

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

May 27, 2016

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

LOPP 0286  
  
(Hawaii)

Approval of (1) Amendment to Sublease made by and between the Board of Land and Natural Resources on Behalf of the Department of Accounting and General Services, Office of Enterprise Technology Services, also known as the Information and Communication Services Division ("State"), and the Trustees of the Estate of Bernice Pauahi Bishop ("KS"), which amends the Sublease dated April 30, 2010 between Hualalai Land Corporation ("Hualalai") as Sublessor and the State as Sublessee to Show that KS has Succeeded to the Interest of Hualalai in the Sublease, and (2) Sublessee Estoppel Certificate; Sublease Premises Located in Kaupulehu, Island of Hawaii, TMK no. (3) 7-2-002: Por. 001

APPLICANT:

Department of Accounting and General Services, whose business and mailing address is 1151 Punchbowl Street, Room 412, Honolulu, Hawaii 96813

LANDOWNER AND SUBLESSOR:

Robert Nobriga, Corbett Kalama, Micah Kane, and Lance Wilhelm, as Trustees of the Estate of Bernice Pauahi Bishop, whose address is 567 South King Street, Suite 200, Honolulu, Hawaii 96813

LEGAL REFERENCE:

Section 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Kaupulehu, Island of Hawaii, identified by Tax Map Key: (3) 7-2-002: Por. 001, as shown on attached map labeled Exhibit A.

AREA:

.712 acre (approximate)

ZONING:

State Land Use District:      Agricultural  
County of Hawaii:              Agricultural

CHARACTER OF USE:

Constructing, operating and maintaining a radio communications facility for public safety and public service.

SUBLEASE TERM:

Beginning on the earlier of the date of the sublease, April 30, 2010, or date of sublessee's commencement of actual construction, and terminating on December 30, 2025.

ANNUAL RENT:

From 01/01/2015 to 12/31/2019 (current)      \$1,500 per month  
From 01/01/2020 to 12/31/2025                      \$1,800 per month

DCCA VERIFICATION:

Landowner –  
Place of business registration confirmed:      YES X              NO \_\_  
Registered business name confirmed:          YES X              NO \_\_  
Good standing confirmed:                          YES X              NO \_\_

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This matter is exempt from an environmental assessment under the following:

**Exemption Class 1**

Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

\* \* \*

45. Acquisition of land or interests in land.

\*\*\*

*See Exemption Notification attached hereto and made a part hereof.*

REMARKS:

In 2010, a Sublease Agreement was executed between the Hualalai Land Corporation ("Hualalai"), as sublessor, and the Board on behalf of the Department of Accounting and General Services' Information and Communication Services Division ("DAGS"), as sublessee. Hualalai was the lessee under a lease with the Trustees of the Estate of Bernice Pauahi Bishop ("KS"). The sublease was approved by the Board at its meeting held on November 19, 2009. A copy of the sublease is attached hereto as Exhibit D and the submittal for item D-7 of the November 19, 2009 meeting is attached hereto as Exhibit E. The November 19, 2009 submittal, in part, explains the following:

DAGs, through its Information & Communication Services Division (ICSD), has the responsibility for carrying out the State's telecommunications functions. DAGS-ICSD owns and operates microwave radio transmission systems, antennas, towers, buildings, and related equipment, communication facilities and infrastructure throughout the islands.

The Kaupulehu radio station facility is one of several facilities that comprise the Anuenue radio system. The system is used only by public agencies for public purposes. There is no commercial use of the facilities. The Anuenue project is a partnership between DAGS and the US Coast Guard. Government users of the system include the State Department of Health, Department of Land and Natural Resources, University of Hawaii, County of Hawaii Police Department, US Department of the Interior and US Coast Guard to name a few. The agencies rely on telecommunications to communicate and transmit information and data between offices and facilities as well as to communicate with personnel in the field.

In 2015, Hualalai surrendered its interest in the lease with KS, KS terminated the lease, and Hualalai assigned its interest in the sublease to KS. KS succeeded to the interest of Hualalai in the sublease and elected not to cancel the sublease upon the assignment to KS. In conjunction with KS' succession, KS is asking that a Sublessee Estoppel Certificate be executed by the State, which is attached as Exhibit B. DAGS, through its Office of Enterprise Technology Services, has confirmed the correctness of the statements in the Estoppel Certificate.

DAGS has also represented to DLNR staff that in order for the State to pay rent to KS as the successor to Hualalai, the sublease must be amended to show KS as the sublessor. Thus, the State,

May 27, 2016

as the sublessee, and KS, as the sublessor, must amend the sublease to show that KS is the sublessor under the sublease.

The Amendment of Sublease is attached as Exhibit C. Both the Sublessee Estoppel Certificate and Amendment of Sublease have received preliminary approval by the Department of Attorney General and KS and its attorneys.

RECOMMENDATION:

That the Board:

1. Declare the Amendment of Sublease and Sublessee Estoppel Certificate to be exempt from an environmental assessment as it will probably have minimal or no significant effect on the environment;
2. Approve the above-discussed Amendment to Sublease and Sublessee Estoppel Certificate subject to the following:
  - a. Final review and approval of the Department of Attorney General and attorneys for the Trustees of the Estate of Bernice Pauahi Bishop; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Pamela Matsukawa  
Appraisal and Real Estate Specialist

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
DEPUTY DIRECTOR - WATER

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

**EXEMPTION NOTIFICATION**

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

**Project Title:** Approval of (1) Amendment to Sublease made by and between the Board of Land and Natural Resources on Behalf of the Department of Accounting and General Services, Office of Enterprise Technology Services, also known as the Information and Communication Services Division ("State"), and the Trustees of the Estate of Bernice Pauahi Bishop ("KS"), which amends the Sublease dated April 30, 2010 between Hualalai Land Corporation ("Hualalai") as Sublessor and the State as Sublessee to Show that KS has Succeeded to the Interest of Hualalai in the Sublease, and (2) Sublessee Estoppel Certificate; Sublease Premises Located in Kaupulehu, Island of Hawaii, TMK no. (3) 7-2-002: Por. 001

**Project / Reference No.:** LOPP 0286

**Project Location:** Kaupulehu, Island of Hawaii, Hawaii, TMK no. (3) 7-2-002: Por. 001

**Project Description:** Change of Sublessor (State is Sublessee)

**Chap. 343 Trigger(s):** Use of state funds

**Exemption Class and Description:** In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to:

**Exemption Class 1**

Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

\* \* \*

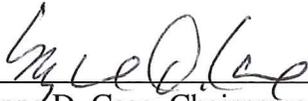
45. Acquisition of land or interests in land.

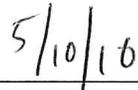
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Therefore, staff recommends the Board declare the project exempt from the preparation of an environmental assessment.

