

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

May 4, 2023

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

OAHU

Authorize the Department of Defense, Hawaii National Guard to Enter into a Memorandum of Agreement Between the Department of Defense, Hawaii Army National Guard and the City and County of Honolulu, Honolulu Police Department for an existing substation and emergency generator constructed on Department of Defense property, retention of a City and County of Honolulu, Honolulu Police Department Office Trailer on-site, and access to, and partial use of the Department of Defense, Hawaii Army National Guard Building 300A located at 4087 Diamond Head Road, Honolulu, Oahu, TMK 3-1-042: 040.

CONTROLLING AGENCY (of subject executive order):

Department of Defense

APPLICANT (requesting lease):

City and County of Honolulu, Honolulu Police Department (HPD), whose principal place of business is 801 South Beretania Street, Honolulu, Hawaii 96813.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

ZONING:

State Land Use District:	Urban
City & County of Honolulu:	Diamond Head Special District R-10 Residential District

ITEM M-29

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Land presently encumbered by Governor's Executive Order No. 1997 dated April 9, 1962, setting aside the land to the Department of Defense (DOD) for the Diamond Head Reservation. Building 300A is currently assigned and used by the Department of Defense, Hawaii Army National Guard's Facilities Management Office (FMO) and the Hawaii Emergency Management Agency (HIBMA).

LOCATION:

Please see Exhibit A, attached. Hawaii Army National Guard, Building #300A, 4087 Diamond Head Road, Honolulu, Oahu, identified by Tax Map Key: 1st Division, 3-1-042: 040.

CHARACTER OF USE:

The HPD Substation, Office Trailer and parking will be used by District 6 and 7 officers serving the East Honolulu District and Waikiki District. The HPD will have 24/7 access to their facilities, the parking lot, and restrooms in B300A.

TERM:

The term of this MOA shall be for a period of five (5) years from the effective date noted on the MOA, renewable annually, for a maximum of ten (10) years at which time a new MOA may be considered.

RENT AMOUNT:

\$3,600 per month to be reviewed and possibly adjusted annually.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 11-200-S(a), Environmental Impact Statement Rules of the Department of Health, State of Hawai'i, this disposition is exempt from requirements regarding preparation of an environmental assessment, negative declaration, or environmental impact statement as required by Chapter 343, Hawai'i Revised Statutes, as amended, relating to Environmental Assessments, because the proposed action falls within

Exemption Class # 1 (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.), DOD Actions/Training, Item 30 (Non-construction activities in support of other agencies/organizations involving community participation projects and law enforcement activities), of the Comprehensive Exemption List for the State of Hawaii Department of Defense, dated October 25, 2018, as approved by the Environmental Quality Control Council.

DCCA VERIFICATION:

Government agency, not applicable.

REMARKS:

The HPD District 6 and 7 substation serves the public throughout the entire East Honolulu District and supports the Waikiki District. In addition, HPD's presence at B300A provides the Hawai'i National Guard and the public the assurance of a police presence within the community which also serves as a deterrent to crime in the area.

The HPD has occupied space on DOD property at B300A since 2006. The last MOA was effective from October 28, 2016, renewable annually for a maximum of five (5) years. The last MOA has since expired resulting in this request.

Therefore, the DOD is willing to allow the HPD the continued use of said property at B300A on a "non-interference" basis, for this purpose only, until such time that the HPD can secure the necessary funding and land to construct a new East Honolulu District Substation.

A draft Memorandum of Agreement between the Department of Defense, Hawaii Army National Guard and the City and County of Honolulu, Honolulu Police Department, is attached as Exhibit B.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by chapter 343, HRS, 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 Department of Defense, Hawaii National Guard to enter into a Memorandum of Agreement between the Department of Defense, Hawaii Army National Guard and the City and County of Honolulu, Honolulu Police Department, subject to any applicable conditions cited above which are by this

reference incorporated herein and further subject to the following:

1. Review and approval by the Department of the Attorney General; and
2. Such other terms and conditions as may be prescribed by the Adjutant General to best serve the interests of the State.

