

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

October 24, 2014

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

STATEWIDE

Authorize and Consent to the State of Hawaii, Department of Defense Entering Into
Agreements for Civil Defense Warning Sirens on State Lands Managed by Other
Departments or Agencies of the State, the City and County, or County, at Various
Locations, Statewide

APPLICANT

The State of Hawaii, Department of Defense (“DOD”), Office of Civil Defense/Emergency
Management

REQUEST

DOD is requesting that the Board authorize and consent to it entering into agreements for
civil defense warning sirens on State lands managed by other departments or agencies of the
State, the City and County, or County (“**State and County Agencies**”) having jurisdiction
thereof, at various locations, statewide

STATUTORY PROVISIONS

Hawaii Revised Statutes (“HRS”), Chapter 171, §171-11 and §171-95, and any other
applicable sections of Chapter 171, as amended

§171-11 Public purposes, lands set aside by the governor; management. “Lands while so
set aside for such use or purpose or when acquired for roads and streets shall be managed
by the department, agency, city and county, county, or other political subdivisions of the
State having jurisdiction thereof, unless otherwise provided by law. Such department,
agency of the State, the city and county, county, or other political subdivisions of the
State in managing such lands shall be authorized to exercise all of the powers vested in
the board in regard to the issuance of leases, easements, licenses, revocable permits,
concessions, or rights of entry covering such lands for such use as may be consistent with
the purposes for which the lands were set aside on the same terms, conditions, and

restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board; provided that any nonrenewable dispositions granting rights for a period not in excess of fourteen days shall not require (1) the approval of the board or ...” (emphasis added)

§171-95 Disposition to governments, governmental agencies, public utilities, and renewable energy producers. “(a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction: ... (6) Waive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever such waiver or modification is beneficial to the State.”

LICENSE AREA

Site specific; however, approximately 16 square feet, more or less, for each siren location.

APPLICANT TERMS AND CONDITIONS

DOD shall be responsible for providing the State of Hawaii, Department of Land and Natural Resources with fully executed copies of agreements it enters into with State and County Agencies for the Project within thirty (30) days of execution.

ENVIRONMENTAL ASSESSMENT – HRS, CHAPTER 343

DOD shall be responsible for ensuring compliance with HRS, Chapter 343.

BACKGROUND

Hawaii’s hurricane season is June through November. In August 2014, as Hurricane Iselle approached the State, a hurricane warning was issued for the island of Hawaii; however, just before making landfall the hurricane was downgraded to a tropical storm. Nevertheless, the island sustained the brunt of the storm’s heavy winds and rains which resulted in some flooding, damaged homes, downed power and telephone lines, fallen albizia trees, and roads which were blocked by debris.

DOD routinely conducts alert and accountability exercises to ensure optimal response times should disaster, such as Hurricane Iselle, strike in Hawaii. The State’s civil defense warning system is integral to the early detection and communication of imminent disasters that pose a potential threat to public health and safety in Hawaii.

A Public Health and Safety Project. DOD is implementing the State’s new civil defense disaster warning and communications system (the “**Project**”). The State of Hawaii, Department of Accounting and General Services (“**DAGS**”) is DOD’s consultant for the

Project which involves a major overhaul of the existing siren network. Some sirens are between 25 to 40 years old, and have exceeded their useful economic life. Other sirens have malfunctioned, failing to sound, and the equipment's termite infested wooden poles are disintegrating.

The Project is designed to fortify the trustworthiness of warning sirens by replacing, installing, and/or upgrading sirens at more than 500 site specific locations throughout four (4) counties and six (6) major islands, statewide. Aging siren equipment will be replaced, and the control and communications components on all sirens will be modernized. Very high frequency and trunked radio networks will be replaced and upgraded with redundant satellite and cellular communications. The streamlined technology will enable DOD to monitor and control every siren throughout the State from a centralized location by way of common communications infrastructure.

A Manner of Disposition. For similar purposes in the past, DOD requested the Board issue perpetual, non-exclusive easements as a manner of disposition. However, the process for each easement would necessitate DAGS providing survey maps and legal descriptions that are required for the preparation of the easement document by the State of Hawaii, Department of the Attorney General. In addition, the City and County of Honolulu (the "City") require easements be designated by its Department of Planning and Permitting ("DPP"). The financial funding for the Project is limited, and precludes the ability to incur expenses to hire licensed surveyors to prepare the required maps and descriptions for each siren location, or the DPP process.

Alternatively, DOD established a Memorandum of Agreement ("MOA") and a License Agreement (collectively, "Agreements"). DOD intends to enter into Agreements with State and County Agencies having jurisdiction over State lands upon which the warning sirens and related equipment would reside. The MOA provides a framework of responsibility of each political subdivision in which each will jointly manage its own efforts in fulfilling the planning, design, construction, implementation, maintenance, and control of the sirens and equipment. DOD has entered into an MOA with the City, and the Counties of Maui, Hawaii, and Kauai (see attached **Exhibit A**). The License Agreement is designed to be site-specific to each siren location. It will include a site map with illustrated renderings of the siren and equipment, together with any other terms and conditions imposed by each of the respective agencies having jurisdiction (see attached **Exhibit B**).

A Board Consent Under HRS, §171-11. On June 1, 2011, the City and DOD entered into an MOA for the Project. HRS §171-11 provides that Board approval is required for dispositions over land set aside to an agency for public purposes in excess of fourteen (14) days. At its meeting on April 25, 2014, under Agenda Item D-8, the Board consented to the License Agreement for the Project between the City and DOD (see attached **Exhibit C**). The Board action included its blanket consent to license agreements encompassing thirteen (13) siren locations on State lands managed by the City pursuant to Governor's executive orders.

Furthermore, the Board extended its consent to license agreements encompassing other locations managed by the City, subject to the same manner of disposition. Moreover, staff informed the Board of its intent to return at a later date to request the Board similarly consent to license agreements for various siren locations, statewide:

“Because the great number of sirens needing improvements, the sirens are being implemented incrementally. Thus, there are other sirens under jurisdiction of other agencies pursuant to other executive orders. Depending on the discussion between DOD/DAGs and those agencies, staff will bring the request for consent under 171-11, HRS, using similar approach, to the Board at a later date.”

HRS §171-95 provides that the Board may waive or modify requirements and conditions contained in leases held by the governments and agencies whenever such waiver or modification is beneficial to the State (for example, a waiver of a condition contained in leases concerning its requirement to obtain prior approvals from the Board for consents).

REMARKS

The Project is integral to public safety and consistent with the stipulated public use of State lands managed by State and County Agencies, including but not limited to schools, harbors, airports, and beach parks. Since DOD is likewise an instrumentality of the State, it too is mandated to act in the best interests of the State.

At more than 500 siren locations statewide, the number of locations is voluminous. For DOD to request the Board’s consent to each Agreement for each siren location on a piecemeal basis would be time intensive for all agencies involved, including the Board. Alternatively, the Board’s blanket consent to the Agreements would simplify and streamline the time and efforts required by all parties to the Project. The intent is to give all parties the flexibility to jointly manage and fulfill its own efforts pursuant to the Agreements in a timely manner. DOD’s ability to process the Agreements in a timely manner is critical to each siren location, and DOD wishes to obtain all appropriate authorizations as soon as possible. DOD has construction contractors in each County that are ready to install and/or replace the sirens. The Board’s blanket consent would give DOD the flexibility to move the Project forward by allowing its contractors to proceed upon the execution of the Agreements.

Staff recommends the Board authorize and consent to DOD entering into Agreements for civil defense warning sirens on State lands managed by State and County Agencies having jurisdiction thereof, at various locations, statewide, subject to the Agreements being processed by DOD and its Deputy Attorney General. DOD shall be responsible to review and approve the Agreements to protect the best interests of the State. As such, it would not be necessary to also have the Board, its staff, and its assigned Deputy Attorney General to further review and approve the Agreements prior to further processing. The Agreements may include variations of the MOA and License Agreements attached as Exhibits A and B,

respectively. To the extent DOD has already entered into Agreements with State and County Agencies for the Project, staff recommends the Board consent to these executed Agreements retroactively to the instrument's effective date therein eliminating a need to further process the Board's consent to those Agreements, after the fact.

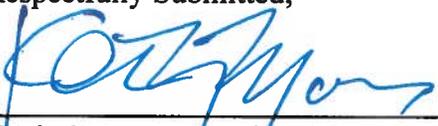
The recommended Board actions contemplate alleviating unnecessary steps in the consent process that are intended to protect the best interests of the State.

RECOMMENDATION

That the Board, subject to the terms and conditions cited above which are incorporated herein in their entirety by reference, and further subject to other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State of Hawaii:

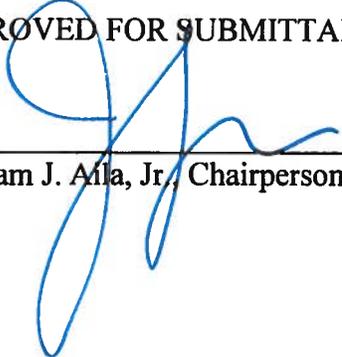
- authorize and consent to the State of Hawaii, Department of Defense entering into agreements for civil defense warning sirens on State lands managed by other departments or agencies of the State, the City and County, or County having jurisdiction thereof, at various locations, statewide.

Respectfully Submitted,



Kevin E. Moore, Acting Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

MEMORANDUM OF AGREEMENT
BETWEEN THE
CITY AND COUNTY OF HONOLULU
AND
STATE OF HAWAII

This **MEMORANDUM OF AGREEMENT (MOA)**, entered into on this 1st day of June 2011, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813 ("CITY"), the **STATE OF HAWAII** by its **DEPARTMENT OF DEFENSE**, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816 ("DOD"), and the **STATE OF HAWAII** by its **DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("DAGS").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of Civil Defense Outdoor Siren Warning System, together with improvements, equipment, facilities and appurtenances related thereto ("sirens and related equipment"), throughout the CITY.

Hawaii Revised Statutes ("HRS") § 128-2 defines a "local organization for civil defense" to include an organization created in accordance with HRS Chapter 128 to perform civil defense functions in the City and County of Honolulu. Civil defense functions include all those provided pursuant to HRS Chapter 128 which includes air raid warning services and communications. HRS § 128-3 provides for the appointment of a Deputy Director for each political subdivision. HRS § 128-6 establishes Civil Defense powers provides for direction or control of warnings and signals for alerts or attacks, and the devices to be used.