Consulted Parties: Not applicable

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

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

  
\_\_\_\_\_  
Date



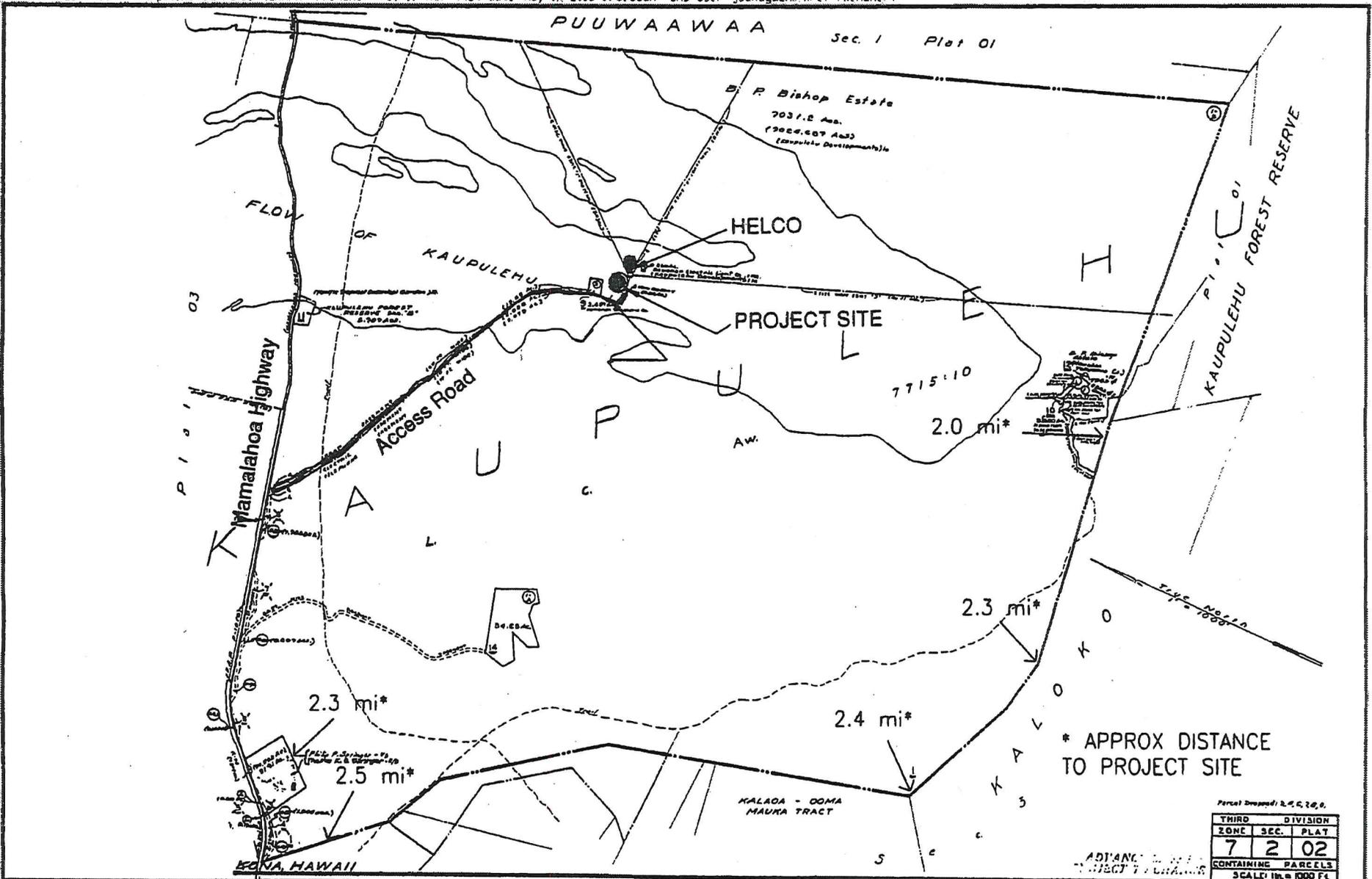


EXHIBIT A



**WILSON OKAMOTO CORPORATION**  
ENGINEERS | PLANNERS | CONSULTANTS

INFORMATION COMMUNICATION SERVICES DIVISION ANUENUE RADIO SITES AND TOWERS, KAUPULEHU SITE

**TAX MAP KEY**

FIGURE  
**1.3**

**SUBLESSEE ESTOPPEL CERTIFICATE**

SUBLESSEE: State of Hawaii by its Board of Land and Natural Resources, on behalf of the Department of Accounting and General Services, Office of Enterprise Technology Services, also known as the Information and Communication Services Division

SUBLESSOR: Hualalai Land Corporation

ASSIGNEE: Trustees of the Estate of Bernice Pauahi Bishop

SUBLEASE: Sublease Agreement, dated April 30, 2010 by and between Sublessor and Sublessee, as amended by that certain Amendment to Sublease Agreement effective September 2, 2015 by and between Sublessor and Sublessee

SUBLEASED PREMISES: Certain parcel of land located on the Island of Hawaii, State of Hawaii with Tax Map Key No. (3) 7-2-002:Portion of 001 and the improvements located thereon.

In connection with Assignee's assumption of the Sublease, Sublessee certifies to Assignee, its successors and assigns, that as of \_\_\_\_ day of \_\_\_\_\_, 20\_\_, to the best of its knowledge:

1. All capitalized terms not defined herein shall bear the meanings ascribed to such terms in the Sublease.
2. As far as Sublessee is aware, the Sublease, as set forth above, is in full force and effect, and has not been modified, supplemented or amended in any way, except as set forth above; the Sublease is the entire agreement between the parties and/or Sublessee's rights with respect to the Subleased Premises. Sublessee has not executed any Subleases or assignments of the Sublease, and Sublessee has not assigned or encumbered its interest in the Sublease.
3. As far as Sublessee is aware, the Sublessor is not currently in default in any of its obligations under the Sublease.
4. Sublessee acknowledges that the statements contained in this Sublessee Estoppel Certificate may be relied upon by Sublessor and Assignee and their successors and assigns in connection with the assignment and assumption of the Sublease. The party executing this Sublessee Estoppel Certificate on behalf of Sublessee states that he/she has been authorized to do so on behalf of Sublessee.

APPROVED AS TO FORM:

Executed this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Deputy Attorney General

SUBLESSEE:  
STATE OF HAWAII  
Board of Land and Natural Resources

Dated: \_\_\_\_\_

BY: \_\_\_\_\_  
Name: SUZANNE D. CASE  
Title: Chairperson

## AMENDMENT TO SUBLEASE

THIS AMENDMENT TO SUBLEASE (this “**Agreement**”), effective as of September 2, 2015 (“**Effective Date**”), is made by and between STATE OF HAWAII BY ITS BOARD OF LAND AND NATURAL RESOURCES, ON BEHALF OF THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, OFFICE OF ENTERPRISE TECHNOLOGY SERVICES, ALSO KNOWN AS THE INFORMATION AND COMMUNICATION SERVICES DIVISION, whose address is 1151 Punchbowl Street, #B-10, Honolulu, Hawaii 96813 (“**State**”), and ROBERT K.W.H. NOBRIGA, CORBETT AARON KAMOHAIKIOKALANI KALAMA, MICAH A. KANE, and LANCE KEAWE WILHELM, as Trustees of the Estate of Bernice Pauahi Bishop, whose address is 567 South King Street, Suite 200, Honolulu, Hawaii 96813 (“**KS**”).

### 1. BACKGROUND.

**1.1 Sublease.** This Agreement addresses that certain Sublease dated April 30, 2010, originally between Hualalai Land Corporation, a Hawaii corporation (“**Hualalai**”), as sublessor, and the State, as sublessee, (the “**Sublease**”). The Sublease demises that certain parcel of land identified by Tax Map Key No. (3) 7-2-002:Portion of 001 and improvements thereon, as more particularly described in the Sublease (collectively, the “**Demised Premises**”).

**1.2 KS as Lessor/Sublessor.** Pursuant to that certain instrument effective September 2, 2015, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-57230371, (i) Hualalai surrendered its interest in that certain Lease No. 28,885 dated August 23, 1961, as may have been amended (the “**Lease**”), to KS, (ii) Hualalai and KS terminated the Lease, and (iii) Hualalai assigned any interest it had in the Sublease to KS. KS has succeeded to the interest of Hualalai and elected not to cancel the Sublease upon such assignment.

**1.3 Amendment.** KS, as the successor to Hualalai’s interest in the Sublease, and the State, as the current sublessee under the Sublease, desire to amend the Sublease to show that KS is the sublessor under the Sublease.

### 2. AGREEMENT.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and for the mutual benefits accruing to KS and the State by this Agreement, they confirm and agree that, as of the Effective Date, KS is the sublessor under the Sublease.

### 3. GENERAL PROVISIONS.

**3.1 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of State and KS and their respective successors, successors in trust, and assigns.

**3.2 Captions; Construction of Terms.** The captions used in this Agreement are for convenience only and do not limit or amplify the provisions of this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and according to its fair meaning, and not strictly for or against the State or KS. In addition, the construction of this Agreement and any of its various provisions shall be unaffected by any argument or claim, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of State or KS.

EXHIBIT C

**3.3 Counterparts.** This Agreement may be executed in as many counterparts as may be deemed necessary or convenient, and by the parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

**3.4 Completion of Blanks.** The parties agree that either party is authorized to complete any blanks contained in this Agreement with the applicable information, whether before or after this Agreement has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this Agreement by means of the insertion of new content.

**3.5 Limitation of Liability.** This Agreement has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this Agreement shall be imposed or assessed against said Trustees in their individual capacities.

[SIGNATURES TO BEGIN ON THE NEXT PAGE]

The State and KS have executed this Agreement effective as of the Effective Date.

Approved as to Content, Authority, and Compliance with KS Policy:

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Vice President/Director

Approved as to Form:

\_\_\_\_\_  
Legal Group

\_\_\_\_\_  
Retained Counsel Cades Schutte LLP

TRUSTEES OF THE ESTATE OF BERNICE  
PAUHI BISHOP, AS AFORESAID

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**“KS”**

DEPARTMENT APPROVED:

\_\_\_\_\_  
Comptroller, Department of Accounting  
and General Services

Date: \_\_\_\_\_

STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

By \_\_\_\_\_

SUZANNE D. CASE

Chairperson

Date: \_\_\_\_\_

**“State”**

Approved by the Board of Land  
and Natural Resources at its meeting  
held on \_\_\_\_\_.

APPROVED AS TO LEGALITY, FORM,  
EXCEPTIONS, AND RESERVATIONS:

\_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_

## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT made on April 30, 2010, by and between HUALALAI LAND CORPORATION, a Hawaii corporation, whose address is c/o Cox Enterprises, Inc., 6205 Peachtree Dunwoody Road, Atlanta, Georgia 30328, hereinafter called "Sublessor," and the STATE OF HAWAII, by its Board of Land and Natural Resources, on behalf of the Department of Accounting and General Services, Information and Communication Services Division, hereinafter called "Sublessee," pursuant to Section 171-30, Hawaii Revised Statutes, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813.

### WITNESSETH:

**WHEREAS**, Sublessor leases approximately 7,065 acres of land on the Island of Hawaii, State of Hawaii, being TMK (3) 7-2-02-01, hereinafter called the "Property" from the Trustees of the Estate of Bernice Pauahi Bishop ("Property Owner") pursuant to Lease No. 28,885 dated August 23, 1961, but effective as of January 15, 1961, as amended, a memorandum of which is dated May 4, 2010, and recorded in the Bureau of Conveyances of the State of Hawa'i as Document No. 2010-060664 (the "Master Lease"), and

**WHEREAS**, Sublessee desires to use a portion of the Property in an area known as "Kaupulehu" for the purpose of constructing, operating and maintaining a radio communications facility for public safety and public service; and

**WHEREAS**, Sublessor and Sublessee desire to memorialize their understandings and agreements relative to Sublessee's use and occupancy of the Property;

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter contained, the parties do hereby agree as follows:

### **ARTICLE I. SUBLEASE COUPLED WITH AN INTEREST**

**Section 1.1. Sublease.** The Sublessor in consideration of the rent and covenants hereinafter reserved and contained and on the part of the Sublessee to be paid, observed and performed, does hereby grant unto the Sublessee (a) a Sublease to use that certain 0.712-acre (approximate) area of land located within the area known as "Kaupulehu," island of Hawaii (TMK (3) 7-2-02: portion of 1) (the "Subleased Area"), as shown in Exhibit "A", for the purpose of constructing, operating and maintaining a radio communication facility ("Facility") for public safety and public service as shown in Exhibit "B", (b) power, communication, and electrical grounding easements as shown on Exhibit "B", (c) shared use of the access roadways, (d) permission, subject to the prior approval of Sublessor in each case, to trim back nearby trees and vegetation when necessary to enable the clear passage of microwave signals, and (e) if access to the Facility is not already available via public roads, a nonexclusive easement for access to the Facility in such location as from time to time designated by Sublessor. Sublessor makes no representations or warranties regarding the Subleased Area, except as expressly provided in this

**EXHIBIT D**

Sublease.

