

ORDINANCE NO. _____

BILL NO. 80 (2022)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS RELATED TO THE ACQUISITION OF A LICENSE FOR ACCESS, BUFFER, AND PARKING FOR THE UALAPU'E FIRE STATION, KAUNAKAKAI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The County of Maui, Department of Fire and Public Safety ("FPS") has requested a non-exclusive right to use the State of Hawaii, Department of Hawaiian Home Land's real property identified as Tax Map Key Numbers (2) 5-6-002:001 (por.) and :036 (por.) ("DHHL Land") for the purposes of ingress and egress, buffer zone, and parking for the recently acquired site of the Ualapu'e Fire Station located at 7541 Kamehameha V Highway, Kaunakakai, Molokai, and identified as Tax Map Key No. (2) 5-6-002:002 ("Ualapu'e Fire Station").

DHHL agrees to grant a license ("the License") to the County of Maui for the use of its land in exchange for a one-time lump-sum fee established at \$1.42 per square foot for the total area covered by the License. Council hereby waives an appraisal of the License area.

The total License area will be determined through a certified professional survey conducted at FPS's direction and expense.

DHHL and FPS desire to enter into the License, a copy of which is attached hereto as Exhibit "1".

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor may not enter into any intergovernmental agreement or any amendment that places a financial obligation upon the County or any County department or agency.

SECTION 2. Council Authorization. The Council of the County of Maui hereby authorizes the Mayor, or his authorized representative to execute the License, and all other necessary documents relating to the License, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



CHRISTIE M. TRENHOLME
Deputy Corporation Counsel
County of Maui
LF2021-1773
2022-04-12 Ord Auth DHHL License 846

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris R. Lee", is written over a horizontal line.

Upon the request of the Mayor.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

LICENSE NO. 846
(Non-Exclusive)

This LICENSE NO. 846 ("License") made and issued this _____ day of _____, 2022 by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as "LICENSOR," to the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, hereinafter referred to as "LICENSEE."

W I T N E S S E T H T H A T:

WHEREAS, under Section 207(c)(1) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), LICENSOR is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like; and

WHEREAS, LICENSEE has requested a non-exclusive license to use Hawaiian home lands for the purposes of ingress and egress roadway access, buffer zone, and parking until such time that its adjacent fee-simple property identified more specifically by TMK No. (2) 5-6-002:002 is no longer used as a fire station; and

WHEREAS, LICENSOR has determined that the issuance of a non-exclusive license for as more particularly described above will be beneficial to the LICENSOR, its beneficiaries and the greater East Molokai community at large.

NOW THEREFORE, LICENSOR, in consideration of the terms, covenants and conditions herein contained to be kept, observed and performed by the LICENSEE, hereby grants and conveys unto LICENSEE, a non-exclusive license to use a portion of that certain Hawaiian home lands parcel situated in Ualapue, Island of Molokai, identified by Tax Map Key Nos. (2) 5-6-002-001(por.) & :036(por.); as shown as the diagonally lined areas on Exhibit "A"; and further described in Exhibit "B" (metes and bounds survey), attached hereto and to be made a part hereof, hereinafter referred to as the "Premises."

TO HAVE AND TO HOLD the same unto LICENSEE, commencing upon the date of execution hereof, and continuing until such time that its adjacent fee-simple property identified more specifically by TMK No. (2) 5-6-002:002 is no longer used as a fire station, subject to reverter to the LICENSOR upon termination or abandonment, as provided herein.

LICENSOR AND LICENSEE mutually agree to the following terms, conditions and covenants:

1. TERM. The term of the License shall be until such time as LICENSEE's adjacent fee-simple property identified more specifically by TMK No. (2) 5-6-002:002 is no longer used as a fire station.

2. FEE. LICENSEE shall pay a one-time lump-sum fee established at \$1.42 per square foot for the total access area covered by this License. The total access area will be determined through a certified professional survey conducted at LICENSEE's direction and expense. LICENSEE will provide the necessary information as soon as possible to the LICENSOR to determine the total fee amount.

3. PURPOSE. The purpose of this License and use of the Premises as described is strictly for ingress and egress roadway access, and to provide a buffer zone and parking area.

4. DUE CARE AND DILIGENCE. LICENSEE shall use due care and diligence in the construction, operation, repair, renewal, maintenance and removal of the improvements and shall keep the appliances, equipment and improvements in good and safe condition and repair; should said appliances, equipment or improvements cause any damage or nuisance or waste or spoil the Premises, LICENSEE shall repair and restore the Premises within a reasonable time agreeable to LICENSOR.

5. CONDEMNATION. If at any time the Premises across which the License extends, or any part thereof, shall be condemned or taken for any public project by any governmental authority, LICENSEE will have the right to claim and recover from the condemning authority, but not from the LICENSOR, such compensation as is payable for the License and for LICENSEE'S appliances and equipment, if any, used in connection with this LICENSE, which shall be payable to LICENSEE as its interest appears.

6. ABANDONMENT. In the event the Premises shall be abandoned or shall remain unused for the purpose identified herein for a continuous period of one years, all rights granted hereunder shall terminate. Any improvements will be left as is. LICENSEE will remove its appliances and equipment, if any, and LICENSOR hereby consents and agrees to such removal. Failure of LICENSEE to remove its appliances and equipment within 90 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR may remove LICENSEE'S appliances and equipment, and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.