Additionally, HRS § 128-18 grants the State and the City immunity from any liability for death of or injury to persons, or property damage, as a result of any act or omission in the course of employment or in the performance of duties pursuant to HRS Chapter 128, except in cases of willful misconduct.

The DOD, DAGS, and the CITY by mutual consent, agree to jointly manage efforts and projects undertaken to fulfill the responsibility for the installation, maintenance and control of such warnings and devices.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. DOD's responsibilities:

- a. Develop and maintain a list of proposed locations for sirens and related equipment.
- b. Participate in meetings with the CITY to discuss proposed siren sites.
- c. Submit listings of proposed siren sites for review and concurrence.
- d. Initiate a License Agreement with the CITY which will address site specific issues for existing and new siren sites.
- e. Seek appropriations for siren warning projects on behalf of the CITY, and where such appropriations are made, fund the design and construction of the sirens and related equipment.
- f. Inspect, repair, and maintain the sirens and related equipment.
- g. For the installation, operation, repair and maintenance of the sirens and related equipment:
 - 1) DOD's contractor shall obtain a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 2) DOD shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, DOD and DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days prior written notice to the CITY, DOD, and DAGS.
 - 3) DOD's consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 4) DOD's consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to

the commencement of the contractor's activity under each right-of-entry permit.

- 5) DOD, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its work at each siren site.

2. CITY's responsibilities:

- a. Review and approve the proposed location of the siren sites.
- b. Review and approve the construction plans provided by DOD for the installation of the sirens and related equipment.
- c. Grant DOD a license to install, operate, and maintain sirens and related equipment on the siren sites approved by the CITY.
- d. Issue right-of-entry permits to DAGS' and DOD's contractor for approved siren sites.
- e. Provide assistance to DOD for the repair and maintenance of the sirens and related equipment at the request of DOD.
- f. The City, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its siren project activities.

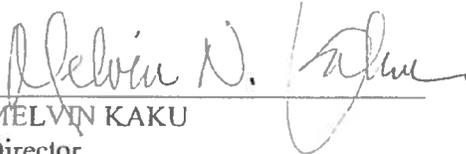
3. DAGS' responsibilities are as follows:

- a. Provide DOD staff with technical services and overview coordination support for the implementation of DOD siren projects on CITY controlled siren sites.
- b. Procure the design consultants, negotiate and approve the consultant's fees, prepare the design contracts and make payments using funding appropriated to DOD for this purpose.
- c. Oversee the design, bidding, and construction phases of the work in accordance with all applicable regulatory requirements. Prepare the construction contracts and make payments.
- d. When overseeing design and construction phase work for DOD sirens and related equipment:

- 1) If a siren site is located on State-owned property, DAGS shall be responsible for obtaining an easement (on behalf of DOD) for the siren, related equipment and siren maintenance from the State Department of Land and Natural Resources.
 - 2) DAGS' consultants and contractors will process a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 3) DOD shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, DOD and DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the CITY, DOD, and DAGS.
 - 4) DAGS' consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 5) DAGS' consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
 - 6) DAGS, its officers, employees, agents, consultants, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its work at each siren site.
4. **Modifications:** Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.
 5. **Termination:** Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

IN WITNESS THEREOF, the parties have executed this MOA on the day, month, and year mentioned above.

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF EMERGENCY
MANAGEMENT



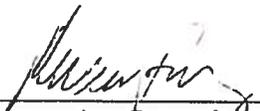
MELVIN KAKU
Director

CITY AND CITY OF HONOLULU



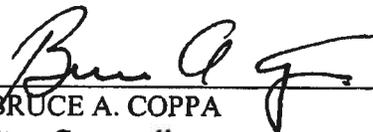
PETER B. CARLISLE,
Mayor

APPROVED AS TO FORM
LEGALITY



Deputy Corporation Counsel

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

By 

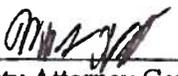
BRUCE A. COPPA
State Comptroller

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 

DARRYLL D. M. WONG
Major General
Hawaii National Guard
Adjutant General

APPROVED AS TO FORM:



Deputy Attorney General

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

This **MEMORANDUM OF AGREEMENT ("MOA")**, entered into on this 16th day of April 2014, by and between the COUNTY OF MAUI, a municipal corporation of the State of Hawai'i, whose address is 200 South High Street, Wailuku, Hawaii 96793 ("COUNTY"), the STATE OF HAWAII by its DEPARTMENT OF DEFENSE, whose address is 3949 Diamond Head Road, Honolulu, Hawai'i 96816 ("DOD"), and the STATE OF HAWAII by its DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, whose address is Kalanimoku Building 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("DAGS") (COUNTY, DOD, and DAGS collectively referred to as "Parties").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of Hawai'i State Emergency Outdoor Siren Warning System, together with improvements, equipment, facilities and appurtenances related thereto ("sirens and related equipment"), throughout the COUNTY.

Hawai'i Revised Statutes ("HRS") §128-2 defines a "local organization for civil defense" to include an organization created in accordance with HRS Chapter 128 to perform civil defense functions in the COUNTY. Civil defense functions include all those provided pursuant to HRS Chapter 128 which includes air raid warning services and communications. HRS §128-3 provides for the appointment of a Deputy Director for each political subdivision. HRS §128-6 establishes Civil Defense powers and provides for direction or control of warnings and signals for alerts or attacks, and the devices to be used.

Additionally, HRS §128-18 grants the STATE and COUNTY immunity from any liability for death of or injury to persons, or property damage, as a result of any act or omission in the course of the employment or in the performance of duties pursuant to HRS Chapter 128, except in cases of willful misconduct.

The DOD, DAGS, and the COUNTY, by mutual consent, agree to jointly manage efforts and projects undertaken to fulfill the responsibility for the installation, maintenance and control of such warnings and devices.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the Parties do hereby agree as follows:

1. DOD's responsibilities:

- a. Maintain a list of proposed locations for sirens and related equipment.
- b. Participate in meetings with the COUNTY to discuss proposed siren sites.
- c. Submit listings of proposed siren sites for review and concurrence.
- d. Seek appropriations for siren warning projects on behalf of the COUNTY, and where such appropriations are made, fund the design and construction of the sirens and related equipment.

FOR COUNTY CONTROLLED SITES:

- e. Initiate a License Agreement with the COUNTY which will address site specific issues for existing and new siren sites.
- f. The License agreement conditions of access for the installation, operation, repair and maintenance of the sirens and related equipment shall include:
 - 1) DOD's contractor shall obtain a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 2) DOD shall require its contractor to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the COUNTY, DOD, DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the County.
 - 3) DOD's contractor shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 4) DOD's contractor shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.

5) DOD, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and COUNTY governments in performing its work at each siren site.

2. COUNTY's responsibilities:

- a. Identify, review and approve the proposed location of the siren sites
- b. Assist DOD in the coordination with site owners and communities to facilitate the siren site approvals.
- c. Participate with DOD and DAGS in the sirens final acceptance process.
- d. The COUNTY, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its siren project activities.

FOR COUNTY CONTROLLED SITES:

- e. Review and approve the construction plans provided by DOD for the installation of the sirens and related equipment.
- f. Grant DAGS, DOD, and their contractors a license to install, operate, and maintain sirens and related equipment on the siren sites approved by the County.
- g. Issue right-of-entry permits to DAGS' and DOD's contractor for approved siren sites.

3. DAGS' responsibilities are as follows:

- a. Provide DOD staff with technical services and overview coordination support for the implementation of DOD siren projects on COUNTY controlled siren sites.
- b. Procure the design consultants, negotiate and approve the consultant's fees, prepare the design contracts and make payments using funding appropriated for this purpose.
- c. Oversee the design, bidding, and construction phases of the work in accordance with all applicable regulatory requirements. Prepare the construction contracts and make payments.

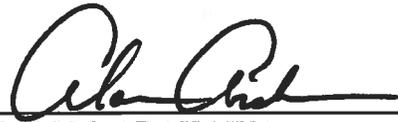
- d. When overseeing design and construction phases of work for the DOD sirens and related equipment:
- 1) If a siren site is located on State-owned property, DAGS shall be responsible for submitting an easement (on behalf of DOD) for the siren from the State Department of Land and Natural Resources.
 - 2) DAGS' consultants and contractors will process a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 3) DAGS shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) products and completed operations coverage; and all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the COUNTY, its elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the COUNTY.
 - 4) DAGS' consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 5) DAGS' consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
 - 6) DAGS, its officers, employees, agents, consultants, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, STATE and COUNTY governments in performing its work at each siren site.

4. **Modifications.** Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.

5. Termination. Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

IN WITNESS THEREOF, the Parties have executed this MOA on the day, month, and year mentioned above.

COUNTY OF MAUI



ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:



ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:



CALEB ROWE
Deputy Corporation Counsel

APPROVED AS TO FORM:



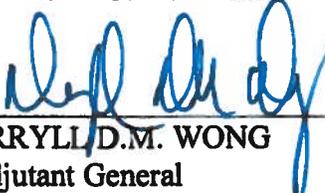
Deputy Attorney General

APPROVED AS TO FORM:



Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 

DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 

DEAN SEKI
State Comptroller

MEMORANDUM OF AGREEMENT
BETWEEN THE
COUNTY OF HAWAI'I
AND
STATE OF HAWAI'I

This **MEMORANDUM OF AGREEMENT (MOA)**, entered into on this 23rd day of November, 2011, by and between the **COUNTY OF HAWAI'I**, a municipal corporation of the State of Hawai'i, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai'i 96820 ("COUNTY"), the **STATE OF HAWAI'I** by its **DEPARTMENT OF DEFENSE**, whose address is 3949 Diamond Head Road, Honolulu, Hawai'i 96816 ("DOD"), and the **STATE OF HAWAI'I** by its **DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("DAGS").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of the Hawai'i State Emergency Outdoor Siren Warning System, together with improvements, equipment, facilities and appurtenances related thereto ("sirens and related equipment"), throughout the County of Hawaii.