Respectfully Submitted,



KENNETH S. HARA
Major General
Adjutant General

APPROVED FOR SUBMITTAL:



Dawn S. Chang, Chairperson

MEMORANDUM OF AGREEMENT
BETWEEN
THE HAWAII ARMY NATIONAL
GUARD
AND
HONOLULU POLICE DEPARTMENT, CITY AND COUNTY OF
HONOLULU

SUBJECT: Continued use of State Department of Defense (DOD) property for the Honolulu Police Department (HPD) East Honolulu District Substation and Office Trailer, and HPD access to and partial use of Hawaii Army National Guard Fort Ruger Armory Building 300A and adjoining parking lot and driveway

This Memorandum of Agreement ("MOA") is made effective this _____ day of _____ 2023, by and between the Hawaii Army National Guard (HIARNG) and Honolulu Police Department (HPD) for the subject above located on 22nd Avenue (premises), Honolulu, Hawaii, and as shown on Exhibit A, attached hereto and incorporated herein, and supersedes the previous MOA dated October 28, 2016.

WHEREAS, HIARNG will permit the continued 24/7 use of State Department of Defense property for the HPD East Honolulu District Substation (approx. 4,154 S.F.) and Office Trailer (approx. 1,380 S.F.), and HPD access to and use of HIARNG Fort Ruger Armory Building 300A toilet facilities, and adjoining parking lot and driveway (refer to Exhibit A), until such time the HPD can secure the necessary funding and land to construct a new East Honolulu District Substation.

WHEREAS, HPD will utilize the property for the daily operations of the East Honolulu District 6 and 7 Police Substation.

Therefore, the HIARNG and HPD mutually agree to the following conditions:

- I. The term of this MOA shall be for a period of five (5) years from the effective date noted above, renewable annually, for a maximum of ten (10) years at which time a new MOA may be considered.
2. This MOA can be terminated only by mutual agreement between HIARNG, DOD and HPD.
3. This agreement may be reviewed or updated only at the discretion of the Adjutant General.
4. In the event of troop mobilization by the HIARNG, the United States Selective Service, or other emergency, this agreement will remain in force and may be modified by mutual agreement between the HIARNG and HPD to conform to conditions existing at that time.
5. The HPD will comply with any existing or forthcoming force protection requirements as deemed necessary by the HIARNG or the DOD. This will include the provision of current employee rosters provided to HIARNG force protection personnel.
6. The DOD, State of Hawaii, HIARNG, its agents, officers or employees, shall not be responsible for damages to, or loss of property, death or injury to any persons which may arise from or is in any way connected with the activities of the HPD, its agents, officers, servants, employees or others invited onto the premises by any one of them, in using the facilities herein granted or which may arise from the activities of the State of Hawai'i, its agents, officers or employees, on the said premises.

EXHIBIT B

7. The HPD, on behalf of itself, its officers, directors, members, agents, servants, employees, assigns, invitees/guests, successors in interest, heirs, legal ward, legal representative, and others who may be on, or using the facilities herein granted at their invitation or the invitation of any one of them, in consideration of the State of Hawai'i Department of Defense permitting or allowing the use of the premises, agrees and promises to indemnify and hold harmless the State of Hawai'i, Department of Defense, its agents, officers and employees, against any and all legal claims, lawsuits, demands, costs and judgments, legal actions or proceedings (including any and all related attorney fees and costs), for any and all losses, bodily injury, liabilities, death or property damage which may arise from, or is in any way connected with, the activities of the HPD, its agents, officers, directors, members, agents, servants, employees, assigns, invitees/guests, successors in interest, heirs, legal ward, legal representative, and others invited onto the premises by any one of them, in using the premises herein granted.
8. The HPD shall comply with all applicable laws, ordinances, rules and regulations of the Federal, State, and County wherein the premises are located.
9. The HPD shall not generate revenue or charge any fees on the property without explicit consent of the DOD.
10. The HPD employees, agents, volunteers, and guests shall at no time be considered employees of the U.S. Government, DOD or the HIARNG for any purpose nor will the employees of the U.S. Government or the HIARNG be considered employees of the HPD.
11. The HPD acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the HIARNG.
12. The HPD shall keep the premises in a clean, sanitary, safe and orderly condition to maintain the appearance standards of the HIARNG and DOD and shall not store any hazardous materials such as biological, chemical, and/or radioactive materials that pose a threat to life, health and safety, and by and at its expense, shall exercise due diligence in the protection of all property located on the premises against fire or damage from other causes. The HIARNG shall not be responsible for any damage to the HPD's property that may be stored in the facility.
13. The HPD shall protect the premises against pollution of its air, ground, and water. The HPD shall comply with all laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency or any federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials, wastes, and substances within the premises is specifically prohibited. HPD shall not discharge any waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance
14. The HPD shall not construct any permanent structure on the premises and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the Adjutant General or by his/her designated Representative.
15. Vehicle maintenance or service work is not allowed on the property. If oil or other noxious liquids are discovered dripping from the HPD's vehicles, the HPD shall remove the vehicle(s) from the property or shall provide drip pans to capture the leaking fluids. The HPD shall clean any liquids found and restore the pavement or ground to its original condition.

