

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

September 25, 2015

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

PSF No.: 15KD-152

(Kauai)

Approval of License of Private Property of Bank of Hawaii as Trustee of the Kukuilono Park Trust Estate, as Licenser, to 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, as Licensee, for a Transmission Tower and Radio and Microwave Communications Facility for Public Safety and Public Service, at Kalaheo Homesteads, 2nd Series, Koloa, Kauai, Tax Map Key (4)2-3-005:por.002.

APPLICANT:

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

LANDOWNER:

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

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kalaheo Homesteads, 2nd Series, situated at Koloa, Kauai, identified by Tax Map Key: (4)2-3-005:por.002, as shown on the construction plan labelled Exhibit A to this submittal.

The prior Air Force lease of this telecommunications facility site describes the property as follows:

A parcel of land situated at Kukuilono, Island of Kauai, State of Hawaii, its location shown on **Exhibit A** and described as follows:

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

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

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

Together with nonexclusive use and undefined access rights over adjacent land of the Lessor and the right to use and to keep clear of vegetative growth or other obstructions the aerial right-of-way described on **Exhibit B**, attached hereto, and hereby made a part hereof, to be used for the site of a microwave relay station.

We note, however, that the above description is not yet in the draft license agreement attached hereto as Exhibit D, and the license agreement should be clearer on the State's access rights over adjacent land of the lessor.

AREA:

13,043 sq. ft.

ZONING:

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

CHARACTER OF USE:

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

LEASE TERM:

Twenty (20) years from date of commencement.

ANNUAL RENT:

\$45,000 per year for the first five years and a 15% increase every five years throughout the term of the license.

The Department of Accounting and General Services (DAGS), Information and Communication Services Division (ICSD), confirms that the operating funds are available to pay the rent for the first year and it will include the rent as a part of its budget for future years of the license.

DCCA VERIFICATION:

Landowner – Bank of Hawaii, Trustee

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

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:

The United States Air Force ("USAF") operated a telecommunications facility at this site under a lease that terminated as of July 31, 2015. DAGS-ICSD wishes to take over the telecommunications facility under a license from the BOH to the State of Hawaii. Pursuant to the terms of the lease to the USAF, the USAF must remove the improvements and restore the property at termination and the USAF's funding to do so lapses on September 30, 2015. Therefore, BOH wants the State to expedite a commitment to enter into a license agreement for this facility.

The proposed license agreement will provide DAGS-ICSD with access to the land area and will transfer ownership of the USAF improvements (communications tower, equipment building, emergency generator and related fuel storage tank/system) to DAGS. With this agreement, DAGS-ICSD will assume all operations and maintenance

responsibilities for the facility to provide radio and microwave communications services for west Kauai. While this will be an increase in the services DAGS-ICSD provides for current State system users (first responders), DAGS-ICSD's ability to keep this site operational will also ensure that current federal first responders' services are maintained.

Per DAGS, while ICSD does not currently have a presence at the site, DLNR and Kauai county agencies are actually using it.

There is currently a microwave link from Mt. Kaala, Oahu, to Kilohana, Kauai. The Kukuilono, Kauai facility would provide another link from Mt. Kaala. With respect to voice traffic, the Kilohana site primarily covers only Lihue. Kukuilono would cover the coastline up to most of Waimea. Most importantly, it serves to relay the signal up to Kokee, which is a prime site for covering the valleys and most of the rest of the coastline. Neither the Kokee nor Pohakuwaawaa sites can be functional without the relay of Kukuilono. These sites cannot be reached from Kilohana. *See* photos attached to the submittal as Exhibit B

If this facility ceases operations, the current system users will have to identify alternate means to route communications and DAGS-ICSD will have to resume its search to identify candidate sites to build a new communications facility to bring services to this region of Kauai. The anticipated cost for alternate site acquisition and construction improvements will likely exceed the total cost of this lease over the 20-year license period.