In consideration of the aforesaid, it is expressly understood and agreed by the parties that Sublessee has contractual rights only and this Sublease does not grant, transfer or convey to Sublessee any right, title or interest whatsoever in or to any portion or all the Subleased Area. Sublessor reserves access to and use of the land around the Facility.

## ARTICLE II. TERM

**Section 2.1. Term.** The term of this Sublease shall commence on the earlier of (i) the date hereof and (ii) the date on which Sublessee commences actual construction activities on the Subleased Area whether under this Sublease or any right of entry agreement between the parties hereof (the "Commencement Date") and continue for a term ending on December 30, 2025, subject to termination as provided below.

**Section 2.2. Sublessee's Additional Right to Cancel Sublease.** Subject to the conditions set forth in this Sublease regarding termination and surrender, Sublessee shall have the right to cancel this Sublease at any time under the following conditions:

- a. Should Sublessee's public funding or allotment by the Director of the Department of Budget and Finance be substantially cut; or
- b. The program and/or agency is abolished, terminated, reorganized or substantially downsized;

Provided, however, that Sublessee provides Sublessor with appropriate evidence of either a or b above and gives Sublessor a minimum of ninety (90) days prior written notice to cancel.

**Section 2.3. Termination and Removal.** Termination or cancellation shall not be a waiver of rights which may have accrued or may thereafter accrue under the Sublease based upon or pertaining to the period prior to and including the effective date of such termination. At termination or cancellation, Sublessee shall, upon request of Sublessor and at Sublessee's expense, promptly remove all or any portion of the Facility as requested by Sublessor and restore the Subleased Area to its original condition.

**Section 2.4. Holdover.** In the event Sublessee continues to use or occupy the Subleased Area after the expiration, termination or cancellation of this Sublease with the consent of Sublessor but without the execution of a new agreement, Sublessee shall be deemed to be using the Subleased Area as a Sublessee from month to month, subject to all of the conditions, provisions and obligations of this Sublease insofar as the same are applicable to a month-to-month tenancy except that the license fee shall be the greater of fair market rental value at highest and best use as established by Sublessor or the rent in effect immediately preceding expiration of the term. Sublessee shall pay double the foregoing rate for holding over without the consent of Sublessor and Sublessor shall be entitled to eject Sublessee.

**Section 2.5. Extension of Time.** Notwithstanding any provision contained herein to the contrary, whenever applicable, the Sublessor, at the Sublessor's sole discretion, may for good cause shown, allow additional time beyond the time or times specified herein to the Sublessee, in which to comply, observe and perform any of the payments, terms, conditions and covenants contained herein. Any such extension(s) shall not entitle Sublessee to any future extension(s).

**Section 2.6. Future Use of the Subleased Area.** The beneficial use of the Subleased Area by the Sublessee includes those communications systems that are used by State, local, and federal government agencies or by entities sponsored by the State or local governments that are not-for-profit in nature and /or have a defined role in assisting the government in times of disaster or emergency. The Sublessee shall not use the Subleased Area or permit the use of the Subleased Area for commercial business or in support of commercial, for profit, or fee for service communications traffic of any kind. Subject to the foregoing, the Sublessor agrees that the Sublessee may enter into agreements with others to use the Subleased Area without further consent of the Sublessor provided the following:

- (a) No fees or rents other than recovery of pro-rata electric utility and/or generator fueling costs are charged or paid;
- (b) The Sublessee provides the Sublessor copies of any agreements made with agencies or entities as described in this Section.

### **ARTICLE III. RENT**

**Section 3.1. Base Rent.** Starting from the Commencement Date, Sublessee agrees to pay to Sublessor a base rent in advance on or before the first day of each and every calendar month (with any partial month to be pro-rated) during the term of this Sublease, without demand or offset, at the following rates:

|                                       |                   |
|---------------------------------------|-------------------|
| Commencement Date through 12/31/2014: | \$1,200 per month |
| 01/01/2015 – 12/31/2019:              | \$1,500 per month |
| 01/01/2020 – 12/31/2025:              | \$1,800 per month |

**Section 3.2. Security Deposit.** No security deposit of any kind shall be required to be paid by Sublessee.

**Section 3.3. Real Property Tax.** Sublessee shall be liable for its pro rata share of real property taxes to be paid as additional rent. However, the Sublessee may obtain an exemption from real property taxes under Hawaii Revised Statutes Section 246-36(2), and upon granting of the exemption, the Sublessor's real property taxes will be reduced by the Sublessee's pro rata share. Accordingly, after the effective date of the Sublessee's tax exemption, neither the pro rata share nor the real property taxes of others shall be actually assessed to or collected against the Sublessee in any form and additional rent relating to the real property taxes shall no longer be payable by the Sublessee.

**Section 3.4. General Excise Taxes.** The Sublessee shall pay to the Sublessor as additional rent, together with each payment of rent or any other payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as the same may be amended, and all other similar taxes imposed on the Sublessor on the rent or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like, an amount which, when added to the rent or other payment shall yield to the Sublessor, after deduction of all taxes payable by the Sublessor with respect to all payments, a net amount equal to that which the Sublessor would have realized from the payments had no taxes been imposed. As an example, the State of Hawaii general excise tax on gross income will be currently charged at a rate of 4.166%.

**Section 3.5. Operating Costs and Utilities.** Sublessee shall be responsible for all operating and maintenance costs which include, without limitation, all costs of any kind, incurred in operating, cleaning, equipping, protecting, lighting, repairing, managing, insuring, replacing and maintaining the Facility and the Subleased Area, including utility service costs and landscaping; provided, however, that upon request of Sublessee, Sublessor may agree, in its sole discretion but without obligation, to perform repairs on behalf of Sublessee and Sublessee shall reimburse Sublessor for the reasonable costs thereof.

**Section 3.6. Conveyance Tax.** Sublessee shall Sublessor as additional rent for any State of Hawaii conveyance tax (if any) which shall be or become payable as a result of this Sublease.

#### **ARTICLE IV. ASSIGNMENT BY SUBLESSOR, ATTORNMENT AND SUBORDINATION**

**Section 4.1. Assignment.** Sublessor may at any time assign, mortgage or otherwise transfer its interests as Sublessor in and to this Sublease, or any portion thereof, to any person, and may at any time sell, mortgage or otherwise transfer its interest in and to all or any portion of the Subleased Area to any person, in each case without the consent or approval of Sublessee. In the event of a sale or conveyance by Sublessor of Sublessor's interest in the Subleased Area, the same shall be subject to this Sublease and shall operate to release the then selling or conveying Sublessor from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of Sublessee, and in such event Sublessee agrees to look solely to the responsibility of the successor in interest of Sublessor in and to this Sublease. Prior to transferring its interest in the Subleased Area, Sublessor shall disclose the existence of this Sublease to its successor in interest in the Subleased Area.

**Section 4.2. Attornment.** Sublessee shall attorn to any assignee, transferee or purchaser of Sublessor from and after the date of notice to Sublessee of such assignment, transfer or sale in the same manner and with the same force and effect as though this Sublease were made, in the first instance, by and between Sublessee and such assignee, transferee or purchaser. In the event of the exercise of the power of sale under, or the foreclosure of, any mortgage, trust indenture or other encumbrance placed by Sublessor against all or any portion of the Subleased Area, Sublessee shall upon demand attorn to the purchaser upon the effective date of any such sale or

foreclosure of such mortgage or other encumbrance, and shall recognize the purchaser or judgment creditor as Sublessor under this Sublease.

**Section 4.3. Subordination.** Sublessee shall, within ten (10) business days of receipt from Sublessor, execute such instruments or further assurances as Sublessor shall deem reasonably necessary, to effectuate the attornment set forth in Section 4.2 above, or to evidence or confirm the subordination of this Sublease to any mortgages, ground leases (including but not limited to the Master Lease referred to in this Sublease), or other instruments.

**Section 4.4. Estoppel Certificate.** Either party (the "Responsive Party") shall at any time upon not less than ten (10) business days' prior written notice from the other party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing (a) certifying that this Sublease as is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect) and the date to which the Sublease fee and other charges are paid in advance, if any, and (b) acknowledging that there are no, to the Responsive Party's knowledge, uncured defaults on the part of the Requesting Party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by the permitted assignee, transferee, purchaser, mortgagee or trustee (under a trust indenture) with respect to the Subleased Area. The Responsive Party's failure to deliver such statement within such time shall be conclusive upon the Responsive Party (i) that this Sublease is in full force and effect, without modification except as may be represented by the Requesting Party, (ii) that there are no uncured defaults in the Requesting Party's performance under this Sublease, and (iii) that no more than one (1) month's Sublease fee has been paid in advance.

#### **ARTICLE V. HOURS OF ENTRY**

Sublessee shall be entitled to access to and the quiet enjoyment of the Subleased Area at all times during the term of this Sublease.

#### **ARTICLE VI. NUISANCES**

Sublessee assumes and accepts all risks of nuisances, sprays, odors, chemicals, dust, noise, gun shots, vibration and other effects of Sublessor's or its designees' uses of the neighboring property (including but not limited to hunting), even if such uses have an effect on Sublessee's use of the Subleased Area. Sublessee hereby assumes complete risk of and forever releases Sublessor from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Subleased Area and arising out of any use of the neighboring property permitted by law.