EXHIBIT B

HPD use of premises/utilities and the provision of maintenance services by the HIARNG or DOD, and the shared cost thereof:

- a. The HPD will maintain a separate electric meter for its substation and Office Trailer and shall pay all utility costs pertaining thereto. The HPD shall also provide a locking mechanism on the water spigots located on their portion of their building to prevent unauthorized water usage.
- b. The HPD shall be responsible for the cost of all repair and maintenance work to its Substation and Office Trailer, along with the necessary coordination for such work to its facilities.
- c. The HPD will be responsible for all safety inspections, equipment inspections, and fire inspections that are required by federal, state, local, and National Guard laws, ordinances, and regulations. HPD's portion of B300A shall be treated as a separate facility, where applicable and reasonable, and all federal, state, local and National Guard requirements relating to inspections, compliance, safety, building codes, etc. shall be the sole responsibility of the HPD.
- d. The HPD will be allowed to share the use of the toilet facilities in B300A.
- e. The HPD agrees to the assessment of a monthly billed usage fee of \$3,600 as determined on a square footage occupancy/use ratio and includes the following:
 - 1) Water, sewage, electricity, custodial and disposable supply (e.g., toilet paper, paper towels, soap, etc.) costs related to use of the toilet facilities in B300A.
 - 2) Grounds keeping maintenance.
 - 3) Refuse collection.
 - 4) Parking lot lighting.

The DOD will review this monthly fee annually and, if necessary, make adjustments to reflect updated costs. Any adjustment to cost shall be mutually agreed upon. In the event an agreement cannot be made regarding cost adjustments, HPD reserves the right to terminate this MOA and vacate said premises as per the conditions set forth in section 16 below.

- f. The HPD agrees to sharing in the cost, to be determined on a square footage occupancy/use ration, for the following maintenance and repair work on the premises, when such work is required for the proper appearance and operation of the premises, as determined by the HIARNG or DOD:
 - 1) Exterior repainting of B300A and the HPD Substation.
 - 2) Interior repainting of the toilet facilities in B300A
 - 3) Repaving and restriping of the asphalt concrete parking lot and driveway on the South side of B300A/HPD substation.
 - 4) Maintenance repairs of the toilets in B300A and common water, sewer and electrical utilities serving B300A and the HPD Substation and Office Trailer.
16. Prior to the termination of this MOA and its extensions:
- a. The HPD shall perform and Environmental Baseline Study (EBS) or Environmental Condition of Property (ECOP) report of the premises as described above and utilized by the HPD to determine if

EXHIBIT B

there are any environmental conditions that require remediation that was caused by the HPD's use of the premises during the term of this MOA. The HPD shall be responsible to remediate (clean-up) the environmental conditions identified in the EBS or ECOP that was caused by the HPD's use of the premises during the term of the MOA.

- b. The HPD shall vacate the said facilities, remove the Office Trailer and all moveable property therefrom, and restore the premises to a condition satisfactory to the Adjutant General. If the HPD shall fail or neglect to remove said property and so restore the premises, then, at the option of the Adjutant General, said property shall either become the property of the State of Hawai'i without compensation therefore, or the Adjutant General may cause the property to be removed and the facilities to be restored at the expense of the HPD and no claim for damages against the State of Hawai'i or its officers or agents shall be created by or made on account of such removal and restoration work.