DAGS provided Land Division with two Phase I Environmental Baseline Surveys for the site conducted by the USAF; one dated March 2002 and the other dated April 2015. Both provide a certification of no known contamination, essentially stating as follows:

This real property contains no known hazardous substances as that term is defined in the CERCLA (42 U.S.C. 9601), as amended, or other contamination as specified by the RCRA of 1976, the implementing Environmental Protection Agency regulations (40 CFR Parts 261, 262, 263, and 761), and the Federal Property Management Regulations (41 CFR Part 101-47). A complete search of agency files revealed that no hazardous substances have been stored for more than one year, known to have been released, or disposed of on the Air Force-controlled real property described above.

DAGS' request is attached as Exhibit C to this submittal. The draft license agreement under negotiation is attached as Exhibit D to this submittal.

RECOMMENDATION:

That the Board:

1. Declare this acquisition of a land use license to be exempt from an environmental

assessment as it will probably have minimal or no significant effect on the environment;


2. Approve entering into a license agreement with Bank of Hawaii as Trustee of the Kukuilono Park Trust Estate on behalf of the Department of Accounting and General Services for the purposes described above, under the terms and conditions cited above and as provided in the license agreement, subject to the following:
 - a. Review and approval by the Department of the Attorney General in behalf of both the Board and Department of Accounting and General Services, including but not limited to clarifying lawful access to the license site and reviewing the legality of hold harmless or indemnity provisions in the draft license;
 - b. Review and approval of the metes and bounds description for the site by the DAGS Survey Division; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

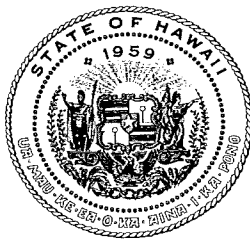
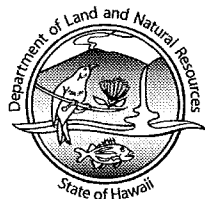


Pamela Matsukawa
Appraisal and Real Estate Specialist

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 License of Private Property of Bank of Hawaii as Trustee of the Kukuioolono Park Trust Estate, on Behalf of the Department of Accounting and General Services, for a Transmission Tower and Radio and Microwave Communications Facility for Public Safety and Public Service, at Kalaheo Homesteads, 2nd Series, Koloa, Kauai, Tax Map Key (4)2-3-005:por.002.

Project / Reference No.: 15KD-152

Project Location: Kalaheo, Kauai, Tax Map Key (4)2-3-005:por.002.

Project Description: License agreement on private land for telecommunications facility

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.

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

Consulted Parties: Not applicable

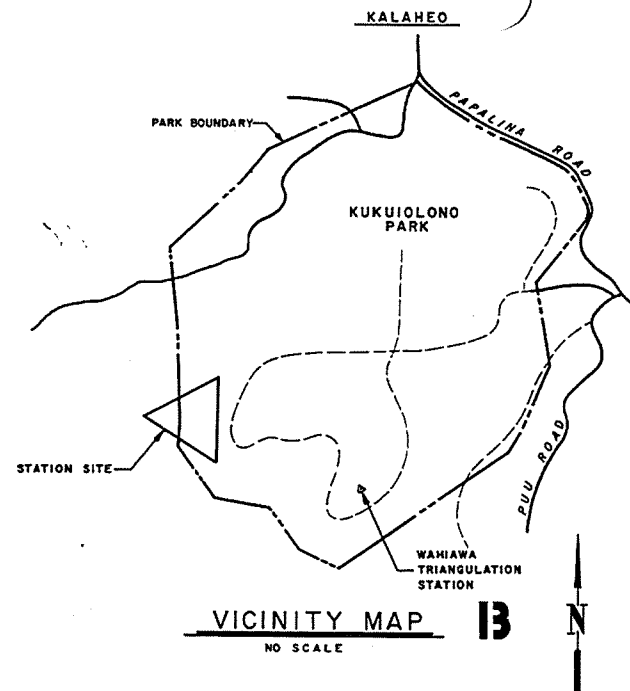
Recommendation: That the Board find that this acquisition will probably have minimal or no significant effect on the environment and is therefore presumed to be exempt from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson




Date



NOTICE

This document contains data developed at the private expense of Collins Radio Company and is furnished under contract or agreement between Collins Radio Company and the recipient hereof upon the condition that the contents of this document shall not be disclosed, copied, duplicated, disseminated, or used except for purposes authorized by contract or otherwise expressly authorized in writing. This notice is void when a "Limited Rights" legend also appears on the data.

