

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Waianae, Hawaii 96819

January 27, 2023

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Waianae, Hawaii

Land Board Members:

SUBJECT: Authorization to Enter into a U.S. Government License For Real Estate with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service for the Installation of Sea Level Monitoring Equipment at the Waianae Small Boat Harbor, Waianae-Kai, Waianae, Island of Oahu, Hawaii Tax Map Key: (1) 8-5-002:044 (Portion)

And

Declare Project Exempt from Requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawaii Administrative Rules.

APPLICANT:

U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Weather Service Pacific Region (NWS).

LEGAL REFERENCE:

Sections 171-13, and -95 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waianae Small Boat Harbor, Waianae, Oahu, hereinafter referred to as the "Premises" as shown on the attached maps labeled **Exhibits A-1, A-2 and A-3**. Said premises are a portion of Governor's Executive Order No. 4385.

AREA:

The Sea Level Station consisting of approximately:

- 9 Sq. Ft (3' x 3') rack or wall space in a storage room within the Waianae district office;
- 3 Sq. Ft. vertical space on "B" Pier for Stilling Well, submerged into the water -12' depth;
- 150' of improved land to run conduit with cables from stilling well to storage room.

ZONING:

State Land Use District: Urban, Conservation

County of Honolulu LUO: P-1 Restricted Preservation, P-2 General Preservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _ NO X

CURRENT USE STATUS:

NOAA NWS sea level monitoring equipment within the harbor district office; subsurface conduits running from the district office to a sea level gauge on pier B.

CHARACTER OF USE:

Install, operate and maintain automated sea level monitoring equipment, associated conduits and sea level gauge on pier B of the Waianae Small Boat Harbor. The equipment collects and communicates changes in the sea level as part of a network that supports the mission of the NOAA Pacific Tsunami Warning Center.

COMMENCEMENT DATE:

October 1, 2022

RENT:

Gratis (Government Agency)

TERM:

20 Years, beginning October 1, 2022, through September 3, 2042

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15, Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item No. 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

REMARKS:

This is a housekeeping matter. In September 2022, NOAA's real estate office sent staff a U.S. Government License (**Exhibits B**) and photos (**Exhibit C**) of sea level monitoring equipment at Waianae Small Boat Harbor.

A similar license was previously executed by DLNR and NOAA in the year 2000 for the installation of a gauge and sea level monitoring equipment, which has since lapsed. The purpose of the gauge and equipment was to measure sea level changes and the potential impact of tsunami on the surrounding community. The gauge was removed from its location on pier B prior to the pier's renovation in 2019.

NOAA contacted staff requesting a new license to reinstall the gauge and provided a new license agreement with dated exhibits. NOAA's sea level monitoring equipment and underground conduit were left on-site following the end of the previous license. NOAA is awaiting the execution of the license before reinstalling the sea level gauge at pier B.

The gauge will be employed by the Pacific Tsunami Warning Center, a unit of the NWS's Pacific Region, to provide data regarding tsunami events. NOAA indicated that this site is essential to fill in a data network grid, which is used to accurately determine a region's potential tsunami hazards.

The Waianae site will have a pressure sensor that would be mounted in the same location on B Pier, as the previous equipment.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 Chair to Execute a U.S. Government License No. 23WSW0200N with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service covering the subject areas under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

Attachments:

- A-1 Waianae Small Boat Harbor Location on Oahu
- A-2 Proposed Location in relation to Waianae Small Boat Harbor
- A-2 Location of equipment and conduit in Waianae Small Boat Harbor
- B U.S. Government License No. 23WSW0200N
- C Photos of Equipment

OAHU

U.S. Dept. of Commerce, NOAA National Weather Service Sea Level Monitoring Equipment