RICK BLANGIARDI (date)
Mayor
City and County of Honolulu

KENNETH S. HARA (date)
Major General, HIARNG
Adjutant General

ARTHUR J. LOGAN (date)
Chief of Police
Honolulu Police Department

APPROVED AS TO FORM AND LEGALITY:

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DANA M.O. VIOLA
Corporation Counsel
Department of the Corporation Counsel

DEAN A. SOMA
Deputy Attorney General
Department of the Attorney General

HPD SUBSTATION
ADDITION TO B300A

RESTROOM

HIARNG B300A

HIARNG
GATE

HPD
EMERGENCY
GENERATOR

HPD OFFICE
TRAILER

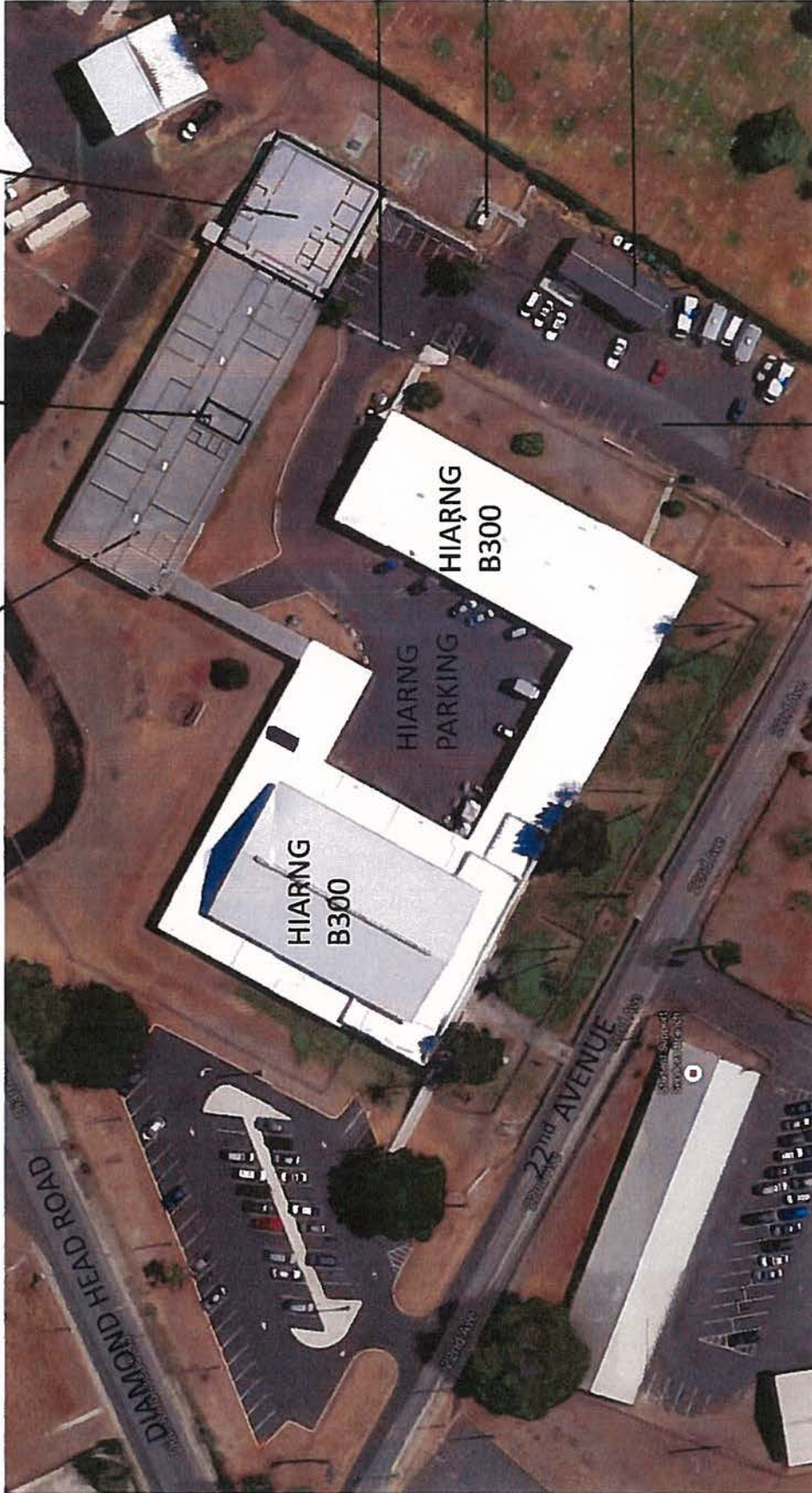


EXHIBIT A
02-19-16

HIARNG/HPD
PARKING LOT

HPD SUBSTATION AT HIARNG B300/B300A