074-5015-00

SEE SEPARATE PARTS LIST 101-7287-001

REV		FDAN DATE	NAME	DATE
A	FDAN 1510	71457	CHK <i>FFB</i>	6-15-7
			APPD <i>RGH</i>	6-11-7

COLLINS RADIO COMPANY
FACILITIES PLANNING AND DESIGN



MICROWAVE EXTENSION (HANG)

STATION	MICROWAVE
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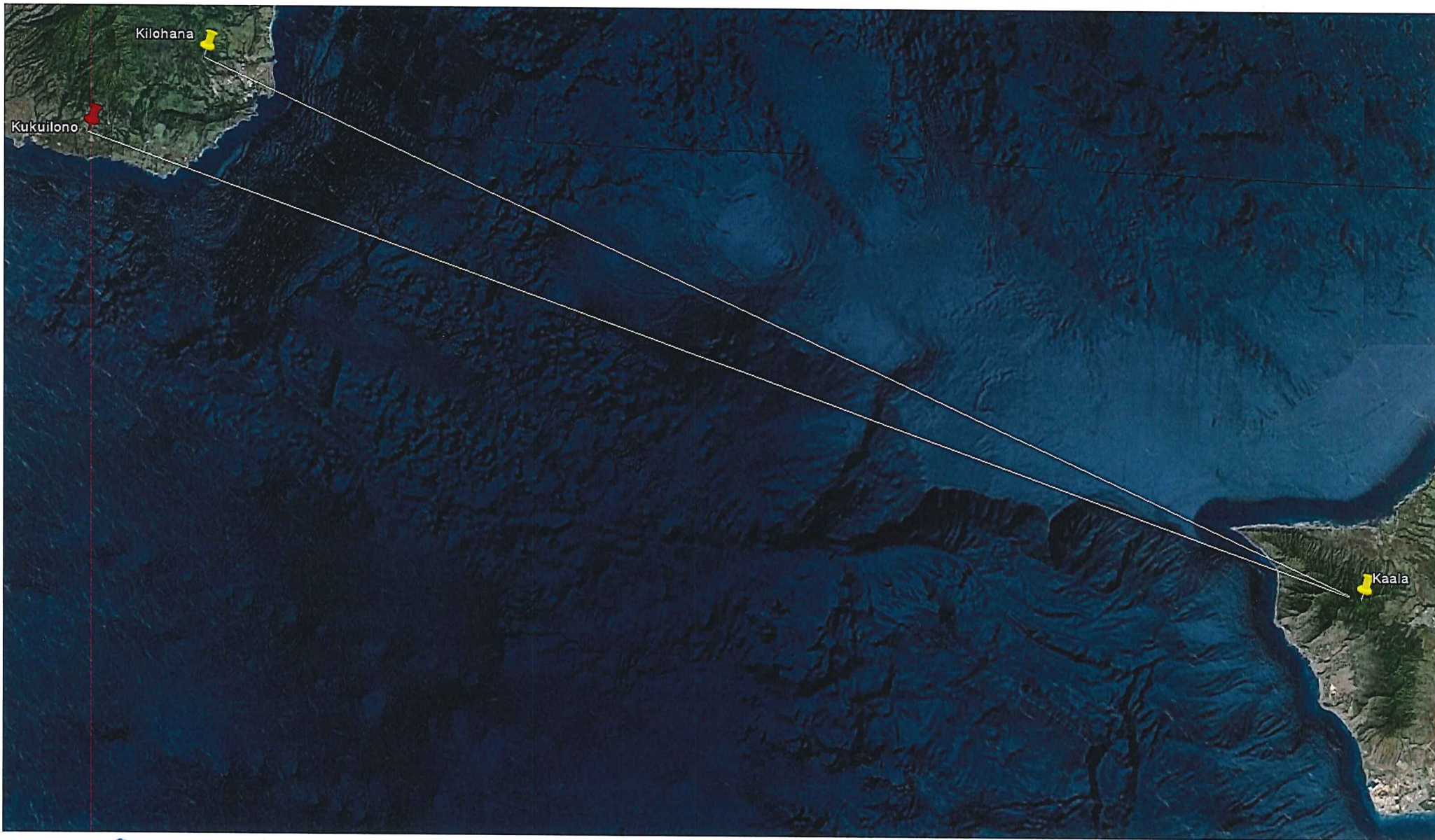
KUKUIOLONO