Hawai'i Revised Statutes ("HRS") § 128-2 defines a "local organization for civil defense" to include an organization created in accordance with HRS Chapter 128 to perform civil defense functions in the County of Hawai'i. Civil defense functions include all those provided pursuant to HRS Chapter 128 which includes air raid warning services and communications. HRS § 128-3 provides for the appointment of a Deputy Director for each political subdivision. HRS § 128-6 establishes Civil Defense powers provides for direction or control of warnings and signals for alerts or attacks, and the devices to be used.

Additionally, HRS § 128-11 grants the State of Hawai'i and the County of Hawai'i immunity from any liability for death of or injury to persons, or property damage, as a result of any act or omission in the course of employment or in the performance of duties pursuant to HRS Chapter 128, except in cases of willful misconduct.

The DOD, DAGS, and the COUNTY by mutual consent, agree to jointly manage efforts and projects undertaken to fulfill the responsibility for the installation, maintenance and control of such warnings and devices.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. DOD's responsibilities:
 - a. Maintain a list of proposed locations for sirens and related equipment.
 - b. Participate in meetings with the COUNTY to discuss proposed siren sites.
 - c. Submit listings of proposed siren sites for review and concurrence.
 - d. Seek appropriations for siren warning projects on behalf of the COUNTY, and where such appropriations are made, fund the design and construction of the sirens and related equipment.

FOR COUNTY CONTROLLED SITES:

- e. Initiate a License Agreement with the COUNTY which will address site specific issues for existing and new siren sites.
- f. The License Agreement conditions of access for the installation, operation, repair and maintenance of the sirens and related equipment shall include:
 - 1) DOD's contractor shall obtain a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 2) DOD shall require its contractor to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the COUNTY, DOD, DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the COUNTY.

- 3) DOD's contractor shall maintain and exercise due care to keep the area surrounding the siren site be clear and safe for public use during the term of the right-of-entry permit.
- 4) DOD's contractor shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
- 5) DOD, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments in performing its work at each siren site.
- 6) DOD, through its officers, employees, agents, contractors, or subcontractors shall obtain and ensure compliance with HRS Chapter 343, as amended.

2. COUNTY's responsibilities:

- a. Identify, review and approve the proposed location of the siren sites.
- b. Assist DOD in the coordination with site owners and communities to facilitate the siren site approvals.
- c. Participate with DOD and DAGS in the sirens final acceptance process.
- d. The COUNTY, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments in performing its siren project activities.

FOR COUNTY CONTROLLED SITES:

- e. Review and approve the construction plans provided by DOD for the installation of the sirens and related equipment.
- f. Grant DAGS, DOD and their contractors a license to install, operate, and maintain sirens and related equipment on the siren sites approved by the COUNTY.
- g. Issue right-of-entry permits to DAGS' and DOD's contractor for approved siren sites.

3. DAGS' responsibilities are as follows:
- a. Provide DOD staff with technical services and overview coordination support for the implementation of DOD siren projects on COUNTY controlled siren sites.
 - b. Procure the design consultants, negotiate and approve the consultant's fees, prepare the design contracts and make payments using funding appropriated for this purpose.
 - c. Oversee the design, bidding, and construction phases of the work in accordance with all applicable regulatory requirements. Prepare the construction contracts and make payments.
 - d. When overseeing design and construction phase work for DOD sirens and related equipment:
 - 1) If a siren site is located on State-owned property, DAGS shall be responsible for obtaining an easement (on behalf of DOD) for the siren from the State Department of Land and Natural Resources.
 - 2) DAGS' consultants and contractors will process a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 3) DAGS shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) products and completed operations coverage; and all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the COUNTY, its elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the COUNTY.
 - 4) DAGS' consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.

- 5) DAGS' consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
- 6) DAGS, its officers, employees, agents, consultants, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments in performing its work at each siren site.

4. Modifications. Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.

5. Termination. Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

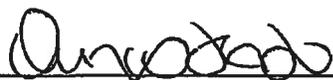
IN WITNESS THEREOF, the parties have executed this MOA on the day, month, and year mentioned above.

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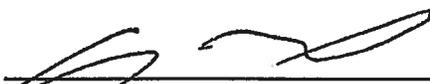
COUNTY OF HAWAI'I

By 
WILLIAM P. KENOI
Mayor

RECOMMEND APPROVAL:


QUINCE MENTO
Civil Defense Administrator

APPROVED AS TO FORM
AND LEGALITY:


CRAIG T. MASUDA
Deputy Corporation Counsel

STATE OF HAWAI'I
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

By 
for BRUCE A. COPPA
State Comptroller

APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAI'I
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAI'I)
)
COUNTY OF HAWAI'I) SS.

On September 28, 2011, before me personally appeared WILLIAM P. KENOI, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawai'i, a municipal corporation of the State of Hawai'i, that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i, the foregoing instrument was signed and sealed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Sections 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2010), as amended, and said WILLIAM P. KENOI acknowledged said instrument to be the free act and deed of said County of Hawai'i.

Guillermo G. Sumera L.S.
Notary Public, State of Hawai'i
Printed Name: Guillermo G. Sumera
My commission expires: 9/22/13

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Memorandum of Agreement = State Dept of Defense and Accounting & General Services

Doc. Date: _____ Undated at time of notarization.

No. of Pages: 7 Jurisdiction: Third Circuit

Guillermo G. Sumera 9/28/11
Signature of Notary Date of Notarization and Certification Statement
Guillermo G. Sumera
Printed Name of Notary

L.S.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF KAUA'I

AND

STATE OF HAWAI'I

This **MEMORANDUM OF AGREEMENT (MOA)**, entered into on this 29th day of December, 2011, by and between the COUNTY OF KAUA'I, a municipal corporation of the State of Hawai'i, whose principal place of business and mailing address is 3990 Kaana St. Suite 100, Lihu'e, Hawai'i 96766 ("COUNTY"), the STATE OF HAWAI'I by its DEPARTMENT OF DEFENSE, whose address is 3949 Diamond Head Road, Honolulu, Hawai'i 96816 ("DOD"), and the STATE OF HAWAI'I by its DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("DAGS").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of the Hawai'i State Emergency Outdoor Siren Warning System, together with improvements, equipment, facilities and appurtenances related thereto ("sirens and related equipment"), throughout the County of Kaua'i.

Hawai'i Revised Statutes ("HRS") § 128-2 defines a "local organization for civil defense" to include an organization created in accordance with HRS Chapter 128 to perform civil defense functions in the County of Kaua'i. Civil defense functions include all those provided pursuant to HRS Chapter 128 which includes air raid warning services and communications. HRS § 128-3 provides for the appointment of a Deputy Director for each political subdivision. HRS § 128-6 establishes Civil Defense powers provides for direction or control of warnings and signals for alerts or attacks, and the devices to be used.

Additionally, HRS § 128-11 grants the State of Hawai'i and the County of Kaua'i immunity from any liability for death of or injury to persons, or property damage, as a result of any act or omission in the course of employment or in the performance of duties pursuant to HRS Chapter 128, except in cases of willful misconduct.

The DOD, DAGS, and the COUNTY by mutual consent, agree to jointly manage efforts and projects undertaken to fulfill the responsibility for the installation, maintenance and control of such warnings and devices.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. DOD's responsibilities:
 - a. Maintain a list of proposed locations for sirens and related equipment.
 - b. Participate in meetings with the COUNTY to discuss proposed siren sites.
 - c. Submit listings of proposed siren sites for review and concurrence.
 - d. Seek appropriations for siren warning projects on behalf of the COUNTY, and where such appropriations are made, fund the design and construction of the sirens and related equipment.

FOR COUNTY CONTROLLED SITES:

- e. Initiate a License Agreement with the COUNTY which will address site specific issues for existing and new siren sites.
- f. The License Agreement conditions of access for the installation, operation, repair and maintenance of the sirens and related equipment shall include:
 - 1) DOD's contractor shall obtain a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 2) DOD shall require its contractor to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the COUNTY, DOD, DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the COUNTY.

- 3) DOD's contractor shall maintain and exercise due care to keep the area surrounding the siren site be clear and safe for public use during the term of the right-of-entry permit.
- 4) DOD's contractor shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
- 5) DOD, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and COUNTY governments in performing its work at each siren site.
- 6) DOD, through its officers, employees, agents, contractors, or subcontractors shall obtain and ensure compliance with HRS Chapter 343, as amended.

2. COUNTY's responsibilities:

- a. Identify, review and approve the proposed location of the siren sites.
- b. Assist DOD in the coordination with site owners and communities to facilitate the siren site approvals.
- c. Participate with DOD and DAGS in the sirens final acceptance process.
- d. The COUNTY, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments in performing its siren project activities.

FOR COUNTY CONTROLLED SITES:

- e. Review and approve the construction plans provided by DOD for the installation of the sirens and related equipment.
- f. Grant DAGS, DOD and their contractors a license to install, operate, and maintain sirens and related equipment on the siren sites approved by the COUNTY.
- g. Issue right-of-entry permits to DAGS' and DOD's contractor for approved siren sites.

3. **DAGS' responsibilities are as follows:**
- a. **Provide DOD staff with technical services and overview coordination support for the implementation of DOD siren projects on COUNTY controlled siren sites.**
 - b. **Procure the design consultants, negotiate and approve the consultant's fees, prepare the design contracts and make payments using funding appropriated for this purpose.**
 - c. **Oversee the design, bidding, and construction phases of the work in accordance with all applicable regulatory requirements. Prepare the construction contracts and make payments.**
 - d. **When overseeing design and construction phase work for DOD sirens and related equipment:**
 - 1) **If a siren site is located on State-owned property, DAGS shall be responsible for obtaining an easement (on behalf of DOD) for the siren from the State Department of Land and Natural Resources.**
 - 2) **DAGS' consultants and contractors will process a right-of-entry permit for the installation of the siren and related equipment at each siren site.**
 - 3) **DAGS shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) products and completed operations coverage; and all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the COUNTY, its elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the COUNTY.**
 - 4) **DAGS' consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.**

- 5) DAGS' consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
- 6) DAGS, its officers, employees, agents, consultants, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments in performing its work at each siren site.