#### **ARTICLE VII. OPERATION OF SUBLESSEE'S BUSINESS**

**Section 7.1. Use of Subleased Area.** Sublessee will use the Subleased Area only as permitted in Article I above. Any other activities, including other communications-related activities or the installation of other electronic or communications-related equipment, are prohibited unless previously approved in writing by Sublessor, which approval may be given or

withheld in Sublessor's sole discretion, and which may be conditioned upon the payment of additional sums and fees to Sublessor and a change in the terms of this Sublease. Sublessee shall comply with all laws, rules, regulations and ordinances made by any government authority applicable to Sublessee's use of the Subleased Area and the Facility. Sublessee assumes all risks as to the suitability of the Subleased Area for the permitted use.

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

Sublessee shall rely solely on its rights under FCC guidelines and Federal law in the case of interference with the operations of radio systems within the Subleased Area. Sublessee understands that Sublessor does not hold itself out as having telecommunications expertise. Sublessor shall have the right to locate other telecommunications equipment and service providers in the vicinity of the Subleased Area, provided that the new equipment and/or service providers do not block or obstruct any microwave radio paths in operation to and from the Subleased Area.

**Section 7.2. Necessary Approvals.** Sublessee shall be responsible for obtaining all necessary government approvals and Sublessor shall have no obligations with respect thereto; provided, however, Sublessor agrees to execute such consents and to cooperate with Sublessee, at Sublessee's sole expense, to the extent it may be necessary to obtain and maintain the necessary approvals, subject to Section 7.4 below.

**Section 7.3. Construction of Sublessee's Improvements.** Sublessee shall not construct any improvements nor make any alterations to the Subleased Area or the Facility without Sublessor's prior written consent with the exception that the Sublessee may replace, modify, or add antenna systems at any time without prior written consent of the Sublessor. All such construction and alteration shall be completed in good workmanlike manner using only new materials, in accordance with governmental regulations, and free and clear of any liens or claims for work, labor or materials. Sublessee agrees to cause all of its contractors performing work on, in or about the Subleased Area to indemnify and hold harmless Sublessor against any liens or damage to the Subleased Area or personal injury or death caused by such construction or alteration, and to provide Sublessor with a certificate of insurance evidencing compliance with Sublessor's insurance requirements attached hereto as Exhibit "C". Sublessee is solely responsible for connecting all required utilities to the Facility, and for compliance with the terms of Section 7.4. Sublessee shall be solely responsible to obtain all required permits and approvals at Sublessee's sole cost.

**Section 7.4. Consent Required For Utilities, Improvements and Landscaping.** Sublessee shall use its best efforts to make the Facility and improvements in the Subleased Area as inconspicuous and unobtrusive as possible. Prior to the construction or alteration of any improvements or installation of any power lines or other utilities, Sublessee shall submit to Sublessor for Sublessor's review and consent the design plans for any improvements or

alterations or utilities in the Subleased Area, which plans shall include a construction plan, and renderings to show how such plans comply with this Section. Sublessor may withhold consent on various grounds, including but not limited to aesthetic, health, safety and operational reasons. In addition, Sublessor will not consent to any structure, where the tower structure exceeds 150 feet in height or where the appurtenances thereto exceed an additional 25 feet in height. Sublessor shall have the right to withhold consent in its sole discretion as to any equipment, improvement or other item not shown in Exhibit "B". Consent by Sublessor shall not be deemed a warranty or representation as to the adequacy of Sublessee's plans in any way and Sublessee shall be solely liable for complying with all legal and engineering requirements. All of Sublessee's visible improvements, including but not limited to the Facility, cables and antennae, shall be painted with a color or colors acceptable to Sublessor, provided that such colors are available as a standard option from the original equipment manufacturer and in accordance with governmental and environmental approvals received by the Sublessee. Sublessor's approval of any plans, specifications, or drawings shall not be deemed to be a warranty or other representation on Sublessor's part as to the accuracy, completeness, or suitability of such plans, specifications, or drawings or that the improvements therein described are legal or structurally safe or sound, and Sublessee shall not be relieved from its responsibility for any errors or omissions therein or any consequences arising from construction pursuant to such approved plans.

Prior to the commencement of any such construction or alteration, Sublessee also will furnish to Sublessor the name and license number of any and all contractors performing work on behalf of Sublessee, an executed copy of the contract(s) for construction and an executed copy of a bond procured by the contractor in an amount not less than one hundred percent (100%) of the contract price and in a form and with one or more sureties satisfactory to Sublessor, naming Sublessee and Sublessor as obligees and conditioned for the full performance of the contract in accordance with plans and specifications so approved by Sublessor, including the payment of all subcontractors, labor, and materialmen, without cost to Sublessor; provided, however, that no bond shall be required for a construction or alteration project costing \$50,000 or less in the aggregate. Without limiting the conditions upon which Sublessor's consent may be withheld, it shall be reasonable for Sublessor to withhold its consent if (a) Sublessee is unable to verify its source of funds and cost of improvements to Sublessor's satisfaction, or (b) Sublessee does not submit plans and specifications prepared by a licensed architect or engineer certifying that the improvements shown in the plans and specifications comply with all applicable legal requirements, or (c) Sublessor does not approve of the appearance of the proposed improvements, or (d) Sublessee is not in compliance with any of the provisions of this Sublease, or (e) Sublessee's contractor is not approved by Sublessor, or (f) Sublessee's contractor is unable to provide the types and amounts of insurance and bonding against liens as may be required by Sublessor.

**Section 7.5. Ownership of Improvements and Alterations.** Sublessee shall have the right to remove from the Subleased Area at any time during the term of this Sublease before the expiration or termination of this Sublease, any improvements or alterations Sublessee has made to the Subleased Area, provided that Sublessee at its own cost promptly restores any damage to the Subleased Area caused by such removal.

Any improvements or alterations remaining on the Subleased Area upon Sublessee's surrender of the Subleased Area to Sublessor on expiration of termination of this Sublease shall become the property of the Sublessor, except that Sublessor may elect within thirty (30) days before the expiration of the term of this Sublease, or within thirty (30) days after the termination of this Sublease, require the Sublessee, at Sublessee's cost, to remove any improvements or alterations that Sublessee has made to the Subleased Area. The provisions contained in this Section 7.5 shall survive the expiration, termination, assignment or cancellation of this Sublease.

**Section 7.6. Funds for Construction and Operation of the Facility.** Sublessee represents that (a) funds from the Sublessee's general fund will be used to construct the Facility; (b) the rents for the term of this Sublease will be paid from the operational budget of the Department of Accounting and General Services or a successor State agency; and (c) the Subleased Area and Facility will be used as set forth in Section 2.6 above (e.g., to upgrade and accommodate the radio communications infrastructure needs of State, county, and federal agencies in support of a statewide system for law enforcement, public safety, emergency response and civil defense missions).

#### **ARTICLE VIII. MAINTENANCE AND REPAIRS**

Sublessee shall be responsible during the term of this Sublease for maintaining the Facility and Sublessee's improvements in the Subleased Area in good condition and repair, structurally and aesthetically, and for keeping the Subleased Area free from debris and waste. Sublessee shall comply with all laws pertaining to the Facility and the use of the Subleased Area at Sublessee's sole expense. If Sublessee fails to remove debris and waste from the Subleased Area within a reasonable time after receiving from Sublessor demand for such removal, Sublessor shall have the right but not the obligation to enter the Subleased Area and remove such debris and waste at Sublessee's expense. ONE HUNDRED FIFTY percent of the reasonable expenses incurred by Sublessor in carrying out such a removal shall be deemed to be an additional fee payable by Sublessee for the use of the Subleased Area and shall be payable by Sublessee within thirty (30) days of such written notice from Sublessor.

#### **ARTICLE IX. ASSIGNMENT AND SUBLETTING**

Sublessee will not assign this Sublease or any interest therein or hypothecate, mortgage or in any way create any lien on this Sublease or any interest therein, without the consent in writing of Sublessor first had and obtained, which consent may be withheld in Sublessor's sole and absolute discretion. Notwithstanding the above, Sublessee may assign this Sublease to another State agency upon written notice to Sublessor.

Unless otherwise described herein, Sublessee shall not sublet the Subleased Area or otherwise permit third parties to install or operate other communications, electronic or related equipment in the Subleased Area or on the Facility without the prior written consent of Sublessor, which consent may, in the Sublessor's sole discretion, be withheld or conditioned upon the payment of additional sums or fees to Sublessor, or a change in the terms of this Sublease. Without limiting the generality of the foregoing, it shall be reasonable for Sublessor to receive fifty percent (50%) of all consideration received by Sublessee as a condition to giving

such consent. Nothing in this Sublease shall prevent Sublessor or others from using the neighboring property or any other property for communications or any other purposes, provided, however, that such use of the neighboring property does not interfere with Sublessee's use and occupancy of the Facility and Subleased Area.

#### **ARTICLE X. SUBLESSEE'S RESPONSIBILITIES, LIABILITY, AND INSURANCE**

**Section 10.1. Sublessee's Responsibilities.** The Sublessee shall be responsible for damage or injury caused by the Sublessee's officers and employees or contractors in the course and scope of their employment by Sublessee or damage or injury arising from Sublessee's presence on, or use or occupancy of the Subleased Area.

Sublessee agrees that it shall be liable, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Actions By and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act) for all claims.

**Section 10.2. Liability of Sublessor.** The Sublessor shall not be liable to the Sublessee for damage to person or property arising for any reason, except that the Sublessor shall be liable to the Sublessee for damage to the Sublessee resulting from any gross negligence or willful misconduct of the Sublessor or its authorized representatives.