NAME	DATE	PROC IDENT
DR B. BUTLER	2-2-69	101-7287-000
CHK <i>Good/young</i>	2-26-70	FACILITY/CLASS
		9X20/CIVIL
APPD <i>Foreman</i>	2-20-70	SCALE NOTED
		SHEET 1 OF 1

7. ALL CONSTRUCTION EFFORT, INCLUDING CLEARING, GRADING, TREE TRIMMING AND ACCESS, SHALL CONFORM TO THE RIGHT OF ENTRY GRANTED TO THE U. S. ARMY COE/PODRE BY HAWAIIAN TRUST CO., LTD, ON 13 AUGUST, 1969.
 6. POWER POLE LOCATION AND SERVICE CONNECTIONS TO BE COORDINATED WITH KAUAI ELECTRIC CO.
 5. USE 3 STRANDS OF BARBED WIRE PER ASTM A-121.
 4. SITE DATA OBTAINED FROM LEGAL SURVEY PREPARED BY TOWILL, THOMAS & ASSOCIATES, INC., 'JOB NO. 129, DATED 22 JULY, 1969
 3. WHERE GUY ANCHOR IS NOT AT SAME ELEVATION AS TOWER BASE, ADJUST GUY RADIUS TO MAINTAIN PROPER SLOPE OF TOP GUYS.
 2. LOCATION: KAUAI, HAWAII, AZIMUTH 5° TO KALAHEO, 1.5 MILES.
LATITUDE 21° 54' 49" N
LONGITUDE 159° 31' 56" W
ELEVATION 800'
 1. ALL AZIMUTHS GIVEN WITH RESPECT TO TRUE NORTH, UNLESS OTHERWISE NOTED.
- NOTES

-001

10. THIS DWG REVISED TO SHOW AS- BUILT CONDITION JUNE 1971.
9. AC POWER ROUTED UNDERGROUND FROM LAST POLE TO METER SOCKET ON SIDE OF SHELTER.
8. CLEARING TO CONFORM WITH REQUIREMENTS OF LAND OWNER TO KEEP TREE REMOVAL TO A MINIMUM.



Exh.
B



Pohakuwaawaa

Kokee Kukui

Kuloana

Kukuilono

DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

(P)1218.5

AUG 20 2015

MEMORANDUM

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

FROM: Douglas Murdock
Comptroller

A handwritten signature in black ink, appearing to read "Douglas Murdock", written over the printed name and title.

SUBJECT: Land Use License Agreement
ICSD Telecommunications Facility
Portion of TMK: (4) 2-3-005-002
Kukuiolono, Kaua'i

We request assistance and approval for the Department of Land and Natural Resources (DLNR) to enter into a new license agreement with the Bank of Hawaii (BankOH) on behalf of the Department of Accounting and General Services (DAGS), Information and Communication Services Division (ICSD) for a telecommunications facility at Kukuiolono, Kauai

DAGS-ICSD has a unique opportunity to acquire a building and antenna tower at the Kukuiolono Park and Golf Course, Kauai. The building and tower sit atop a former United States Air Force (USAF) site under long term License Agreement No. DACA84-5-03-0041, dated March 12, 2004, between BankOH and the USAF. The USAF advised DAGS-ICSD late in 2014 of its intent to relinquish this site, despite the continuing need to keep this site active for multiple federal, state, and county agencies sharing use of the facilities for critical first responder communications. In the interest of acquiring use of this facility to add critical capacity and coverage area to the existing State Microwave System, and to continue to support operation of the facility for the other first responder agencies now utilizing this key site, DAGS-ICSD entered into negotiations with BankOH for the proposed new license agreement.