4. Modifications. Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.

5. Termination. Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

IN WITNESS THEREOF, the parties have executed this MOA on the day, month, and year mentioned above.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

COUNTY OF ~~HAWAII~~ KAUAI *bhp*

By

[Signature]
BERNARD P. CARVALHO
Mayor

RECOMMEND APPROVAL:

[Signature]
THEODORE DALIGDIG
Civil Defense Administrator

[Signature]
WALLACE G. REZENTES
County Finance Director

APPROVED AS TO FORM
AND LEGALITY:

[Signature]
JUSTIN KOLLAR
Deputy County Attorney

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

By *[Signature]*
BRUCE A. COPPA
State Comptroller

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By *[Signature]*
DARRYLL D.M. WONG
Adjutant General

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 1st day of September, 2011 before me appeared **SALLY A. MOTTA**, to me personally known, who, being by me duly sworn, did say that she is the Deputy Director of Finance of the County of Kaua'i, a political subdivision of the State of Hawai'i; and that said instrument was signed on behalf of said County of Kaua'i by authority of its Charter; and said **SALLY A. MOTTA** acknowledged said instrument to be the free act and deed of said County of Kaua'i.

Doc. Date: undated at time of notarization # Pages: 7

Notary Name: Kris N. Nakamura Fifth Circuit

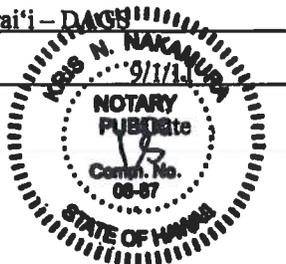
Doc. Description: Memorandum of Agreement between the

County of Kaua'i & State of Hawai'i - DAGS

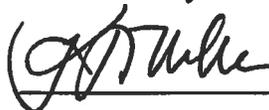


Notary Signature

NOTARY CERTIFICATION



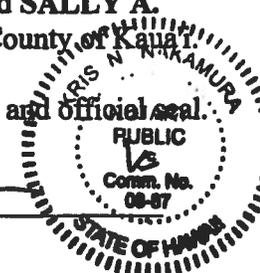
WITNESS my hand and official seal:



Kris N. Nakamura

Notary Public, State of Hawai'i

My commission expires: April 20, 2012



LICENSE AGREEMENT

THIS LICENSE AGREEMENT entered into this _____ day of _____, 201__, by and between the COUNTY OF MAUI, a municipal corporation of the State of Hawaii, whose address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter called the "Licensor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter called the "Licensee."

W I T N E S S E T H:

WHEREAS, Licensor is the owner or manager of those certain parcels of land more particularly described in Exhibit A attached hereto as final siren locations are approved, and made a part hereof (hereinafter referred to as the "parcel"); and

WHEREAS, Licensee desires to license a portion of the parcel for the installation, operation and maintenance of civil defense disaster warning and communication devices, together with improvements, equipment, facilities and appurtenances related thereto; and

WHEREAS, Licensor does not object to granting Licensee a non-exclusive license over the parcel provided Licensee fully complies with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. Purpose of License. It is mutually agreed and understood by and between the parties that the primary purpose for this License is to improve and expand emergency and civil defense communications in times of disaster or national emergency.

2. Grant of License. Licensor hereby grants Licensee a revocable non-exclusive license to install, operate and maintain civil defense disaster warning and communication devices, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in portions of the parcel ("Siren Site") and the right of ingress to and egress from the said Equipment and parcel. This License shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel.

3. Licensed Area. The Siren Site subject to this license is listed in Exhibit A attached hereto and incorporated herein as siren number MA118 (Siren Name Designation: Waihee Ballpark). Licensee shall obtain Licensor's approval of the final location for siting of the equipment and official siren location name.

4. License Term. This License shall become effective on the day and year first above written, and shall continue in full force and effect for until such time that either Licensor or Licensee choose to terminate this License upon giving one (1) year written notice.

5. Right to Construct the Equipment. Licensee may construct and maintain the Equipment on, within, under, over and across the Siren Site provided that Licensee obtains the Licensor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the Siren Site. Licensee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

6. Equipment. The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole which will be tested once a month as shown on

Exhibit "B," attached hereto and made a part hereof. No electrical connection or underground utility trenching are required or shall be allowed.

7. Maintenance. Licensee shall, at its sole cost and expense, maintain said Equipment and appurtenances relating thereto in a good, safe and workmanlike manner, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.

8. Damage. Licensee shall not damage, undermine or otherwise destroy any portion of the Siren Site, including, without limitation, any Licensor facilities or improvements situated on or near the Siren Site or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Licensee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Siren Site so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

9. Reservation of Rights. Licensor reserves unto itself the full use and enjoyment of the Siren Site and to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Licensee, provided that such use by Licensor and/or third parties does not unreasonably interfere with Licensee's rights to use the Siren Site under this License. Licensee shall take steps necessary to ensure that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Licensor's operations in or near the Siren Site.

10. Licensor Work Within or Affecting the Siren Site. If Licensor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Licensor

will coordinate such work with Licensee. Licensee shall not prevent Licensor from performing such work, provided, however, that Licensor will take protective measures to assure that such work does not unreasonably interfere with Licensee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance of the Equipment.

11. Ownership of Equipment. The Equipment and appurtenances and all equipment and tools for the maintenance and use thereof placed in or upon the Siren Site shall remain the property of Licensee and may be removed by Licensee at its own cost and expense at any time during the life of this and shall be removed within a reasonable time from the date of receiving written notice from Licensor to change the location of said Equipment and appurtenances or any part thereof upon the said described property. Licensee shall not in any way alter or relocate said Equipment on the Siren Site without prior written consent of Licensor. Upon removal or relocation of said Equipment and appurtenances, Licensee shall restore the Siren Site to as good a condition as existed prior to the commencement of this License.

12. Removal of Equipment. If Licensor shall at any time in the future deem it necessary to use the Siren Site for any public purpose and/or physical expansion of its current operations, Licensee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Licensor's part; provided, however, that the Licensor shall give Licensee at least one (1) year prior written notice of any requirement for such removal.

13. Assignment. Licensee shall not transfer or assign this License or sublet any part of the Siren Site or grant any interest, privilege or license whatsoever in connection with this License or the Siren Site.

14. Damages or Injury. Licensor and Licensee understand and recognize that by entering into this License, that both are engaged in a civil defense function as contemplated in Hawaii Revised Statutes, Chapter 128, as amended. Neither Licensor nor Licensee shall be civilly liable for the death of or injuries to persons or property damage, as a result of any act or omission in the course of the employment or duties under Hawaii Revised Statutes Chapter 128, as amended.

15. Waiver of Claims. Nothing contained in this Agreement shall be construed by any party as a waiver of any immunity currently authorized by law or that may in the future be so authorized.

16. Insurance. Licensee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Licensor and Licensee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days prior written notice to the Licensor and Licensee.

17. Abandonment. This License and all of Licensee's rights hereunder shall terminate, without any action on the part of Licensor, in the event of non-use or abandonment by Licensee of the Siren Site, or any portion thereof, for a period of one (1) year.

18. Removal upon Termination. Upon termination or cancellation of this License, Licensee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to as good a condition as existed prior to the installation of this License, satisfactory to the Licensor, and if Licensee fails to restore the Siren Site to a condition satisfactory to the Licensor, Licensor shall have the right to charge Licensee, and Licensee shall be solely responsible for, any and all costs and expenses incurred by Licensor in completing and accomplishing such restoration, including, but not limited to any costs the Licensor incurs in removing and disposing of Licensee's Equipment.

19. Default.

i) Notice of default. If Licensee defaults on or otherwise fails to perform its obligations under this License, Licensor will issue a written notice of default to Licensee by hand-delivery or first-class mail.

ii) Licensee to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the Licensor's satisfaction within fifteen (15) days of the date of the Licensor's written notice to Licensee or such further time as may be authorized by the Licensor in writing. Licensee's failure to construct the Equipment in accordance with the plans and specifications approved by Licensor shall be deemed a default of this License.

iii) County remedies for failure to cure. If Licensee fails to cure said defaults or failures to perform within the required time, the Licensor may, but shall not be obligated to,

cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure and remedy to Licensee, who shall immediately pay said costs and expenses to the Licensor upon receiving notice from the Licensor.

20. Costs and Attorneys' Fees. In the event of any litigation by reason of this License, Licensor and Licensee agree that each shall be responsible for their own attorney fees and costs and not for the attorney fees and costs of the other party. Nothing contained herein shall preclude Licensor or Licensee from pursuing an award of attorney fees and costs against any third party in any related litigation.

21. Agreement/Amendments. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments of this License must be in writing and executed by both parties.

22. Compliance with Laws. Licensee, at all times during the term of this License, shall comply with all of the requirements of federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force.

23. Binding Effect. All provisions contained in this License shall be binding upon and inure to the benefit of the respective parties, their successors, and officers, agents, and employees or any person acting for and on their behalf.

IN WITNESS WHEREOF, the parties, represented by the County Mayor for the Licensor and the Vice Director of Civil Defense for the Licensee, have caused these presents to be executed the day and year first above written.