**Section 10.3. Insurance.** Sublessee as a sovereignty, is self-insured, and is not required to procure and maintain insurance relating to its use and occupancy of the Subleased Area or its operations. Sublessee shall be completely responsible for all risk of loss or damage to Sublessee's property at the Subleased Area, no matter the cause of loss or damage.

**Section 10.4. Sublessee's Prohibited Articles.** Sublessee agrees that it will not engage in any activity, or keep or use any article, in or about the Subleased Area, which may be prohibited by the standard form of commercial liability insurance policy.

**Section 10.5. Survival.** The Sublessee's obligations under this Article shall survive the expiration, termination or cancellation of this Sublease.

#### **ARTICLE XI. EXPENSES OF ENFORCEMENT**

If: (a) Sublessor shall, without fault on its part, be made a party to any litigation commenced by or against Sublessee arising out of Sublessee's occupancy of the Subleased Area or any act of Sublessee concerning the Subleased Area or this Sublease, or (b) suit shall be brought for recovery of possession of the Subleased Area, for the recovery of rent or any other amount due under the provisions of this Sublease, or because of Sublessee's breach of any other covenant herein and a breach shall be established, or (c) Sublessor incurs expenses in enforcing without litigation any of the covenants, conditions or agreements contained in this Sublease, including without limitation, expenses incurred to protect its interests in the event that Sublessee becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or files any debtor proceedings or initiates (or has initiated against it) any proceedings under the United

States Bankruptcy Act, then Sublessee shall pay to Sublessor, all reasonable expenses incurred by Sublessor in connection therewith.

## **ARTICLE XII. LIENS**

Sublessee will not commit or suffer any act or neglect whereby the Subleased Area or any improvements thereon, or the estate of Sublessee therein, shall at any time become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, Sublessee shall pay all utility charges, assessments and other costs attributable to Sublessee's use of the Subleased Area.

## **ARTICLE XIII. DEFAULT**

This Sublease is upon the continuing express condition that, if Sublessee shall fail to pay the Sublease fee or any part thereof or any other monies which under the provisions of this Sublease Sublessee shall be obligated to pay, on or before the dates the same have become due and payable and such non-payments shall continue for thirty (30) days following written notice to Sublessee, or if Sublessee shall fail in any other respect faithfully to observe or perform any condition or covenant in this Sublease contained and on Sublessee's part to be observed and performed and any such default shall continue for thirty (30) days following written notice to Sublessee, then and in any such event Sublessor may at once enter into and upon the Subleased Area or any part thereof in the name of the whole, and upon or without such entry at Sublessor's option terminate this Sublease, without service of notice or legal process, and thereupon take possession of the Subleased Area and thereby become wholly vested with all right, title and interest of Sublessee therein and may expel and remove from the Subleased Area Sublessee and/or those claiming under Sublessee and their effects, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby, and without prejudice to any other remedy or right of action which Sublessor may have for collection of Sublease fees or for other or preceding breach of covenant by Sublessee. Any amounts owing by Sublessee to Sublessor under the terms of this Sublease shall carry interest from the date the same becomes due until paid at the lower of two percent (2%) per month or the maximum rate then allowed by law.

## **ARTICLE XIV. WAIVER OF BREACH**

The waiver by Sublessor or Sublessee of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant or condition herein contained; and no covenant herein shall be deemed to have been waived by either party unless such party has waived such covenant in writing.

## **ARTICLE XV. NOTICES AND SERVICE OF PROCESS**

Any notice may be given by either party to the other by delivering the same to such other party, in writing, or by mailing same by United States certified mail in an envelope with sufficient postage prepaid thereon addressed to such party at the party's address shown on page 1 of this Sublease or such other address as provided in writing by such party. For the purpose of this Article, either party may change its address by written notice to the other. Time shall begin

to run from actual receipt or refused delivery. The foregoing shall not preclude any other method of providing written notice to a party including, without limitation, reputable overnight delivery service.

#### **ARTICLE XVI. UTILITIES; GRANT OF ACCESS(S) TO HELCO**

Sublessor shall reasonably cooperate with Hawaii Electric Light Company ("HELCO"), at Sublessee's expense, in HELCO's efforts, if any, to provide service to Sublessee. Sublessor may require all facilities relating to electrical service to be located in such portion of the neighboring property as designated by Sublessor. Sublessee will pay all invoices received by the Sublessee for service and utility charges before they are due, including but not limited to electricity, trash and other charges of every description for services and utilities provided to or to which the Subleased Area or the Facility or any part thereof including any improvements thereon or Sublessor or Sublessee in respect thereof may during the term of this Sublease or during Sublessee's use of the Facility or Subleased Area become liable, whether assessed to or payable by Sublessor or Sublessee, before the dates in which said utility charges and other charges become delinquent. If Sublessee is using services or utilities through Sublessor, Sublessee shall pay to Sublessor or Sublessor's designee Sublessee's share of such charges as determined by Sublessor in its reasonable discretion before such charges become due. Sublessee shall pay all costs to upgrade any systems and equipment if such upgrade is required in order to provide services or utilities to Sublessee.

#### **ARTICLE XVII. ENCUMBRANCES**

This Sublease is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this Sublease, Sublessor may create easements and encumbrances upon the Subleased Area in addition to any existing easements and encumbrances, provided that any such new easements or encumbrances upon the Subleased Area do not unreasonably restrict or interfere with Sublessee's use of the Subleased Area.

#### **ARTICLE XVIII. HAZARDOUS MATERIALS**

**Section 18.1. Definitions.** As used in this Sublease the following terms have the following meanings:

"Hazardous Material" means any substance: (a) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or (b) which is or becomes defined as a "hazardous waste," "hazardous material," "toxic substance," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Sections 2601 through 2629), the Safe Drinking Water Act (42 U.S.C. Sections 300f through 300j); or (c) which is toxic,

explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, a petroleum product, asbestos, polychlorinated biphenyl ("PCB"), or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Hawaii or any political subdivision thereof; or (d) the presence of which on the Subleased Area causes or threatens to cause a nuisance upon the Subleased Area or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Subleased Area.

"Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation: (a) all requirements pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Material, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, whether solid, liquid, or gaseous in nature; and (b) all requirements pertaining to the protection of the health and safety of employees or the public.

**Section 18.2. Sublessee's Covenant.** Sublessee shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Subleased Area or any portion thereof by Sublessee, its agents, employees, contractors, tenants or invitees, or any other person, except in full compliance with all applicable Hazardous Materials laws. Sublessee shall immediately notify Sublessor and provide Sublessor copies upon receipt of all written complaints, claims, citations, demands, inquires, reports or notices relating to any Hazardous Material on the Subleased Area in violation of any Environmental Requirements.

## **ARTICLE XIX. WAIVERS OF LIABILITY AND LOSSES**

**Section 19.1. Waiver of Liability.** Sublessor shall incur no liability of any nature to the Sublessee as a result of Sublessee's entry upon, occupation and use of the Subleased Area of Sublessor in connection therewith or the activities of Sublessee's officers, employees, agents, contractors and subcontractors thereupon. Sublessee waives all claims against Sublessor for injury or damage to person or personal property arising for any reason, except to the extent that such injury or damage results from the negligence or fault of Sublessor or its officers, employees or agents.

**Section 19.2. Losses.** Except as provided herein, Sublessor shall not, under any circumstances, be responsible for any losses or damage to the Facilities or any improvements on the Subleased Area or loss of service therefrom for any reason whatsoever, including without

limitation, damage or loss caused by fire, theft, vandalism, lighting, loss of power, accessibility, shutdown of the Subleased Area for necessary repairs or maintenance, loss of FCC License or other authorization, or interference by any third party. Notwithstanding the foregoing, Sublessor shall be responsible for any loss or damage to the Facility or the Subleased Area resulting directly from the negligence or willful misconduct act of Sublessor or its authorized representatives.

#### **ARTICLE XX. ALL AGREEMENTS ARE CONTAINED HEREIN**

This Sublease contains all of the terms, covenants, conditions, stipulations, agreements and provisions agreed upon between the parties hereto with regard to the Subleased Area. This Sublease supersedes and cancels each and every other agreement, promise and/or negotiation between the parties with reference to the Subleased Area. No employee, agent or representative of Sublessor or of Sublessee has authority to change, modify or alter the terms hereof except by mutual agreement in writing executed by the parties or duly authorized agents or officers of the parties hereto and neither party is nor shall be bound by any inducement, statement, representation, promise or agreement not in conformity herewith.

#### **ARTICLE XXI. CAPTIONS**

The Article captions are inserted merely for convenience and are not to be construed as part of this Sublease or in any way affecting it.

#### **ARTICLE XXII. SEVERABILITY**

If any portion of this Sublease shall be found or held to be illegal, such illegality shall not affect the remainder of this Sublease, which shall remain in full force and effect.

#### **ARTICLE XXIII. BINDING EFFECT**

The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

#### **ARTICLE XXIV. GOVERNING LAW**

This Sublease shall be governed by and construed in accordance with the laws of the State of Hawaii.

#### **ARTICLE XXV. "AS-IS" CONDITION**

Sublessee acknowledges that it has carefully inspected the Subleased Area and accepts the same "AS-IS", with all faults, known and unknown, including but not limited to any dangerous or defective conditions. Sublessee fully assumes all risks and consequences of the Subleased Area. Sublessor has made no warranties or representation, express or implied, as to the condition of the Subleased Area or its habitability, merchantability or fitness for the uses allowed under this Sublease or for any other purpose. Sublessor shall have no obligation to

provide Sublessee with any utility services. Sublessor shall have no obligation to maintain, repair, secure or insure the Facility. Sublessee assumes all risk arising out of the fact that the Subleased Area is not a subdivided lot or easement area approved by any governmental authority. For this reason, the parties hereto affirm their intent that this Sublease not constitute an interest in land. Sublessor reserves the right to modify and relocate improvements, common areas and access ways and to modify the neighboring property and its uses from time to time.