BankOH has obtained approval of their Trust Real Estate Investment Committee to enter into the subject twenty year license agreement at the annual license rate of \$45,000.00 per year for the first five years, with a 15% increase every five years. The additional terms are as reflected in the attached draft agreement. DAGS-ICSD has confirmed that this license rate and the future license rate adjustments are acceptable, and that operating funds are currently available for the first year

Exh. C

The Honorable Suzanne Case
(P)1218.5
Page 2

of the license (future years will be included in their budget program). The final language is currently under review by the DAGS Deputy Attorney General.

We are submitting this request concurrent to finalization of the proposed license agreement language as time is of the essence for approval and execution. DAGS-ICSD was notified this past July that the USAF had already taken action to terminate their license agreement effective July 31, 2015. The USAF license required the USAF to return the property to its original, pristine condition, without the facility improvements that the USAF constructed on-site. DAGS-ICSD appealed to both the USAF and BankOH not to demolish the existing facility in anticipation that the site is of highest value only with the improvements in place. BankOH has agreed not to enforce the requirement for site condition restoration in anticipation that a new operator would enter into a new license agreement with BankOH and assume the ownership, operations, and maintenance of the improvements as soon as possible. DAGS-ICSD is fortunate that we are the first party of interest who has been able to reach this stage of negotiations with BankOH. It is in the State's best interest for DAGS-ICSD to assume management authority of this site and improvements. The facilities are well-maintained and in good condition to provide immediate, continuous operations. This location also sets up our communications coverage to link to DLNR sites in Kukui and Kokee, which, in turn, will help provide coverage for the west coast of Kauai. DAGS-ICSD is also working with DLNR for transfer of management authority of the Kukui and Kokee sites from the USAF to DAGS-ICSD.

If you have any questions, please call me at 586-0400 or your staff may call Ms. Christine Kinimaka of the Public Works Division at 586-0499.

Attachment

c: ✓ Mr. Russell Tsuji, Administrator, DLNR Land Division
DLNR Land Division Kauai
Mr. Eric Akena, DAGS Kauai
Ms. Sharon Wong, DAGS - ICSD

LICENSE AGREEMENT

THIS AGREEMENT ("License") is made effective as of the ____ day of _____, 2015, by and between **BANK OF HAWAII**, a Hawaii corporation, successor by merger to Hawaiian Trust Company, Limited, as **Trustee of the KUKUIOLONO PARK TRUST ESTATE** under that certain indenture made by and between Walter D. McBryde and Hawaiian Trust Company, Limited, dated August 20, 1918, recorded in Liber 498 at Page 488, as amended, ("**Licensor**"), and **the STATE OF HAWAII**, by its **Board of Land and Natural Resources**, whose principal place of business and post office address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, on behalf of the Department of Accounting and General Services, Information and Communication Services Division ("**Licensee**").

1. License Granted.

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

1.2 Licensee will operate and maintain the Facility so as to maintain that portion of the Facility in at least the same general functional condition and appearance as existed upon commencement of this License. Should any damage occur to that portion of the Facility or Property occupied by Licensee which is a result of the activities of the Licensee such damage shall be repaired and all damage remedied at Licensee's sole cost and expense. Prior to any major alterations to the building exterior, tower, guy lines and anchors, utilities, or fuel storage system or other portion of the Facility or Property, Licensee shall submit to Licensor all plans and materials required to make an informed decision concerning approval, and Licensor will, in writing, approve or disapprove the plans and materials submitted within thirty (30) days thereafter. Failing such action by Licensor, the plans and materials will be deemed approved. Approval by Licensor of the plans and materials shall be based, among other things, on appearance, lot coverage, building setbacks, spacing of structures, building elevations, grading and drainage, fencing, landscaping, signage, parking and circulation, building materials, massing, storage and loading areas, site access, and current government regulations. Approval of any plan or material shall only constitute an acceptance by Licensor and not an indication

