator
Land Division, Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
Email: Lydia.M.Morikawa@hawaii.gov

IN REPLY REFER TO:
Log No. 2018.01651
Doc No. 1807GC18
Archaeology

Dear Mr. Tsuji:

**SUBJECT: Chapter 6E-8 Historic Preservation Review –
Amend License Agreement Between the State of Hawaii (Licensee) and Bank of Hawaii
(Trustee) of Kukuioolono Park Trust Estate (Licensor) for Change the License Agreement
Location for a Transmission Tower and Radio and Microwave Communication Facility
Kalaheo Ahupua‘a, Kona District, Island of Kaua‘i
TMK: (4) 2-3-005:002 por.**

This letter provides the State Historic Preservation Division's (SHPD's) review of the subject request titled *Request to Amend License Agreement dated July 1, 2016 between the Bank of Hawaii (BOH) as Trustee of the Kukuioolono Park Trust Estate, under that certain indenture made by and between Walter D. McBryde and Hawaiian Trust Company, Limited dated August 20, 1918, as Licensor, and State of Hawaii, by its Department of Accounting and General Services, on behalf of the Office Enterprise Technology Services (OETS) as Licensee, for a Transmission Tower and Radio and Microwave Communication Facility for Public Safety and Public Services*. SHPD received this amendment request on July 13, 2018. The purpose of the amendment is to change the License Agreement location from TMK: (4) 2-3-005:002 to TMK: (4) 2-3-005:011.

The existing microwave communications facility located within TMK: (4) 2-3-005:002 has been slated for demolition and renovation by the OETS. In May 2018, OETS learned that the TMK: (4) 2-3-005:011 lease would be available on June 1, 2018. The existing improvements and site on Parcel 11 has been determined by OETS to suit the purposes of the State. The OETS approached BOH for a proposed amendment to the existing license. BOH is willing to transfer the terms and conditions of the current DAGS License Agreement to Parcel 11, in addition BOH will execute a term easement or right-of-entry permit to DAGS to allow for the complete demolition of the improvements within Parcel 2, as outlined in the current License Agreement.

A review of SHPD records indicates that an archaeological inventory survey (AIS) has been completed; it is titled *Archaeological Inventory Survey of the Kukuioolono Park and Golf Course, Kalāheo Ahupua‘a, Kona District, Island of Kaua‘i, TMK: (4) 2-3-005:001, 002, 005, 008, 009, 010; (4) 2-3-006:002, 004, 011, 012 (Jones et al., March 2006)*. The AIS encompassed 124.8 acres including the current parcel. Jones et al. (2006) identified three significant historic properties (SIHP 50-30-10-3960, 50-30-10-3907 and 50-30-10-3908) comprising 22 features. Site 3960 consists of several architectural features including the entrance pillars and gate, dedication stone and a bronze deer statue, the microwave building (Site 3906, Feature D), a foundation, a Japanese garden, and a concrete structure. Site 3907 is an assemblage of Hawaiian artifacts, and Site 3908 consists of the graves of Walter D. McBryde and John P. Kamanuwai. All three sites were evaluated pursuant to HAR §13-284-6 as significant historic properties.

Exhibit 6

Russell Y. Tsuji
July 30, 2018
Page 2

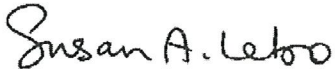
The report recommended preservation of all three historic properties pursuant to HAR §13-277. SHPD concurred with the significance evaluations and the recommendation of preservation.

Based on the information provided, **SHPD has no objections** to the amendment to the current License Agreement.

SHPD requests the opportunity to review and comment on future proposed project with potential to adversely impact the microwave building (Site 3906, Feature D).

Please contact me at (808) 692-8019 or at Susan.A.Lebo@hawaii.gov for any questions or concerns regarding this letter.

Aloha,

A handwritten signature in black ink that reads "Susan A. Lebo". The signature is written in a cursive, flowing style.

Susan A. Lebo, PhD
Archaeology Branch Chief

DAVID Y. IGE
GOVERNOR OF
HAWAII

RECEIVED
LAND DIVISION



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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LAND
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2010 JUL 19 AM 11:05

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF: AJR: OCCL

COR: KA-19-07

MEMORANDUM

JUL 18 2010

TO: LYDIA MORIKAWA, SPECIAL PROJECTS AND DEVELOPMENT
DLNR - Land Division

FROM: SAMUEL J. LEMMO, ADMINISTRATOR
DLNR - Office of Conservation and Coastal Lands

SUBJECT: REQUEST TO AMEND LICENSE AGREEMENT FOR A TRANSMISSION TOWER
AND RADIO AND MICROWAVE COMMUNICATIONS FACILITY
Kalaheo Homesteads, Koloa District, Island of Kauai
TMK: (4) 2-3-005:011

Dear Ms. Morikawa,

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter regarding the subject project.

Based on a review of records, maps, and information related to the subject parcel the OCCL has determined that the proposed project area appears to be located within the State Land Use (SLU) Conservation District *General* Subzone.

According to our records, a telecom facility (i.e., tower, equipment buildings, fencing) was approved for development on the subject parcel via Conservation District Use Permit (CDUP) KA-1308A by the Board of Land and Natural Resources (BLNR) on February 10, 1984. In that permit document the Environmental Impact Assessment (EIA) states:

"The project site (i.e., Tax Map Key No. 2-3-05-011) covers an area of 8,148 square feet and is currently zoned as conservation".

Based on our findings this project may require approval or authorization for either the demolition of existing structures and/or the construction of a new or updated facility. The OCCL requests that the DLNR – Land Division (or applicant) contact this office when it is determined the specific land uses to be proposed. Once the type of land uses being proposed on the site are finalized the permitting or approval requirements can be determined by this office.

Exhibit 7

If you have any questions related to this letter or the Conservation District in general, please do not hesitate to call or email Alex J. Roy, M.Sc. of our Conservation and Coastal Lands staff at 808-587-0316 or via email at alex.j.roy@hawaii.gov

Thank you.

CC: *BLNR - Chairperson*
DLNR - Land Div. – Russel Tsuji
SOH - DAGS
SOH - OETS