#### **ARTICLE XXVI. LIMIT OF SUBLESSOR'S LIABILITY**

Notwithstanding any provision of this Sublease or common law right to the contrary, Sublessor's maximum liability to Sublessee under this Sublease or in any way relating to the Subleased Area, the neighboring property, the Facility or this Sublease shall be limited to the fees paid by Sublessee pursuant to this Sublease plus liability insurance proceeds payable to Sublessee if any. Sublessee waives and releases any and all rights to claims in excess of such fees and insurance proceeds. This paragraph shall not apply to claims for damages intentionally caused by Sublessor.

#### **ARTICLE XXVII. MISCELLANEOUS**

**Section 27.1. Time is of the Essence.** Time is of the essence in the performance of all provisions of this Sublease.

**Section 27.2. Legal Restrictions.** In the event that the use of the Subleased Area under this Sublease is in violation of any laws of the United States, State of Hawaii or the County of Hawaii, such use shall immediately terminate. In the event the Sublessor desires to obtain any required government approval, including subdivision approvals, so as to conform to applicable laws, Sublessee shall cooperate with Sublessor to obtain such approvals on the understanding that Sublessor shall not be obligated to expend any funds required for improvements to secure such approvals.

**Section 27.3. Waiver of Consequential Damages.** Notwithstanding anything to the contrary contained in this Sublease, whether the cause of any damages, loss or liability is insurable, insured or not insured, foreseen or unforeseen, in no event shall either Party be responsible or liable to the other Party for anticipatory profits or any indirect, special, incidental or consequential damages of any kind or nature arising directly or indirectly in connection with the construction, use or operation of the Subleased Area or the exercise of any rights related thereto. The foregoing shall apply regardless of the fault, negligence or strict liability of either Party and shall apply whether such losses or damages are based on an action or claim in contract or tort, including negligence, strict liability or otherwise.

**Section 27.4. Tax Clearances.** Per HRS 103-53(a), all State contracts require, as a prerequisite to entering into the contract, tax clearances from the director of taxation and the IRS. Additionally, per HRS 103-53(c) the State shall withhold final payment of a contract until the receipt of tax clearance from the director of taxation and the IRS.

**Section 27.5. Survival.** The parties' respective right and obligations, which by their nature would extend beyond the cancellation, termination or expiration of this Sublease, will survive such cancellation, termination, or expiration.

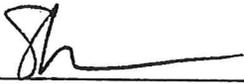
**Section 27.6. Termination of Right of Entry Agreement.** Upon the full execution of this Sublease, any right of entry agreement between or among the parties hereto which covers the Subleased Area shall be automatically terminated without further action by any party except that any of the parties' respective rights, obligations and liabilities thereunder, which by their nature would extend beyond the termination of such right of entry agreement, will survive such termination.

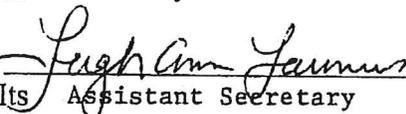
**Section 27.7. Consent of Property Owner.** Notwithstanding anything in this Sublease to the contrary, this Sublease shall not be binding upon the parties hereto unless and until consented to by the Property Owner, in writing, pursuant to a separate consent executed by the Property Owner and the parties hereto. Sublessee shall be responsible for paying any and all costs, expenses and other charges imposed by the Property Owner related to such separate consent and approval of this Sublease.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

HUALALAI LAND CORPORATION,  
a Hawai'i corporation

By:   
Its Secretary

By:   
Its Assistant Secretary

**SUBLESSOR**

APPROVED AS TO LEGALITY, FORM, STATE OF HAWAII, by its Board of Land  
EXCEPTIONS, AND RESERVATIONS: and Natural Resources

\_\_\_\_\_  
Deputy Attorney General  
Date \_\_\_\_\_

By: \_\_\_\_\_  
Its Chairperson

Approved by the Board of Land and  
Natural Resources at its meeting held  
on \_\_\_\_\_

**SUBLEESSEE**

DEPARTMENT APPROVED:

\_\_\_\_\_  
Comptroller  
Department of Accounting and General Services

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

HUALALAI LAND CORPORATION,  
a Hawai'i corporation

By: \_\_\_\_\_  
Its

By: \_\_\_\_\_  
Its

**SUBLESSOR**

APPROVED AS TO LEGALITY, FORM, STATE OF HAWAII, by its Board of Land  
EXCEPTIONS, AND RESERVATIONS: and Natural Resources

  
\_\_\_\_\_  
Deputy Attorney General  
Date 4/10/10

By:   
\_\_\_\_\_  
Its Chairperson

Approved by the Board of Land and  
Natural Resources at its meeting held  
on November 19, 2009

**SUBLEESSEE**

DEPARTMENT APPROVED:

  
\_\_\_\_\_  
Comptroller  
Department of Accounting and General Services



**EXHIBIT "B"**  
**(Facility)**

# INFORMATION AND COMMUNICATION SERVICES DIVISION KAUPULEHU RADIO SITE AND TOWER

KAUPULEHU, HAWAII 96740

FOR

DEPT. OF ACCOUNTING & GENERAL SERVICES

DIVISION OF PUBLIC WORKS  
STATE OF HAWAII

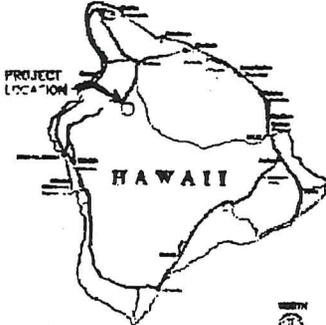
BY

WILSON OKAMOTO CORPORATION

DAGS JOB NO.: 11-10-0478

T.M.K.: 7-2-002-001

DATE: 2008-JUNE

| LOCATION MAP  | VICINITY MAP   | APPROVALS   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
|---|--|---|--|--|-------------|--|------|------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|----------------------------|------------|
|  <p>PROJECT LOCATION</p> <p>HAWAII</p> <p>SCALE: NONE</p> |  <p>SITE</p> <p>SCALE: NONE</p> | <p><i>[Signature]</i><br/> <small>ENGINEER<br/>         DIVISION OF ACCOUNTING AND GENERAL SERVICES<br/>         STATE OF HAWAII</small></p> <p><i>[Signature]</i><br/> <small>DEPT. OF ACCOUNTING AND GENERAL SERVICES<br/>         STATE OF HAWAII</small></p>  | <table border="1"> <thead> <tr> <th colspan="2">APPROVALS</th> </tr> <tr> <th>NAME</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td><i>[Signature]</i></td> <td>11-10-2008</td> </tr> <tr> <td><i>[Signature]</i></td> <td>11-10-2008</td> </tr> </tbody> </table>   |  | APPROVALS   |  | NAME | DATE | <i>[Signature]</i>         | 11-10-2008 | <i>[Signature]</i>         | 11-10-2008 |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| APPROVALS   |  |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| NAME  | DATE   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| <i>[Signature]</i>  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| <i>[Signature]</i>  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
|   |  | CONSULTANTS   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
|   |  | <p>ARCHITECT: WILSON OKAMOTO CORPORATION<br/>         CIVIL AND STRUCTURAL ENGINEER: WILSON OKAMOTO CORPORATION<br/>         MECHANICAL ENGINEER: WILSON OKAMOTO CORPORATION<br/>         ELECTRICAL ENGINEER: WILSON OKAMOTO CORPORATION<br/>         TOWER ENGINEER: WILSON OKAMOTO CORPORATION<br/>         TOWER SURVEY: WILSON OKAMOTO CORPORATION<br/>         PHOTOGRAPHIC ENGINEER: WILSON OKAMOTO CORPORATION<br/>         CITY ENGINEER: WILSON OKAMOTO CORPORATION</p> | <table border="1"> <thead> <tr> <th colspan="2">CONSULTANTS</th> </tr> <tr> <th>NAME</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>WILSON OKAMOTO CORPORATION</td> <td>11-10-2008</td> </tr> </tbody> </table> |  | CONSULTANTS |  | NAME | DATE | WILSON OKAMOTO CORPORATION | 11-10-2008 |
| CONSULTANTS   |  |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| NAME  | DATE   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |
| WILSON OKAMOTO CORPORATION  | 11-10-2008   |   |  |  |             |  |      |      |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |                            |            |

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| 19                            | E-4    | ELECTRICAL, PLAN   |        |        |   |
| 20                            | E-5    | ELECTRICAL, PLAN   |        |        |   |
| 21                            | E-6    | ELECTRICAL, PLAN   |        |        |   |
| 22                            | E-7    | ELECTRICAL, PLAN   |        |        |   |
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| 43                            | A-7    | SECTION, SECTION   |        |        |   |
| 44                            | A-8    | SECTION, SECTION   |        |        |   |
| 45                            | A-9    | SECTION, SECTION   |        |        |   |
| 46                            | A-10   | SECTION, SECTION   |        |        |   |