Exh. D

of then compliance with governmental requirements or an endorsement of the adequacy of the plan, material or any improvement constructed in accordance with them. Licensee shall apply for all federal, state and local government permits necessary for constructing the alterations after receiving Licensors approval such that applicable permits are issued prior to commencement of construction. Prior to commencing construction, Licensee shall also *require its contractors to post payment and performance bonds naming Licensors as an obligee and acquire insurance in such forms and amounts as Licensors shall reasonably request.* Provided all necessary federal, state, and local government permits have been received and that funding is available, Licensee shall commence construction of any improvements as soon after Licensors approval of the plans and materials as is practicable, and shall thereafter diligently proceed to complete construction. All such construction shall be without cost to Licensors. All construction by Licensee on the Property shall be done in accordance with accepted engineering practices for the prevention or control of land erosion and, if requested by Licensors, Licensee shall fence the Property to Licensors reasonable satisfaction.

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

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

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

3.1 Licensee shall pay Licensors quarterly on the first day of each quarter during the term hereof, in advance, in accordance with the schedule contained in Exhibit B, attached hereto; provided, however, that a first payment shall be made upon execution of this agreement and provided further that the first and last payments due hereunder shall be prorated by multiplying said sum by a fraction in which thirty (30) days shall be the denominator and the number of days between the date of payment and the next payment date or the end of the term of this License, as applicable, shall be the numerator.

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

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

6. Other Deposits, Fees and Taxes.

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

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

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

8 Use. Licensee's right to use the Property shall be for the purpose of installing, constructing, and operating a transmission tower and radio and microwave communications Facility for public safety and public service, and no other purposes. The Licensee's Facility shall be used only to house and support communication systems that are used by governmental agencies or by entities sponsored by the State that are not-for-profit in nature and have a defined role in assisting the government in times of disaster or emergency. No commercial business will be transacted and no commercial for-profit, or fee-for-service communications services or traffic shall be supported using the Facility in any capacity.

[NOTE: THE TERM SPONSOR IS LEGALLY AMBIGUOUS. WE WOULD LIKE A BETTER DEFINITION ON WHO THESE ENTITIES ARE IF THE STATE WILL ALLOW OTHERS TO USE WITHOUT TRUSTEE CONSENT AND WITHOUT STATE INDEMNIFYING FOR CLAIMS ARISING OUT OF THEIR USE/ENTRY? HOWEVER, GIVEN THE STATES PURPORTED PUBLIC SAFETY PURPOSE FOR THIS LICENSE, WE MAY MAKE AN EXCEPTION IN JUST THIS ONE CASE, WITH A REQUIREMENT FOR ALL SUCH OTHER PARTIES TO EXECUTE INDEMNITY AGREEMENTS IN FAVOR OF THE LANDOWNER AS A CONDITION TO ENTRY, WITH EXCEPTION FOR EMERGENCIES, BUT REQUIRE EXECUTION ASAP THEREAFTER]

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

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

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

8.1.3 Licensee shall rely solely on its rights under FCC guidelines and Federal law in the case of interference with the operations of radio systems within the Property and surrounding area. Licensee understands that Licensor does not hold itself out as having telecommunications expertise. Licensor shall have the right to locate other telecommunications equipment and service providers in the vicinity of the Property and Facility. [NOTE: WHEN WORKING WITH POTENTIAL NEW LICENSEES, THEY WILL BE REPOSNSIBLE TO WORK WITH EXISTING LICENSEES TO ENSURE THIS DOES NOT HAPPEN. THE TRUST CANNOT BE HELD RESPONSIBLE FOR THIS.]