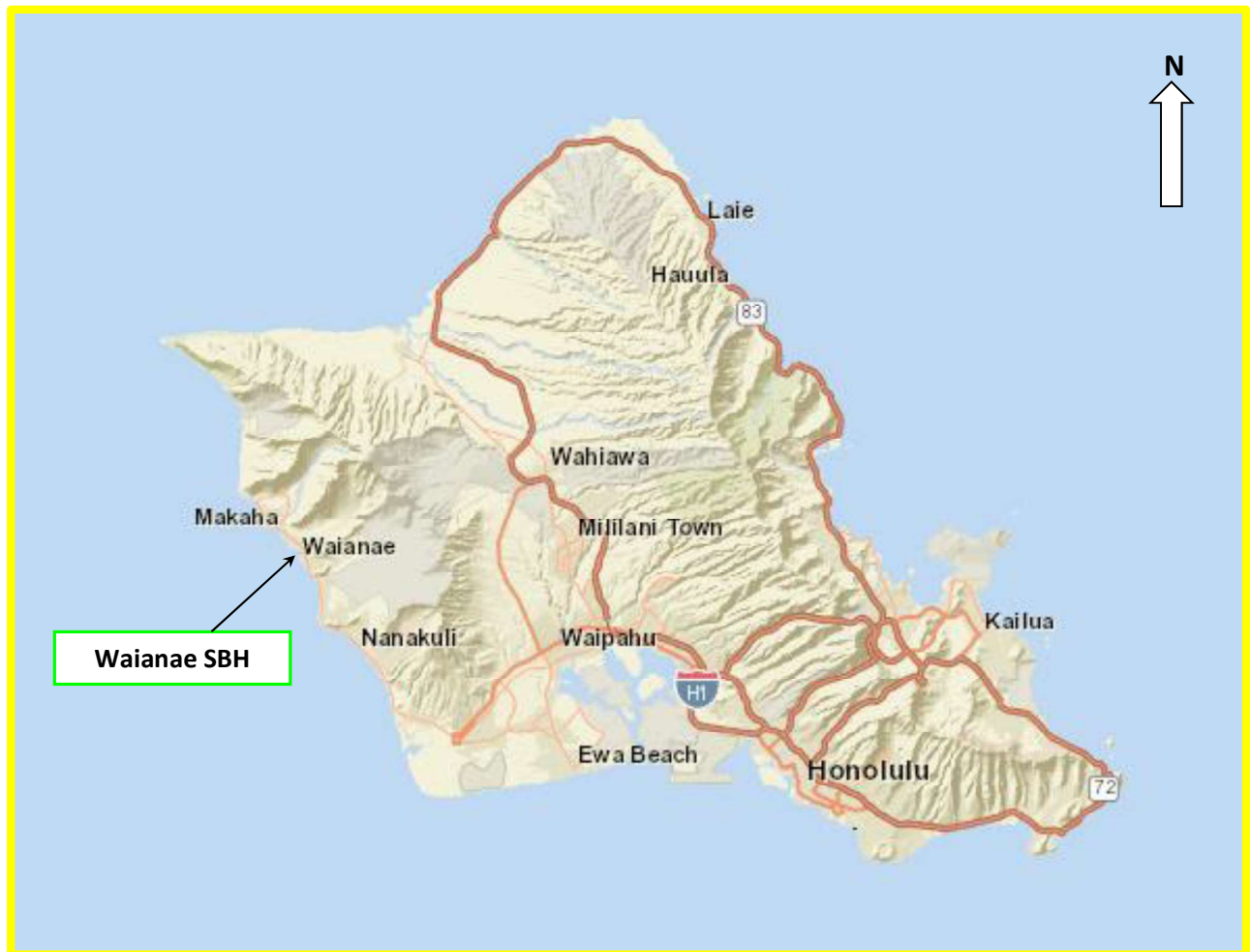


Exhibit A-1

Waianae Small Boat Harbor



Exhibit A-2

Waianae Small Boat Harbor

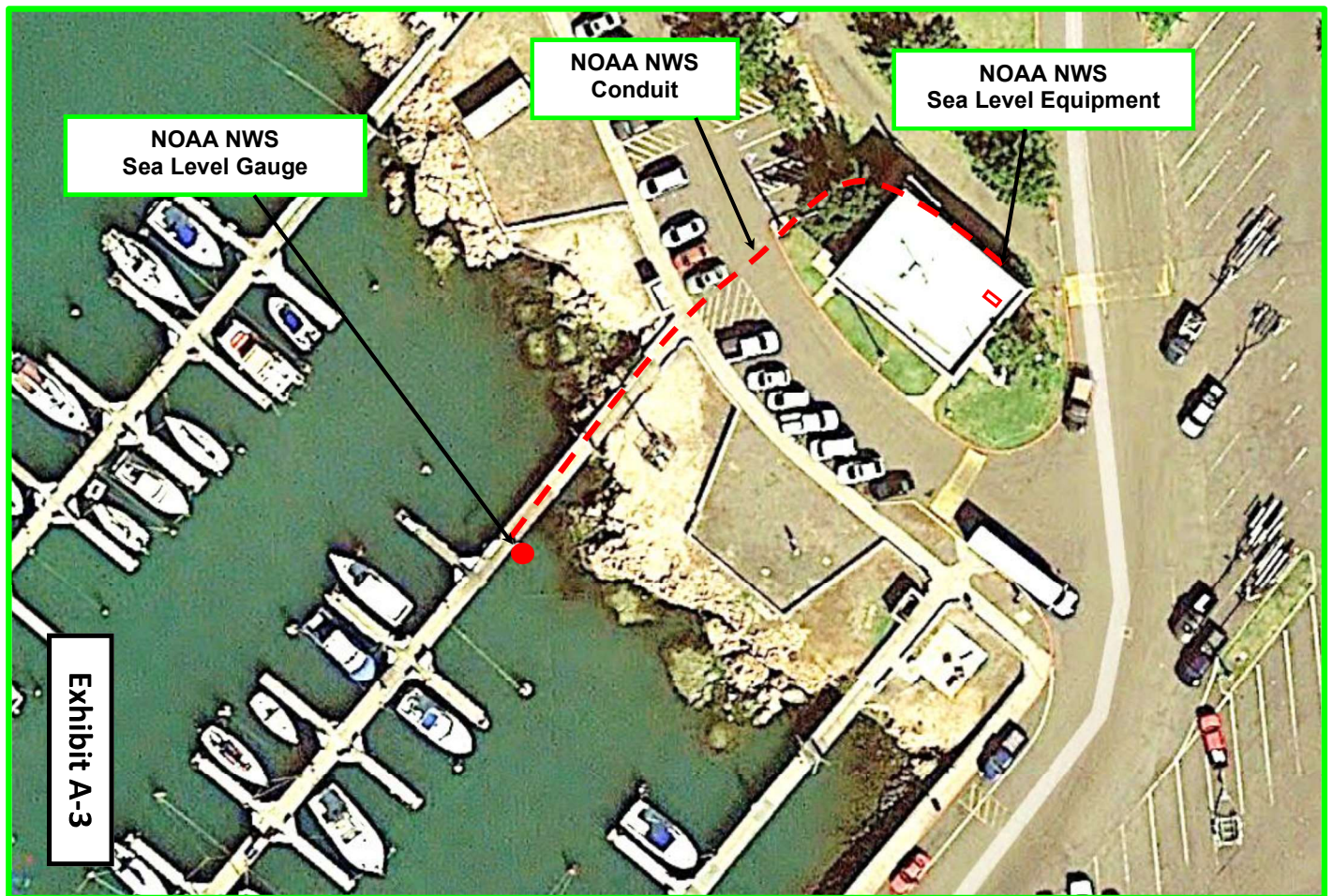


EXHIBIT B



U.S. GOVERNMENT LICENSE FOR REAL PROPERTY



DATE OF LICENSE:

LICENSE NO: 23WSW0200N

This License is made and entered into between:

STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES

whose address is: 1151 Punchbowl Street
Honolulu, Hawaii 96813

hereinafter called the "Licensor", and the United States of America, hereinafter called the "Government".