COUNTY OF MAUI

By _____
Its Mayor "LICENSOR"

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

STATE OF HAWAII
By its Department of Defense

By _____
Doug Mayne
Hawaii State Civil Defense
Vice Director "LICENSEE"

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

EXHIBIT A (Page 1 of 2)

ISLAND: Maui
SITE NAME: Waihe'e Park (118)

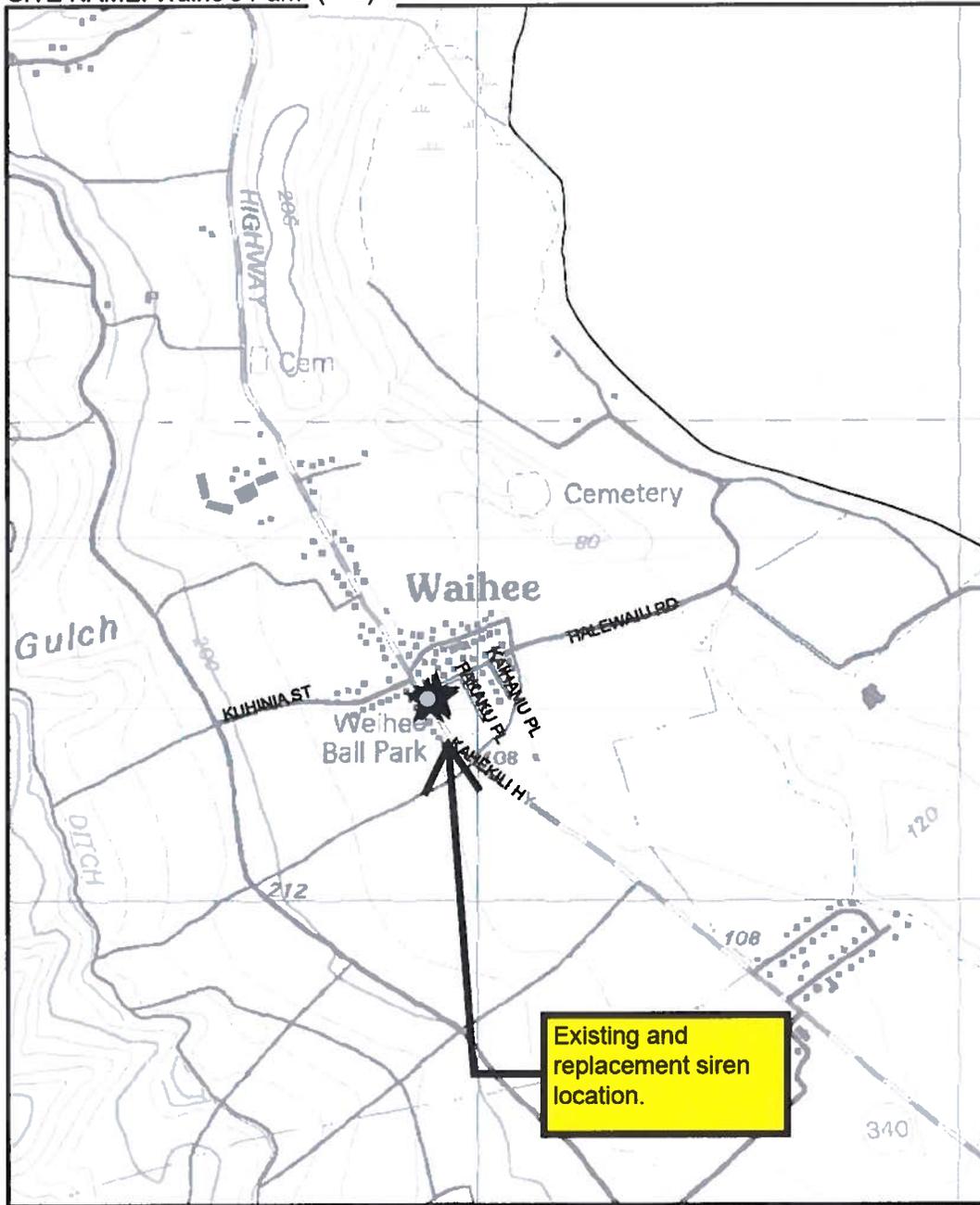
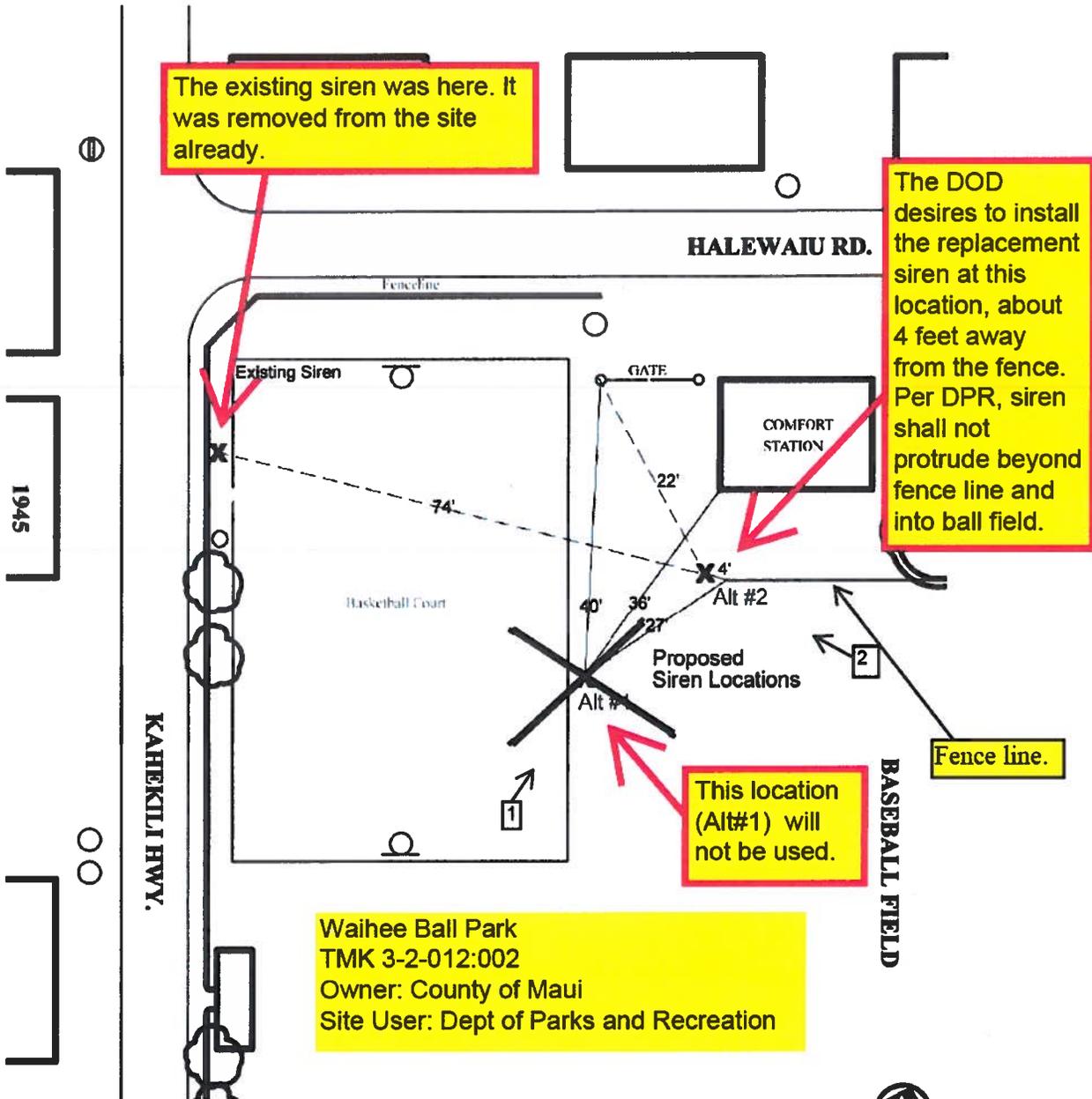


EXHIBIT A (Page 2 of 2)

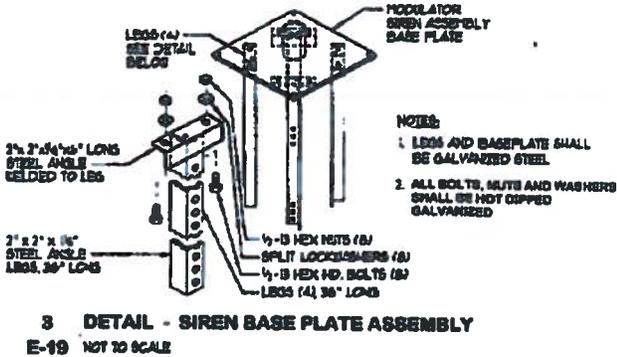
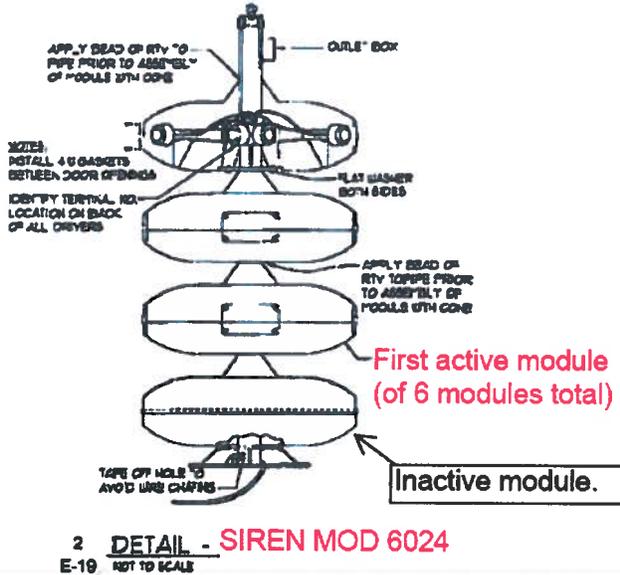
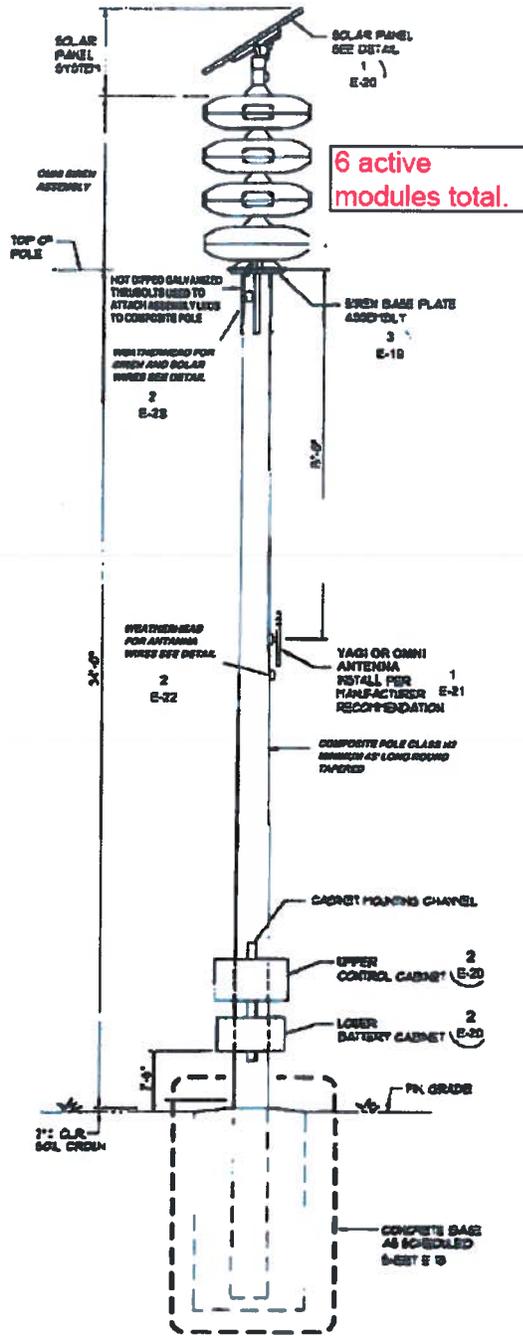
ISLAND: MAUI
SITE NUMBER: 118
SITE NAME: **Waihee Ballpark**

- Ⓜ Utility Pole with Light
- Utility Pole



Sketch has no scale.