8.2 The Facility shall at all times be operated in such a manner as not to cause any radio interference of any kind with operations conducted in and from the Property or

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

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

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

9. Permits and Licenses. Licensee shall secure at its own expense all licenses and permits required by law or ordinance. Neither changes in rules or policies

by agencies or persons other than Licensor that affect the operation or use of the Facility or the Property, nor revocation or suspension of any of Licensee's licenses or permits, shall excuse Licensee from its obligations hereunder, and Licensee shall continue to perform hereunder and to make all payments when and as due. Licensee hereby represents that it will obtain the necessary licenses and permits required to operate the Facility. Licensee shall proceed to acquire and keep current all required licenses and permits with all due diligence. Licensor shall cooperate and not unreasonably withhold any consents needed to obtain said licenses and permits. Licensee will promptly forward copies of said licenses and permits and any subsequent modifications of those licenses and permits to Licensor before the construction or modifications are implemented.

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

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

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

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

10.3 Hazardous Substances.

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

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

c. Licensee shall comply with all governmental requirements applicable to its business or to its use or occupation of the Property, including without limitation, all governmental requirements relating to human health, the environment, and the prevention, investigation and remediation of soil or groundwater contamination, waste disposal, air or wastewater emissions, occupational safety and health, and the

handling of Hazardous Substances ("Hazardous Substance Laws"). If any of said requirements shall be inconsistent with each other, Licensee shall comply with the most stringent requirement. Licensee shall document all actions taken to achieve such compliance and shall make such documentation available for inspection by Licensor. Licensee shall provide Licensor with a copy of the applicable Hazardous Substance Laws giving rise to such action.

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

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

f. Licensee shall defend, and hold Licensor harmless from all costs, expenses, attorneys' fees, losses, or damages arising out of or connected with the Claim.

g. The obligations of the Licensee under this Section ~~10.4~~10.3 shall survive the termination of this License and shall continue in full force and effect.

11. Access. Licensee, its agents and representatives shall have access to the Property at any time or hour. Licensor shall issue three sets of keys to the Licensee for said access, however, the Licensor reserves the right to approve all persons authorized by Licensee to have access to the Property, and Licensee shall keep Licensor duly informed in writing as to the names and proper means of identifying the persons who are from time to time authorized by Licensee to have such access. Licensor shall have access to the Facility or Property upon reasonable notice (24 hours excepting emergency) to Licensee for purposes of determining Licensee's compliance with this License and for emergencies. Licensor shall have the right to relocate Licensee's route of access to the Property from time to time.

12. Liability and Insurance.

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

13. Waiver and Release. Licensee hereby waives and releases all present and future claims relating to loss, cost, damage, liability or claims, including attorneys' fees, arising from or related to injury or damage to persons or property, including wrongful death, arising out of or in connection with the acts, omissions, or exercise of Licensee's rights hereunder, by Licensee, its employees, agents or representatives or any others entering the Facility and Property or claiming by, through or under Licensee. Such waiver and release shall include without limitation claims for any interference with operations by others. Licensee's waiver and release under this paragraph shall survive expiration or earlier termination of this License.

13.1. Expenses of Enforcement. If either Licenser or Licensee shall, without any fault on its part, be made a party to any litigation commenced by or against the other or otherwise, without fault, incur expense because of litigation arising out of this license or Licensee's occupancy of the Property (other than condemnation proceedings), then the other party hereto shall and will pay all costs and reasonable attorneys' fees incurred by or imposed on the one so made a party or otherwise incurring expense in connection with such litigation. Each party will also pay all costs and reasonable attorneys' fees that may be incurred or paid by the other party in enforcing any of the covenants and agreements of this license, including, without limitation, costs of collecting delinquent monthly payments, taxes and other charges.