Witnesseth: The parties hereto, for the mutual undertakings of the parties and consideration hereinafter mentioned, covenant and agree as follows:

- 1. Premises.** Licensor owns or controls improved land located at 85-471 Farrington Hwy, Waianae (Honolulu County) HI 96792 (the "Property"). Licensor licenses to the Government and the Government licenses from the Licensor a portion of the Property consisting of approximately 9 SF (3' x 3') rack or wall space in a storage room; 3 SF vertical space on "B" Pier for Stilling Well, used into water -12' depth; approximately 150' of improved land to run conduit with cables from stilling well to storage room for a Sea Level Station (the "Premises"). The approximate geographic coordinates of the Premises are Latitude 21.449903, Longitude -158.196719. Exhibit "A" further describes the Property and Premises.
- 2. Term.** This License begins on October 1, 2022 and ends on September 30, 2042, subject to the termination and other rights as may be hereinafter set forth. The parties may agree to enter into a succeeding ground license after this License ends, with the Government's property (e.g., improvements, equipment) remaining the property of the Government.
- 3. Rent and Transfer of Funds.** The Government shall pay the Licensor no monetary consideration in the form of rent. Nothing in this License shall constitute an obligation of the Government to transfer its funds to the Licensor or others.
- 4. Termination.** This License is revocable at will by either party. Should this License be revoked prior to the agreed upon expiration date, then, the parties will coordinate the removal of the Government's equipment.
- 5. Use.** The Government may use the Premises for any lawful purpose, such as for installing, operating, maintaining, repairing, and replacing its equipment for the Waianae Sea Level Station as may be necessary in order to carry out the Government's mission. The Government shall have the right to use the Premises or any part thereof for any and all lawful purposes for the operation and use of its equipment. The Government's equipment is provided on Exhibit "B". The Government shall have the right to make alterations, additions, and improvements to the Premises and Government property as may be necessary in order to carry out the Government's mission.
- 6. Utility Connection.** The Government shall have right-of-way to connect to all necessary utilities (e.g., for maintaining power, telecommunications, cabling, and fuel lines to the Premises); all rights-of-way to be over or under the Property may be by routes reasonably determined to be the most convenient to the Government. The Government is responsible for funding its connection to the Premises and shall arrange for connection to existing utilities through separate agreements.
- 7. Operations, Maintenance & Utilities.** (a) The Government will keep and maintain the Government's equipment in good condition, reasonable wear and tear excepted. (b) The Licensor shall maintain, repair, and keep in good and tenantable condition the Premises, as well as the access to the Premises. (c) The Licensor agrees to use reasonable efforts to provide the Government with de minimis amounts of electricity. The Government shall be responsible for obtaining and paying for its own utilities and services beyond any de minimis amounts provided by the Licensor.

U.S. GOVERNMENT LICENSE FOR REAL PROPERTY
DOC NOAA 2020 V1 (DEC)

8. **Taxes and Assessments.** The Government shall not be responsible for the payment of any taxes, assessments, or fees levied on the Property or on the Government's property (e.g., equipment).
9. **Access.** For the duration of this License, and at no cost to the Government, the Licenser is responsible for ensuring the Government, its employees, contractors, subcontractors, licensees and other authorized representatives shall have access (rights of ingress and egress) to the Premises at all times (i.e., 24 hours per day and 7 days per week). The Licenser shall be responsible for securing any easement, right of entry, or other access agreement necessary to ensure the Government's access to the Premises from a nearby public roadway. When applicable, the Licenser shall provide the Government with at least two keys or the combination or code for any security fencing. The Government may, at its own expense, erect a fence or other barrier to restrict access to the Premises.
10. **Hazardous Materials.** The Premises shall be free of hazardous materials according to applicable environmental laws and regulations.
11. **Government Property.** Licenser covenants and agrees that none, nor any part, of the Government's property (e.g., equipment, buildings, fixtures, improvements) placed in, on, upon or affixed to the Premises shall become, or be considered part of, the Premises. The Government's property shall remain the property of the Government, unless disposed of or abandoned by the Government in accordance with applicable federal laws and regulations. Said disposal or abandonment will also need to be coordinated among the parties.
12. **Authority to License.** Licenser covenants that Licenser's interest in the Property is sufficient to enter into this License and Licenser's signatory has full authority to bind the Licenser to all terms and conditions of this License; the Government may reasonably request evidence of said interest and authority.
13. **Claims.** For the purposes of this License, the Government is considered to be self-insured. The Government agrees to promptly consider and adjudicate any claims which may arise out of use of the Licenser's Property/Premises by the Government or duly authorized representatives or contractors of the Government and to pay for any damage or injury as may be required by applicable law. Such adjudication may be pursued under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., the Federal Employees' Compensation Act, 5 U.S.C. § 8101 et seq., or such other legal authority as may be pertinent.
14. **Correspondence.**