EXHIBIT B



Hawaii State Civil Defense			
POLE ELEVATION, SIREN AND BASEPLATE DETAIL			
Siren Type MOD 6024			
REV	FIELD NO	DATE	BY
SCALE	NOT TO SCALE	SHEET	OF 1

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

April 25, 2014

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

OAHU

Consent to License Agreement between City and County of Honolulu and the Department of Defense for Installation, Operation and Maintenance of Civil Defense Disaster Warning and Communication Devices Purposes over Lands Setting Aside to City and County of Honolulu, Oahu at the following TMKs:

- (1) 1-1-063:014, (1) 1-3-027:001; (1) 1-8-020:013, (1) 2-7-036:005,
- (1) 3-1-031:004, (1) 3-1-042:005, (1) 3-5-022:023, (1) 4-1-009:264,
- (1) 5-3-002:031, (1) 5-9-001:038, (1) 8-3-001:001, (1) 8-7-005:001,
- and (1) 9-9-006:020.

CONTROLLING AGENCY (of subject executive orders):

City and County of Honolulu

APPLICANT (requesting license):

Department of Defense and Department of Accounting and General Services

LEGAL REFERENCE:

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

LICENSE AREA:

Typically for each location, 16 square feet, more or less, located within the locations shown on **Exhibit A**.

CHARACTER OF USE:

Civil Defense Disaster Warning and Communication Devices purposes

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

April 25, 2014 *uo*

D-8

EXHIBIT 3

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The applicant agency shall be responsible for ensuring compliance with Chapter 343, HRS.

REMARKS:Project

State Department of Defense (“DOD”) is implementing the Statewide disaster warning and communication system, by either replacing the old sirens or installing new equipment (“Project”). The planned locations, with a total of about 500¹, cover all major islands on sites including beach parks, schools, harbors, airports etc. Department of Accounting and General Services (“DAGS”) is DOD’s consultant in planning and construction of the Project. Some proposed locations are over State lands which have been set aside to the City and County of Honolulu (“City”) for park purposes.

DOD, DAGS, and the City² discussed the logistics, including right of entry and future maintenance, of the Project. A Memorandum of Agreement dated June 1, 2011 (“MOA”) signed by the parties and now attached as **Exhibit B** provides the framework for the respective responsibilities among the parties. It was also agreed by the parties that a site-referenced license agreement, containing construction drawing and map of the equipment, and other conditions would be issued by the City to DOD. A boiler plate for the license is attached as **Exhibit C**.

Disposition manner for the equipment

In the past, DOD and DAGS requested the Board issue perpetual, non-exclusive easements for similar purposes. Majority of the past requests are still pending for the submission of maps and legal descriptions from DAGS, which will form part of the easement document to be prepared by the Department of the Attorney General. In addition, designation of easement is required from the City’s Department of Planning Permitting (“DPP”). As advised by DAGS, the funding allotted for the Project currently does not account for the hiring of licensed land surveyor to prepare the relevant map and legal description and the DPP process.

Upon review of the situation, particularly, regarding the number of possible locations, staff believes the MOA and the license mentioned in the preceding paragraphs adopted by the City, DOD, and DAGS provide a good alternative to achieve the objectives of the Project, namely, installing the required devices in a timely manner for public safety purpose and defining responsibilities of the stakeholders.

Board Consent under 171-11, HRS

Pursuant to 171-11, HRS, approval from the Board is required for dispositions over land

¹ Figures provided by DOD and DAGS. Oahu 198; Maui 102; Hawaii 128; Kauai 54.

² Including Department of Parks and Recreation, and Department of Emergency Management.

set aside to an agency for public purpose in excess of 14 days. The Project is an integral part of the safety of the users of the public facilities. Therefore, the Project is consistent with the public purposes stipulated in the respective Governor's executive orders.

For all locations that fall under the jurisdiction of the City pursuant to respective executive orders as shown on Exhibit A, staff recommends the Board consent to the issuance of license agreements by the City pursuant to the manner described above. Staff understands the construction at some of these locations is ready to commence, and parties concerned desire to obtain all appropriate authorizations as soon as possible.

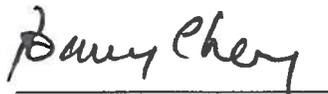
Further, staff recommends the Board extend its consent to the City for other locations under the City's jurisdiction but not covered in Exhibit A at this moment, subject to the same manner of disposition described above. The construction at those sites may become finalized subsequently upon discussion among all parties concerned. The extended consent will facilitate the smooth implementation of the Project, without any potential delay.

Other locations in the future

Because the great number of sirens needing improvements, the sirens are being implemented incrementally. Thus, there are other sirens under jurisdiction of other agencies pursuant to other executive orders. Depending on the discussion between DOD/DAGs and those agencies, staff will bring the request for consent under 171-11, HRS, using similar approach, to the Board at a later date.

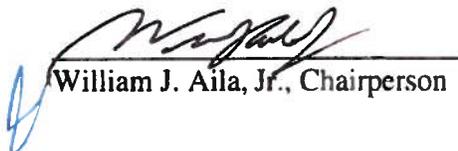
RECOMMENDATION: That the Board consent to the license agreement between the City and County of Honolulu and the Department of Defense, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Location	TMK	Executive Order(s)	Siren #	
Salt Lake District Park	(1) 1-1-063:014	2502	OA136	
DeCorte Park	(1) 1-3-027:001	1922	OA126A	
Iholena Park	(1) 1-8-020:013	167 and 196	OA124A	
Ala Wai Community Park	(1) 2-7-036:005	1428	OA114	*
Kapiolani Beach Park	(1) 3-1-031:004	22	OA112A	*
Diamond Head Lighthouse	(1) 3-1-042:005	3667	OA112	*
Wailupe Beach Park	(1) 3-5-022:023	2066	OA106	*
Waimanalo District Park	(1) 4-1-009:264	3983	OA402	*
Punaluu Beach Park	(1) 5-3-002:031	385 and 1702	OA422	*
Sunset Beach	(1) 5-9-001:038	2598	OA201	*
Keaau Beach Park	(1) 8-3-001:001	1402	OA327	*
Mali South	(1) 8-7-005:001	2464	OA318	*
Aiea Heights	(1) 9-9-006:020	1672	OA303	

Note: *Locations under Phase I of the Project ready to commence construction

EXHIBIT A

MEMORANDUM OF AGREEMENT
BETWEEN THE
CITY AND COUNTY OF HONOLULU
AND
STATE OF HAWAII

This **MEMORANDUM OF AGREEMENT (MOA)**, entered into on this 1st day of June 2011, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813 ("CITY"), the STATE OF HAWAII by its DEPARTMENT OF DEFENSE, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816 ("DOD"), and the STATE OF HAWAII by its DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("DAGS").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of Civil Defense Outdoor Siren Warning System, together with improvements, equipment, facilities and appurtenances related thereto ("sirens and related equipment"), throughout the CITY.

Hawaii Revised Statutes ("HRS") § 128-2 defines a "local organization for civil defense" to include an organization created in accordance with HRS Chapter 128 to perform civil defense functions in the City and County of Honolulu. Civil defense functions include all those provided pursuant to HRS Chapter 128 which includes air raid warning services and communications. HRS § 128-3 provides for the appointment of a Deputy Director for each political subdivision. HRS § 128-6 establishes Civil Defense powers provides for direction or control of warnings and signals for alerts or attacks, and the devices to be used.

Additionally, HRS § 128-18 grants the State and the City immunity from any liability for death of or injury to persons, or property damage, as a result of any act or omission in the course of employment or in the performance of duties pursuant to HRS Chapter 128, except in cases of willful misconduct.

The DOD, DAGS, and the CITY by mutual consent, agree to jointly manage efforts and projects undertaken to fulfill the responsibility for the installation, maintenance and control of such warnings and devices.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. DOD's responsibilities:

EXHIBIT "B",

- a. Develop and maintain a list of proposed locations for sirens and related equipment.
- b. Participate in meetings with the CITY to discuss proposed siren sites.
- c. Submit listings of proposed siren sites for review and concurrence.
- d. Initiate a License Agreement with the CITY which will address site specific issues for existing and new siren sites.
- e. Seek appropriations for siren warning projects on behalf of the CITY, and where such appropriations are made, fund the design and construction of the sirens and related equipment.
- f. Inspect, repair, and maintain the sirens and related equipment.
- g. For the installation, operation, repair and maintenance of the sirens and related equipment:
 - 1) DOD's contractor shall obtain a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 2) DOD shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, DOD and DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days prior written notice to the CITY, DOD, and DAGS.
 - 3) DOD's consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 4) DOD's consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to

the commencement of the contractor's activity under each right-of-entry permit.

- 5) DOD, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its work at each siren site.

2. CITY's responsibilities:

- a. Review and approve the proposed location of the siren sites.
- b. Review and approve the construction plans provided by DOD for the installation of the sirens and related equipment.
- c. Grant DOD a license to install, operate, and maintain sirens and related equipment on the siren sites approved by the CITY.
- d. Issue right-of-entry permits to DAGS' and DOD's contractor for approved siren sites.
- e. Provide assistance to DOD for the repair and maintenance of the sirens and related equipment at the request of DOD.
- f. The City, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its siren project activities.