14. Default. If any payment due hereunder remains unpaid for a period of thirty (30) days after becoming due, or if Licensee makes an assignment for the benefit of creditors, becomes insolvent, or becomes involuntarily or voluntarily bankrupt or otherwise in default or in violation of any term or provision of this License, and fails to correct the default within thirty (30) days of written notice by Licenser, Licenser may, at Licenser's option, (i) declare the entire unpaid balance payable over the term of this

License immediately due and payable, with interest thereon at the maximum legal rate, or (ii) terminate this License. Additionally, if Licensee is in default of any term or condition herein, Licensors may, no earlier than thirty (30) days after notice to Licensee, the PUC and the FCC, disconnect the Property and otherwise prevent its use until Licensee cures the default and pays Licensors the actual costs incurred in disconnecting and reconnecting the Property, but not less than ONE HUNDRED DOLLARS (\$100.00). Such disconnection shall not cause a reduction in the amounts due under this License. In the event suit is brought to enforce any term or provision hereof, the prevailing party shall be entitled to costs of suit and attorneys' fees.

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

16. No Assignments or Sublicensing. Licensee shall not, whether voluntarily, involuntarily or by operation of law, assign, transfer, mortgage, sublicense or otherwise encumber all or any part of Licensee's interest in this License, any rights hereunder, or in the Facility or the Property without the prior written consent of Licensors in each instance (which consent may be unreasonably withheld, and any attempted assignment, transfer, mortgage, sublicense, or encumbrance without such consent shall be wholly void and shall, at the option of Licensors, terminate this License. Licensors may require: (i) full disclosure of the terms and conditions of the assignment, transfer, mortgage, sublicense or other encumbrance, (ii) proof of the financial responsibility, previous experience and intended use of the assignee, transferee or sublicensee, (iii) an increase in the license fees payable hereunder upon such assignment, transfer, mortgage, sublicense or other encumbrance, and (iv) the payment of a reasonable cost of such approval. In the case of an assignment, transfer or sublicense, Licensors may additionally require renegotiation of any term or provision hereof. It shall not be deemed unreasonable for Licensors to refuse to consent based upon the financial responsibility, previous experience, personal reputation and intended use of the proposed assignee, transferee or sublicensee.

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

a. Either Licensors or Licensee may terminate this License by giving the other ninety (90) days' written notice of termination;

b. Any and all damages and compensation awarded or paid because of the taking or acquisition shall belong to the Licensors, except that so long as Licensors is compensated in full for the property of Licensors acquired by the condemning authority, Licensee shall have the right to pursue its claims, if any, against the condemning authority for amounts incurred by Licensee for moving expenses or for damage to any

personal property or trade fixtures owned by Licensee, loss of business goodwill, and the value of the unexpired term of this License;

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

18. Damage or Destruction:

a. Licensor acknowledges and agrees that it is extremely important that Licensee maintain continuous operation of its systems on the Property. Therefore, in the event of any damage to or destruction of Property, or any condemnation of them, which renders Licensee's systems inoperable or unusable, Licensee, as hereinafter provided, shall have the right (subject to any requirements of law or governmental authority) to construct or install temporary facilities without interfering with any other licensed communications, including temporary or replacement antenna, if necessary, on the Property, in such locations as may be reasonably acceptable to Licensor and in a manner which will not interfere with any repair or reconstruction efforts, in order to continue operation of the Facility. Licensor shall allow Licensee to install such additional Building and fixtures, including antennae(s), cables and wires, and shall permit Licensee such access repair and maintenance rights as may be necessary to allow Licensee to operate and maintain such temporary facilities until the Property have been sufficiently repaired to permit Licensee to use the Facility on the Property, or until a substitute permanent location acceptable to Licensor and Licensee has been agreed upon, and construction of such substitute permanent facility has been completed. Licensee agrees to begin repairs as soon as possible and to diligently proceed with such repairs to completion.

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

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

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

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

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

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

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

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

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

If to Licensor:

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

If to Licensee:

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

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

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

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

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

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

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

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

BANK OF HAWAII, Trustee of the
Kukuilono Park Trust Estate

Approved by the Board of Land and
Natural Resources at its meeting held
on _____, 2015

By: _____

Its:

By: _____

Its:

"Licensor"

STATE OF HAWAII

By: _____

Chairperson
Board of Land and Natural Resources

"Licensee"

DEPARTMENT APPROVED:

Comptroller
Department of Accounting and General Services

DRAFT