### ZONING AND CODE INFORMATION

**PROJECT NAME:** [Blank]

**PROJECT LOCATION:** [Blank]

**PROJECT SITE NO.:** [Blank]

**LOT AREA:** [Blank]

**OFFICIAL TITLE & ORGANIZATION:** [Blank]

**DATE OF ISSUE:** [Blank]

**SCALE:** [Blank]

**REVISIONS:** [Blank]

**APPROVED BY:** [Blank]

**DATE:** [Blank]

#### ZONING INFORMATION

**ZONING DISTRICT:** [Blank]

**PERMITTED USES:** [Blank]

**MINIMUM LOT AREA:** [Blank]

**MINIMUM FRONT SETBACK:** [Blank]

**MINIMUM SIDE SETBACK:** [Blank]

**MINIMUM REAR SETBACK:** [Blank]

**MINIMUM FLOOR AREA:** [Blank]

**MINIMUM BUILDING HEIGHT:** [Blank]

**MINIMUM LOT COVERAGE:** [Blank]

#### BUILDING CODE INFORMATION/REQUIREMENTS FOR BIRMINGHAM

**MINIMUM FLOOR AREA:** [Blank]

**MINIMUM BUILDING HEIGHT:** [Blank]

**MINIMUM LOT COVERAGE:** [Blank]

**MINIMUM SETBACKS:** [Blank]

**MINIMUM FLOOR AREA:** [Blank]

**MINIMUM BUILDING HEIGHT:** [Blank]

**MINIMUM LOT COVERAGE:** [Blank]

**MINIMUM SETBACKS:** [Blank]

#### BUILDING CLASSIFICATION:

**BUILDING TYPE:** [Blank]

**OCCUPANCY CATEGORY:** [Blank]

**CONSTRUCTION:** [Blank]

**MINIMUM FLOOR AREA:** [Blank]

**MINIMUM BUILDING HEIGHT:** [Blank]

**MINIMUM LOT COVERAGE:** [Blank]

**MINIMUM SETBACKS:** [Blank]

**MINIMUM FLOOR AREA:** [Blank]

**MINIMUM BUILDING HEIGHT:** [Blank]

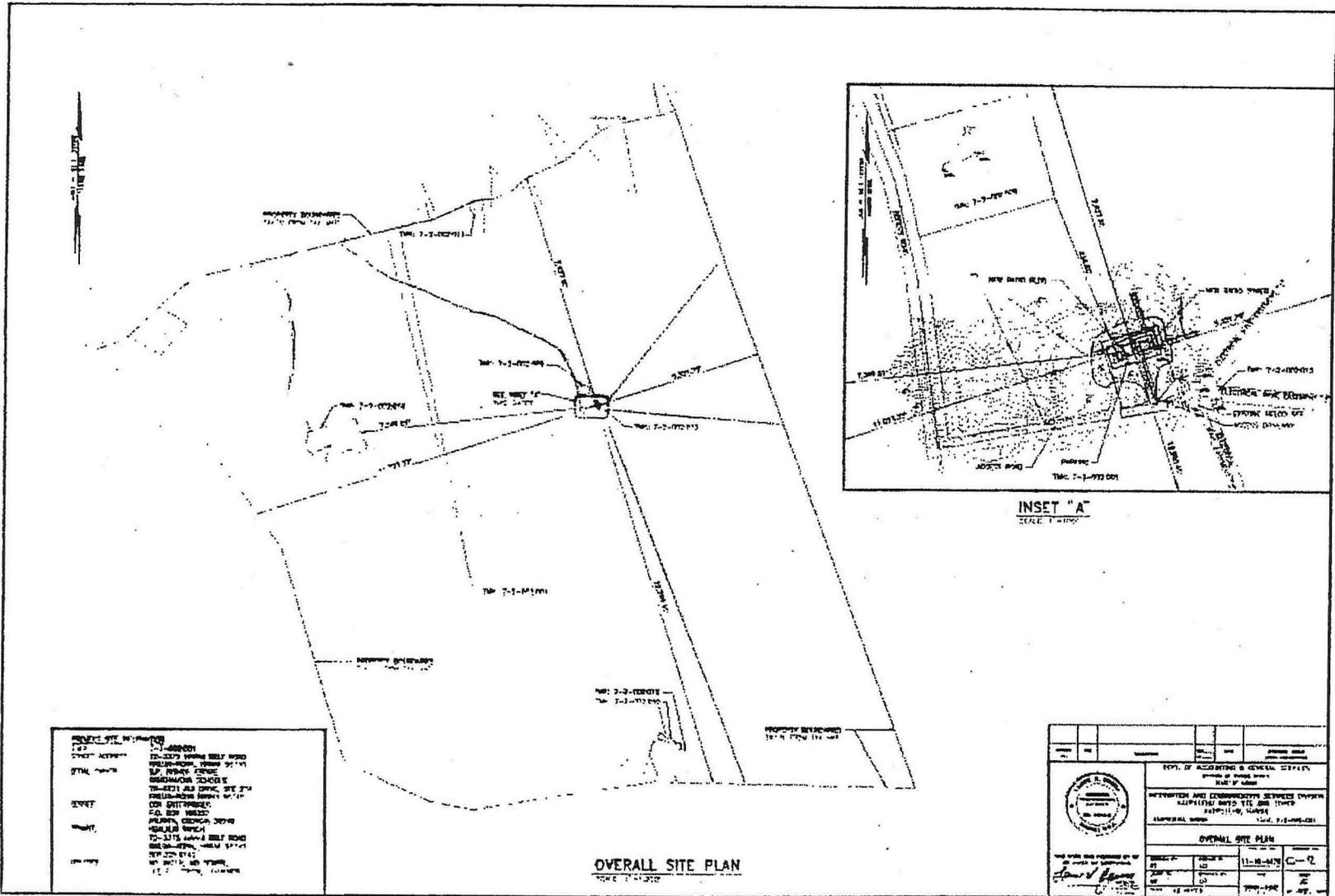
**MINIMUM LOT COVERAGE:** [Blank]

**MINIMUM SETBACKS:** [Blank]

#### FLOOR AREA INFORMATION

**FLOOR AREA:** [Blank]

|   |   |  |  |  |
|---|---|--|--|--|
|   |   |  |  |  |
|  | COPY OF RECORDS & ORIGINAL DRAWINGS<br>DEPOSITED IN THE OFFICE OF THE CITY ENGINEER |  |  |  |
| APPROVED AND SUBMITTED BY: [Signature]  |   |  |  |  |
| DATE: [Blank]   |   |  |  |  |
| TITLE: [Blank]  |   |  |  |  |
| PROJECT NO.: [Blank]  |   |  |  |  |
| SHEET NO.: [Blank]  |   |  |  |  |
| TOTAL SHEETS: [Blank]   |   |  |  |  |







**EXHIBIT "C"**  
**(Sublessor's Insurance Requirements for Contractors)**

Each contractor of Sublessee (each, a "Contractor") shall provide insurance covering Contractor's responsibilities and those of any subcontractors of Contractor, with limits no less than the following:

A. Worker's Compensation Insurance - in limits with coverage as required by Hawaii's Workers Compensation statute; and Employers Liability coverage with limits of \$500,000 each accident, \$500,000 each Employee by disease and \$500,000 policy limit, by disease;

B. Commercial General Liability - coverage for third party liability arising out of the operations performed by Contractor and any subcontractors including, but not limited to, completed operations and contractual liability. Limits shall be for bodily injury and property damage - \$2,000,000 combined single limit per occurrence and Personal Injury - \$2,000,000 per occurrence. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.

C. Commercial Automobile Liability - coverage for third party liability arising out of the operation or use of any owned, non-owned or hired vehicle by contractor or subcontractor. Limits shall be for bodily injury and property damage - \$1,000,000 combined single limit, per accident; and

D. Builders Risk and Installation Floater Insurance - "all risk" property insurance coverage the building or structure to be constructed, and materials to be used in construction, as well as any Contractor tools or equipment at the Premises. The limit of coverage shall be equal to the completed value of the building or structure and shall insure against all loss excluding earthquakes and flood. The coverage shall be provide by a company authorized to write insurance in the State of Hawaii as an insurer.

Prior to commencing performance of this agreement, Contractor shall furnish Sublessor a certificate of insurance from insurance carriers satisfactory to Sublessor, verifying that the insurance required to be maintained is in full force and effect throughout the term of this agreement. Further, Sublessor shall be given thirty (30) days written notice prior to any material change, expiration or cancellation of said insurance. Property Owner, Sublessee and Sublessor shall be named as an Additional Insured on the above required liability coverages: Commercial General Liability, Commercial Automobile Liability and Umbrella Liability. All policies as stated in this agreement shall include a waiver of subrogation in favor of Sublessor.

Contractor shall indemnify, hold harmless and defend Sublessor, its officers, employees, parents, subsidiaries, agents and affiliates, from and against any and all demands, claims, suits, costs of defense, attorneys fees, witness fees, including expert witness fees, liabilities and other expenses including damage to property or for injury to or death of any person, including, but not limited to any employee, agent, servant, independent contractor or subcontractor of Contractor, or a member or members of the general public, in any way arising directly or indirectly from or in connection with the construction, installation or other performance of the terms of this agreement by Contractor, its employees, subcontractors or agents, excluding only loss or liability attributable directly to the gross negligence of Sublessor. Contractor expressly assumes the burden of proof regarding all causation issues hereunder.



STATE OF HAWAII  
STATE PROCUREMENT OFFICE

**CERTIFICATE OF VENDOR COMPLIANCE**

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs (DCCA).