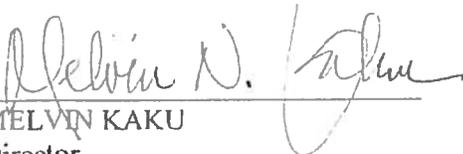
3. DAGS' responsibilities are as follows:

- a. Provide DOD staff with technical services and overview coordination support for the implementation of DOD siren projects on CITY controlled siren sites.
- b. Procure the design consultants, negotiate and approve the consultant's fees, prepare the design contracts and make payments using funding appropriated to DOD for this purpose.
- c. Oversee the design, bidding, and construction phases of the work in accordance with all applicable regulatory requirements. Prepare the construction contracts and make payments.
- d. When overseeing design and construction phase work for DOD sirens and related equipment:

- 1) If a siren site is located on State-owned property, DAGS shall be responsible for obtaining an easement (on behalf of DOD) for the siren, related equipment and siren maintenance from the State Department of Land and Natural Resources.
 - 2) DAGS' consultants and contractors will process a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 3) DOD shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, DOD and DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the CITY, DOD, and DAGS.
 - 4) DAGS' consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 5) DAGS' consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
 - 6) DAGS, its officers, employees, agents, consultants, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its work at each siren site.
4. **Modifications:** Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.
 5. **Termination:** Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

IN WITNESS THEREOF, the parties have executed this MOA on the day, month, and year mentioned above.

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF EMERGENCY
MANAGEMENT



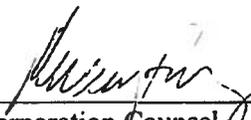
MELVIN KAKU
Director

CITY AND CITY OF HONOLULU



PETER B. CARLISLE,
Mayor

APPROVED AS TO FORM
LEGALITY



Deputy Corporation Counsel

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

By 

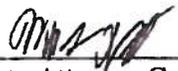
BRUCE A. COPPA
State Comptroller

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 

DARRYLL D. M. WONG
Major General
Hawaii National Guard
Adjutant General

APPROVED AS TO FORM:



Deputy Attorney General

LICENSE AGREEMENT

THIS LICENSE AGREEMENT entered into this _____ day of _____, 201__, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "Licensor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter called the "Licensee."

W I T N E S S E T H:

WHEREAS, Licensor is the owner or manager of those certain parcels of land more particularly described in Exhibit A attached hereto as final siren locations are approved, and made a part hereof (hereinafter referred to as the "parcel"); and

WHEREAS, Licensee desires to license a portion of the parcel for the installation, operation and maintenance of civil defense disaster warning and communication devices, together with improvements, equipment, facilities and appurtenances related thereto; and

WHEREAS, Licensor does not object to granting Licensee a non-exclusive license over the parcel provided Licensee fully complies with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. **Purpose of License.** It is mutually agreed and understood by and between the parties that the primary purpose for this License is to improve and expand emergency and civil defense communications in times of disaster or national emergency.

EXHIBIT "C"

2. Grant of License. Licensor hereby grants Licensee a revocable non-exclusive license to install, operate and maintain civil defense disaster warning and communication devices, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in portions of the parcel ("Siren Site") and the right of ingress to and egress from the said Equipment and parcel. This License shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel.

3. Licensed Area. The Siren Site subject to this license is listed in Exhibit A attached hereto and incorporated herein as siren number OA316 (Siren Name Designation: Nanakuli Beach Park). Licensee shall obtain Licensor's approval of the final location for siting of the equipment and official siren location name.

4. License Term. This License shall become effective on the day and year first above written, and shall continue in full force and effect for until such time that either Licensor or Licensee choose to terminate this License upon giving one (1) year written notice.

5. Right to Construct the Equipment. Licensee may construct and maintain the Equipment on, within, under, over and across the Siren Site provided that Licensee obtains the Licensor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the Siren Site. Licensee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

6. Equipment. The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole which will be tested once a month as shown on

Exhibit "B," attached hereto and made a part hereof. No electrical connection or underground utility trenching are required or shall be allowed.

7. Maintenance. Licensee shall, at its sole cost and expense, maintain said Equipment and appurtenances relating thereto in a good, safe and workmanlike manner, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.

8. Damage. Licensee shall not damage, undermine or otherwise destroy any portion of the Siren Site, including, without limitation, any Licensor facilities or improvements situated on or near the Siren Site or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Licensee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Siren Site so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

9. Reservation of Rights. Licensor reserves unto itself the full use and enjoyment of the Siren Site and to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Licensee, provided that such use by Licensor and/or third parties does not unreasonably interfere with Licensee's rights to use the Siren Site under this License. Licensee shall take steps necessary to ensure that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Licensor's operations in or near the Siren Site.

10. Licensor Work Within or Affecting the Siren Site. If Licensor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Licensor

will coordinate such work with Licensee. Licensee shall not prevent Licensor from performing such work, provided, however, that Licensor will take protective measures to assure that such work does not unreasonably interfere with Licensee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance of the Equipment.

11. Ownership of Equipment. The Equipment and appurtenances and all equipment and tools for the maintenance and use thereof placed in or upon the Siren Site shall remain the property of Licensee and may be removed by Licensee at its own cost and expense at any time during the life of this and shall be removed within a reasonable time from the date of receiving written notice from Licensor to change the location of said Equipment and appurtenances or any part thereof upon the said described property. Licensee shall not in any way alter or relocate said Equipment on the Siren Site without prior written consent of Licensor. Upon removal or relocation of said Equipment and appurtenances, Licensee shall restore the Siren Site to as good a condition as existed prior to the commencement of this License.

12. Removal of Equipment. If Licensor shall at any time in the future deem it necessary to use the Siren Site for any public purpose and/or physical expansion of its current operations, Licensee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Licensor's part; provided, however, that the Licensor shall give Licensee at least one (1) year prior written notice of any requirement for such removal.

13. Assignment. Licensee shall not transfer or assign this License or sublet any part of the Siren Site or grant any interest, privilege or license whatsoever in connection with this License or the Siren Site.

14. Damages or Injury. Licensor and Licensee understand and recognize that by entering into this License, that both are engaged in a civil defense function as contemplated in Hawaii Revised Statutes, Chapter 128, as amended. Neither Licensor nor Licensee shall be civilly liable for the death of or injuries to persons or property damage, as a result of any act or omission in the course of the employment or duties under Hawaii Revised Statutes Chapter 128, as amended.

15. Waiver of Claims. Nothing contained in this Agreement shall be construed by any party as a waiver of any immunity currently authorized by law or that may in the future be so authorized.

16. Insurance. Licensee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Licensor and Licensee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days prior written notice to the Licensor and Licensee.

17. Abandonment. This License and all of Licensee's rights hereunder shall terminate, without any action on the part of Licensor, in the event of non-use or abandonment by Licensee of the Siren Site, or any portion thereof, for a period of one (1) year.

18. Removal upon Termination. Upon termination or cancellation of this License, Licensee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to as good a condition as existed prior to the installation of this License, satisfactory to the Licensor, and if Licensee fails to restore the Siren Site to a condition satisfactory to the Licensor, Licensor shall have the right to charge Licensee, and Licensee shall be solely responsible for, any and all costs and expenses incurred by Licensor in completing and accomplishing such restoration, including, but not limited to any costs the Licensor incurs in removing and disposing of Licensee's Equipment.

19. Default.

i) Notice of default. If Licensee defaults on or otherwise fails to perform its obligations under this License, Licensor will issue a written notice of default to Licensee by hand-delivery or first-class mail.

ii) Licensee to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the Licensor's satisfaction within fifteen (15) days of the date of the Licensor's written notice to Licensee or such further time as may be authorized by the Licensor in writing. Licensee's failure to construct the Equipment in accordance with the plans and specifications approved by Licensor shall be deemed a default of this License.

iii) City remedies for failure to cure. If Licensee fails to cure said defaults or failures to perform within the required time, the Licensor may, but shall not be obligated to, cure

or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure and remedy to Licensee, who shall immediately pay said costs and expenses to the Licensor upon receiving notice from the Licensor.

20. Costs and Attorneys' Fees. In the event of any litigation by reason of this License, Licensor and Licensee agree that each shall be responsible for their own attorney fees and costs and not for the attorney fees and costs of the other party. Nothing contained herein shall preclude Licensor or Licensee from pursuing an award of attorney fees and costs against any third party in any related litigation.

21. Agreement/Amendments. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments of this License must be in writing and executed by both parties.

22. Compliance with Laws. Licensee, at all times during the term of this License, shall comply with all of the requirements of federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force.

23. Binding Effect. All provisions contained in this License shall be binding upon and inure to the benefit of the respective parties, their successors, and officers, agents, and employees or any person acting for and on their behalf.

IN WITNESS WHEREOF, the parties, represented by the County Department Head for the Licensor and the Vice Director of Civil Defense for the Licensee, have caused these presents to be executed the day and year first above written.

CITY AND COUNTY OF HONOLULU

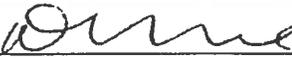
By _____
Its

"LICENSOR"

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

STATE OF HAWAII
By its Department of Defense

By 

Doug Mayne
Hawaii State Civil Defense
Vice Director

"LICENSEE"

APPROVED AS TO FORM:


Deputy Attorney General
State of Hawaii

EXHIBIT A (Page 1 of 2)
SITE LOCATION MAP

ISLAND: Oahu
SITE NUMBER: 316
SITE NAME: Nanakuli Beach Park

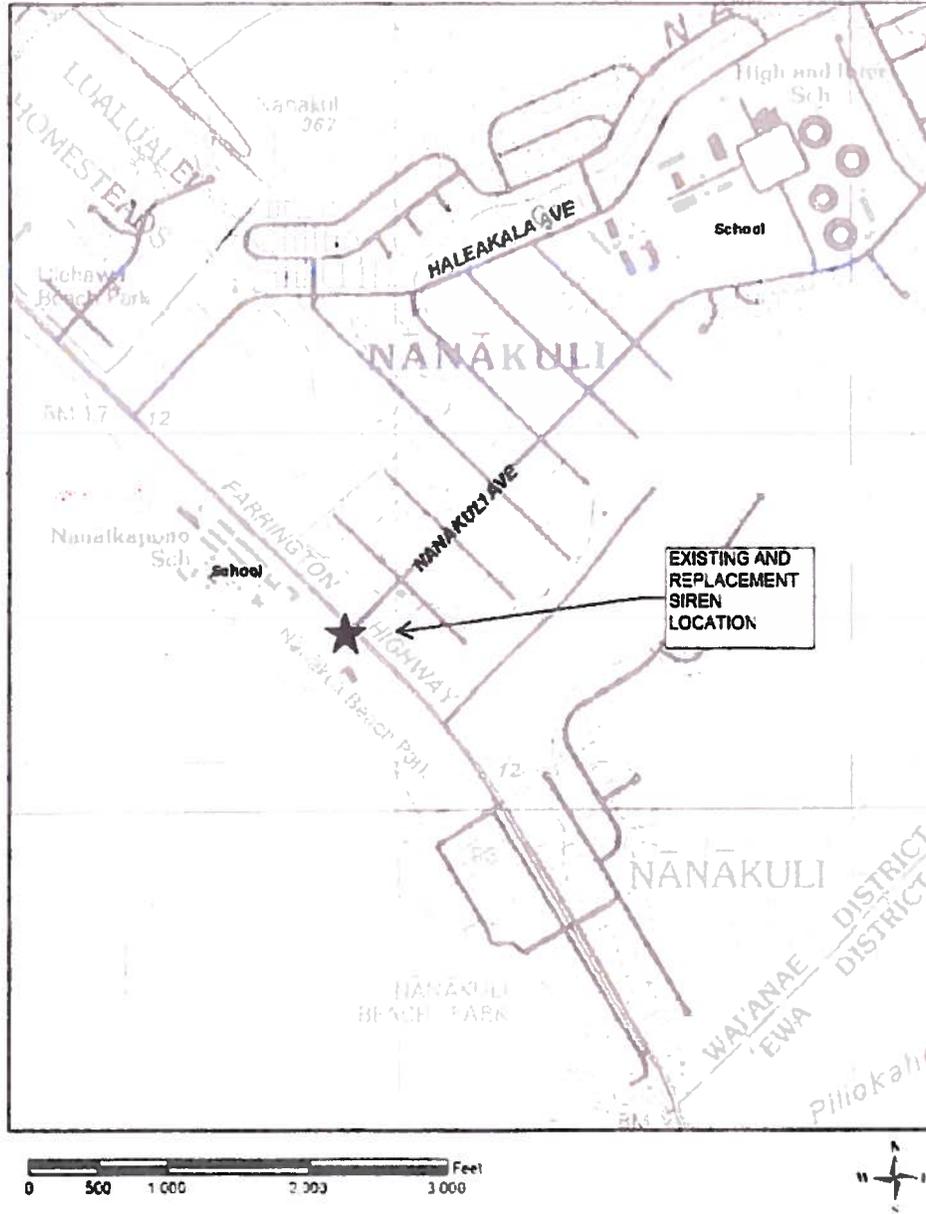


EXHIBIT A (Page 2 of 2)

ISLAND: Oahu
SITE NUMBER: 316
SITE NAME: Nanakuli Beach Park

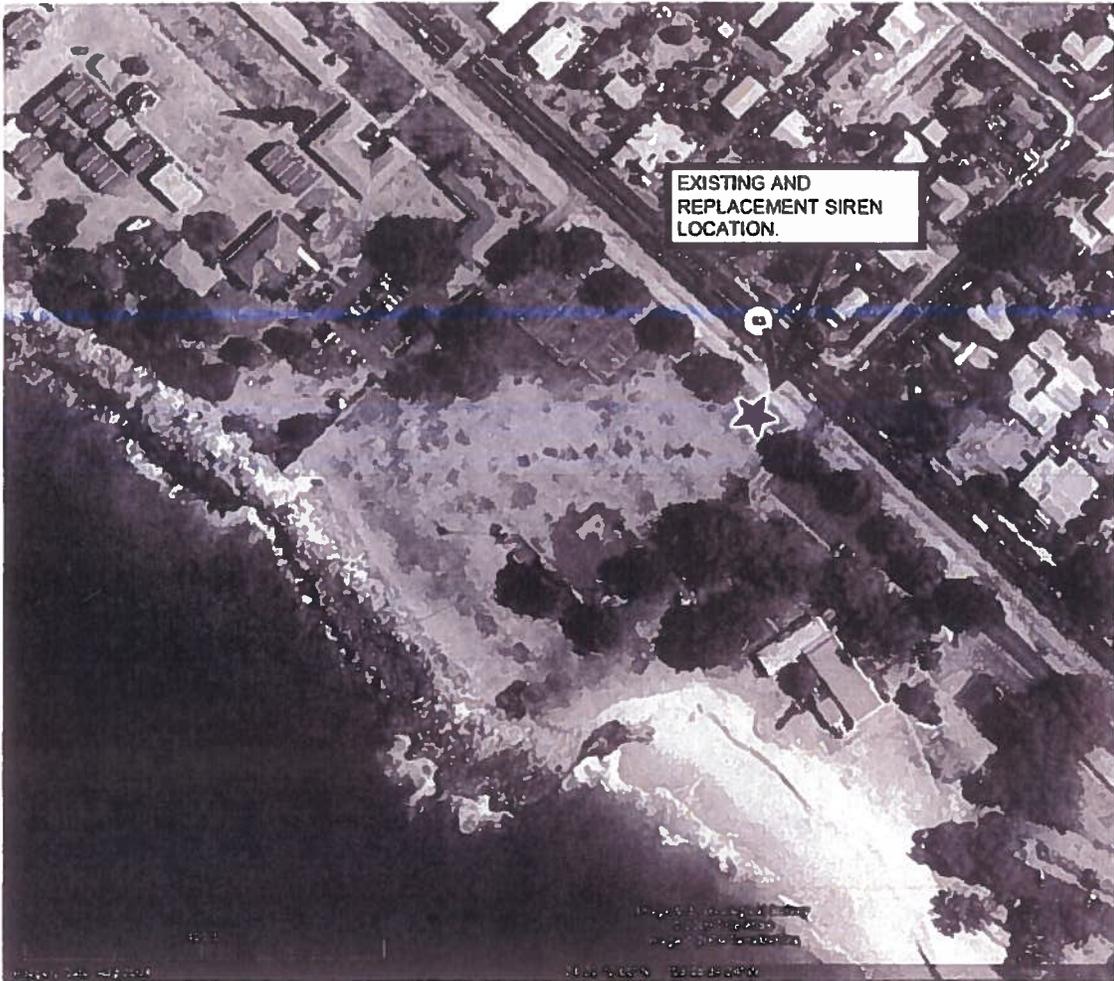
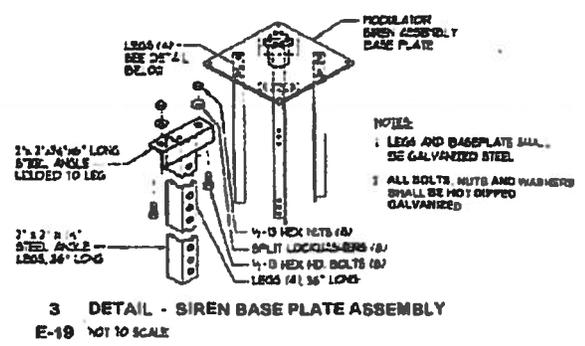
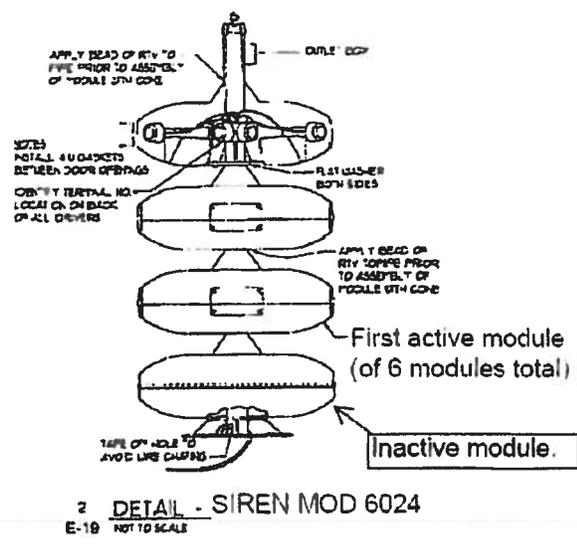
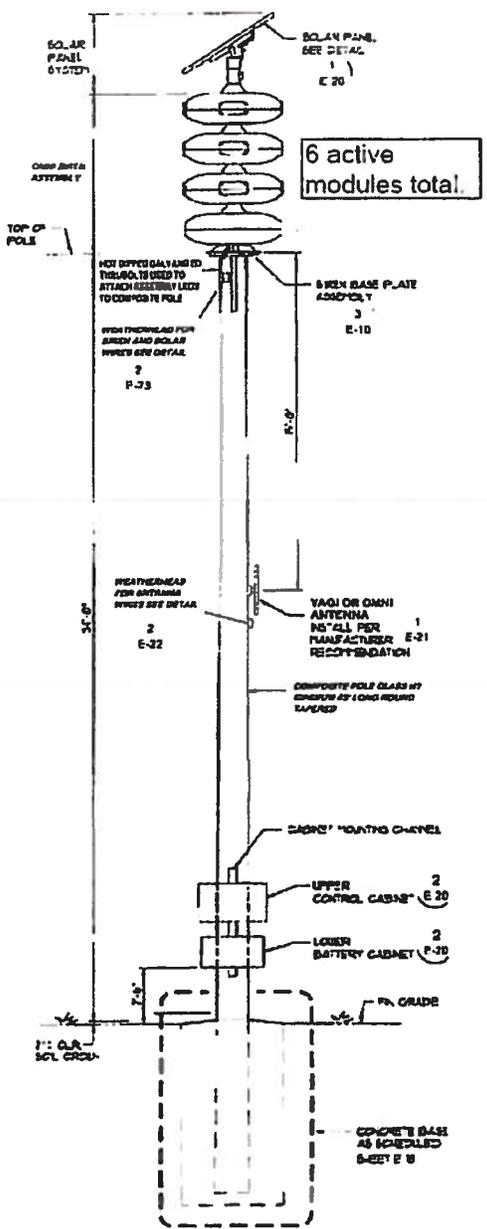


EXHIBIT B



Hawaii State Civil Defense
 POLE ELEVATION, SIREN AND BASEPLATE DETAIL
 Siren Type MOD 6024

REV	DATE	BY	CHKD