Correspondence to the Licenser shall be sent to:	Correspondence to the Government shall be sent to:
Division of Boating and Ocean Recreation 4 Sand Island Access Road Honolulu, HI 96819	United States Department of Commerce NOAA Real Property Management Division, Western Region 7600 Sand Point Way NE (WC41) Seattle, WA 98115 Attn: Contracting Officer

15. **Successors Bound.** This License shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.
16. **Quiet Enjoyment.** Licenser agrees that the Government shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this License, without hindrance from Licenser or anyone claiming rights by, through or under Licenser. In support of the Government's mission of collecting, studying, and reporting on meteorological conditions, the Licenser agrees to share any potential development plans with the Government to avoid damaging any Government improvements including the Government's utility lines, grading and access.
17. **Exhibits and Attachments.** The following are attached and made a part hereof:
- A. Exhibit "A", Description of the Property and Premises (3 pages)
 - B. Exhibit "B", Description of equipment (1 page)

In Witness Whereof, the parties to this License evidence their agreement to all terms and conditions set forth herein by their signatures below.

LICENSOR: STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES

BY _____
Signature Name (Print), Title, & Date

IN THE PRESENCE OF:

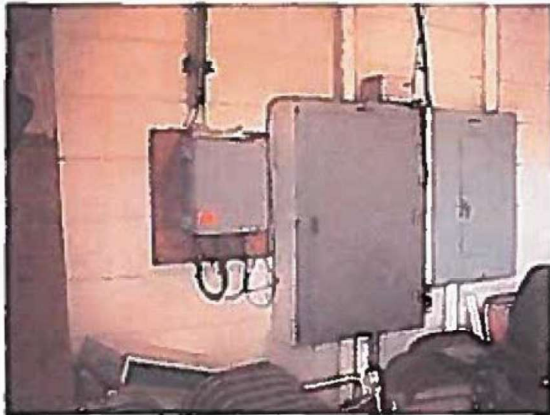
BY _____
Signature Name (Print), Title, & Date

UNITED STATES OF AMERICA:

Signature _____
Department of Commerce Name of Contracting Officer (Print) & Date
Real Property Contracting Officer

Exhibit C

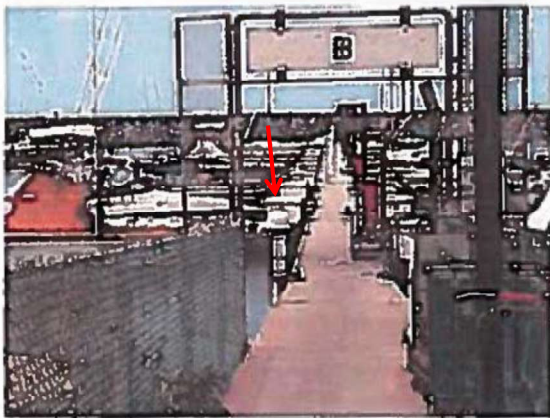
Handar 550 LARC, phone demarc, & charger.



LARC, AC charger, and phone demarc.



Tide gauge stilling well.



Handar 436 encoder assembly.



Exhibit C

Exhibit C