Vendor Name: **HUALALAI LAND CORPORATION**

DBA/Trade Name: **HUALALAI LAND CORPORATION**

Issue Date: **02/21/2013**

Status: **Compliant**

Hawaii Tax#: W20288426-01  
 FEIN/SSN#: XX-XXX5918  
 UI#: XXXXXX6215  
 DCCA FILE#: 19832

Status of Compliance for this Vendor on issue date:

| Form  | Department(s)                                     | Status    |
|-------|---|-----------|
| A-6   | Hawaii Department of Taxation                     | Compliant |
|       | Internal Revenue Service                          | Compliant |
| COGS  | Hawaii Department of Commerce & Consumer Affairs  | Compliant |
| LIR27 | Hawaii Department of Labor & Industrial Relations | Compliant |

Status Legend:

| Status        | Description   |
|---------------|---|
| Exempt        | The entity is exempt from this requirement  |
| Compliant     | The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance |
| Pending       | The entity is compliant with DLIR requirement   |
| Submitted     | The entity has applied for the certificate but it is awaiting approval  |
| Not Compliant | The entity is not in compliance with the requirement and should contact the issuing agency for more information                 |

**AMENDED**

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

November 19, 2009

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

PSF No.: 06HD-017

HAWAII

Approval of a Sublease of Private Property between Hualalai Land Corporation and the State of Hawaii, by its Board of Land and Natural Resources, on Behalf of the Department of Accounting and General Services, for Radio Station Purposes, Kaupulehu, North Kona, Hawaii, TMK: (3) 7-2-02: Por. of 1

APPLICANT:

Department of Accounting and General Services (DAGS), Information and Communication Services Division.

LANDOWNER:

The Estate of Bernice Pauahi Bishop, as Landowner and Lessor under a lease agreement with Hualalai Land Corporation, a Hawaii corporation, the Lessee.

LEGAL REFERENCE:

Section 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Kaupulehu, North Kona, Hawaii, identified by Tax Map Key: (3) 7-2-02: Portion of 1, as shown on the attached map labeled Exhibit A.

AREA:

0.712 acres, more or less.

ZONING:

State Land Use District: Agricultural  
County of Hawaii CZO: Agricultural

CHARACTER OF USE:

Install, operate, and maintain a public safety and public service radio telecommunication station facility.

LEASE TERM:

Approximately 15 years commencing on the earlier of the sublease

*As Amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
*013*  
November 19, 2009

**EXHIBIT E**

execution date or the commencement of construction activities on the subleased area and expiring on December 31, 2025.

ANNUAL RENT:

Negotiations between the Department of Land and Natural Resources and the Hualalai Land Corporation, through its counsel, resulted in the following rent schedule:

|                                     |               |
|-------------------------------------|---------------|
| Commencement date through 12/31/14: | \$1,200/month |
| 01/01/15 through 12/31/19:          | \$1,500/month |
| 01/01/20 through 12/31/25:          | \$1,800/month |

The rent is fixed for the entire fifteen-year term of the sublease in five-year intervals. The rent is similar to that in the Castle and Cooke lease entered into by the Board of Land and Natural Resources in April 2009, on behalf of DAGS for an Anuenue radio station site on the island of Lanai.

On September 22, 2009, the DAGS Comptroller, approved the above rent schedule.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject radio station facility was published in the OEQC Environmental Notice on July 8, 2009, with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

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

REMARKS:

DAGS, through its Information & Communication Services Division (ICSD), has the responsibility for carrying out the State's telecommunication functions. DAGS-ICSD owns and operates microwave radio transmission systems, antennas, towers, buildings, and related equipment, communication facilities and infrastructure throughout the islands.

The Kaupulehu radio station facility is one of several facilities that comprise the Anuenue radio system. The system is used only by public agencies for public purposes. There is no commercial use of the facilities. The Anuenue project is a partnership between DAGS and the US Coast Guard. Government users of the system include the State Department of Health, Department of Land and Natural Resources, University of Hawaii, County of Hawaii Police Department, US Department of the Interior and US Coast Guard to name a few. The agencies rely on telecommunications to communicate and transmit information and data between offices and facilities as well as to

communicate with personnel in the field.

State funds will be used to construct the Kaupulehu facility and represents a part of the infrastructure provided by the State to the Anuenue radio system. Other radio station facilities recently constructed by DAGS include sites in North Kohala, Hawaii, in eastern Oahu on Kokohead and in central Molokai at Puu Nana. As part of the partnership agreement with DAGS, the US Coast Guard refurbished its existing facilities at Mauna Kapu on Oahu and at Haleakala on Maui. Additionally, the US Coast Guard constructed new radio station facilities in central Oahu and east Hawaii to accommodate the new digital microwave radio system.

The Kaupulehu radio station facility will significantly upgrade the infrastructure that supports government telecommunications. The facility's proposed location, TMK: (3) 7-2-02: Portion of Parcel 1, is owned by The Estate of Bernice Pauahi Bishop (The Bishop Estate).

The Hualalai Land Corporation dba Hualalai Ranch leases Parcel 1, which contains 7,065 acres, from The Bishop Estate. The lease does not provide for withdrawals of land from its operation. Accordingly, DAGS proposes to sublease the radio station site from Hualalai Land Corporation for the remaining term of its lease expiring on December 31, 2025.

While there are vacant and unencumbered State lands in the vicinity that may be suitable for a radio station facility, they are without access and utilities. Access and electrical power is available to the subject site due to the previous developments by the Hawaii Electric Light Company and Hawaiian Telcom of their radio station facilities, which are in very close proximity to the subject site.

RECOMMENDATION:

That the Board approve entering into a sublease with the Hualalai Land Corporation on behalf of the Department of Accounting and General Services covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

1. Review and approval by the Department of the Attorney General.

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

Respectfully Submitted,



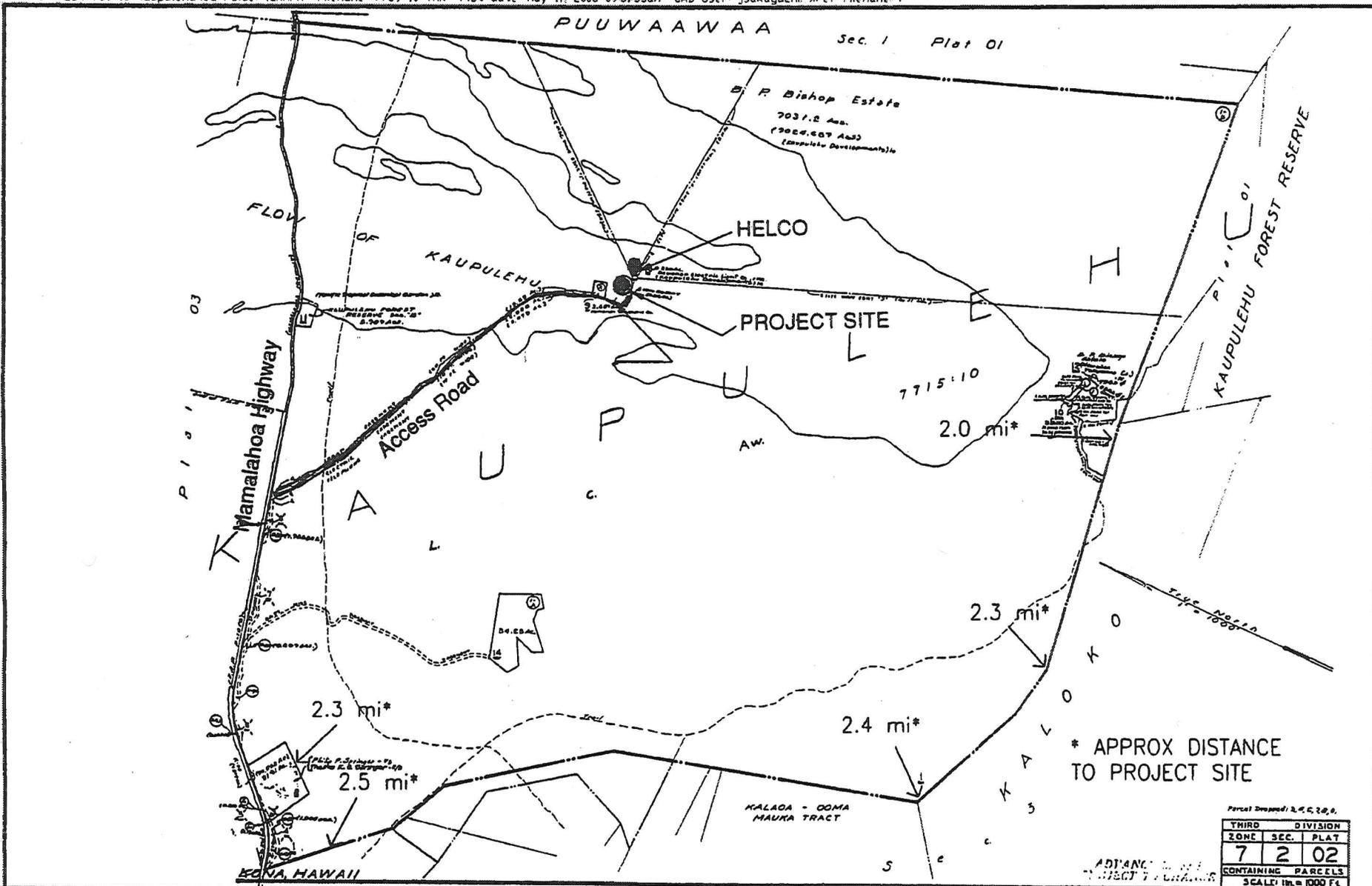
Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thiel, Chairperson 

Land Board Meeting November 19, 2009, D-7 Approved as Amended:

The land Board amended the staff submittal ~~and recommendations~~ by changing the approval to include the use of a land use agreement in addition to or in place of a sublease, and conforming the submittal to reflect that change. Otherwise, the Land Board approved staff's recommendations as submitted.



EXHIBT "A"



**WILSON OKAMOTO CORPORATION**  
ENGINEERS | PLANNERS | CONSULTANTS

INFORMATION COMMUNICATION SERVICES DIVISION ANUENUE RADIO SITES AND TOWERS, KAUPULEHU SITE

**TAX MAP KEY**

**FIGURE 1.3**