7. RELOCATION. If LICENSOR shall determine that the continued exercise of the License rights granted constitutes an undue interference with a subdivision or development of the land over which the Premises crosses, LICENSOR shall have the right to terminate the License granted to the extent necessary to eliminate such interference, provided, that it shall grant to LICENSEE a substitute License within the reasonable vicinity to LICENSEE to effect relocation of any facility or portion thereof, which substitute License shall be subject to the same terms and conditions as contained

in this License. The cost of any such relocation shall be borne by LICENSOR.

8. BREACH. If LICENSEE shall fail to observe or perform any of the covenants, terms, and conditions herein contained, and on its part to be observed and performed, LICENSOR shall deliver written notice of the breach or default by service as provided by Section 634-35 or 634-36, Hawaii Revised Statutes, or by registered mail or certified mail to LICENSEE at its last known address, making demand upon LICENSEE to cure or remedy the breach or default within sixty (60) days from the date of the receipt of the notice. Upon failure of LICENSEE to cure or remedy the breach or default within the same time period provided herein or within such additional period as LICENSOR may allow for good cause, LICENSOR may terminate this License without prejudice to any other remedy or right of action.

9. RIGHT TO ENTER. LICENSOR or the County, and the agents or representatives thereof, shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties, such as inspections, provided, that in the exercise of such rights, LICENSOR or the County shall not interfere unreasonably with LICENSEE or LICENSEE'S use and enjoyment of the Premises.

10. HAZARDOUS MATERIALS. LICENSEE shall not cause or License the escape, disposal, or release of any hazardous materials. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE'S business. Use by the LICENSEE of the Premises to access the fire station is not considered hazardous, in and of itself, under this License. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE.

For the purpose of this License, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of the subject License, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and LICENSOR.

11. EXTENSION OF TIME. That notwithstanding any provision contained herein to the contrary, wherever applicable, LICENSOR may for good cause shown, allow additional time beyond the time or times specified herein to LICENSEE, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

12. INDEMNIFICATION. To the extent permitted by law and subject to Chapter 3.16, Maui County Code, LICENSEE shall indemnify, defend, and hold harmless LICENSOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expenses, thereof, arising out of or resulting from LICENSEE'S (including its officers, employees, or agents) use and possession of the premises. This provision shall survive the expiration or earlier termination of this License.

13. AGREEMENT. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors and assigns.

14. Miscellaneous.

a. Consents. Whenever under the terms of this License the consent or approval of either party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the party receiving any request or consent or approval shall fail to act upon such request within sixty-five (65) days after receipt of written request therefor, such consent or approval shall be presumed to have been given.

b. Bind and Inure. This License shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and their respective officers, directors, representatives, personal representatives, successors, successors-in-trust and assigns.

c. Singular/Plural. The singular or plural depends on its appropriate use.

d. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

e. Paragraph Headings. The headings of paragraphs in this License are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this License.

f. Incorporation of Agreements. This License incorporates all agreements between the parties relating to the subject matter hereof, and supersedes all other prior oral or written letters, agreements or understandings relating to the subject matter hereof. This License may not be modified or amended, not any of the provisions hereof waived, except by an instrument in writing signed by the parties hereto.

g. Counterparts. The parties hereto agree that this License may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. In making proof of this License, it shall not be necessary to produce or account for more than one such counterpart. For all purposes, including, without limitation, recordation and delivery of this License, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

15. SPECIAL CONDITIONS. LICENSOR and LICENSEE also agree to the following:

- a. LICENSEE shall not undertake any construction whatsoever on the Premises until LICENSOR has reviewed and approved the plans in writing (which approval shall not be unreasonably withheld or delayed).
- b. LICENSEE's work shall conform to federal, state and county (government agencies) standards. LICENSEE shall obtain applicable permits and approvals from government agencies prior to the commencement of any work on the property that requires such permits and approvals.
- c. LICENSEE shall be solely responsible for the security of all equipment stored on the premises.
- d. LICENSEE shall construct roadway improvements suitable for LICENSEE's usage as ingress and egress to the fire station within and along Premises. LICENSEE is not required to install any additional improvements along the roadway such as curbs, sidewalks, or drainage.
- e. LICENSEE shall not obstruct the shared ingress and egress access road, specifically identified as a portion of tax map key: 56002036.
- f. At the LICENSOR's sole discretion and in conjunction with the Kuleana Settlement Plan for Ualapue, LICENSEE may be required to install fencing along the Eastern boundary of the ingress and egress access points. LICENSOR shall notify LICENSEE of the requirement to install fencing in writing, and shall

cooperate with LICENSEE on the location and timing of installation. LICENSEE shall bear all economically reasonable cost for fencing materials, supplies, and installation. Fencing of the Premises may also be installed at LICENSEE's discretion, provided the design and installation is subject to LICENSOR'S review and consent, which shall not be unreasonably withheld. LICENSOR acknowledges that LICENSEE is a governmental entity and that funding for improvements is subject to appropriation by the Maui County Council as well as the legal requirements of procurement.

- g. Entry under the LICENSE is allowed for fire department and emergency response activities, including LICENSEE'S employees, agents, contractors, and subcontractors solely for the purpose stated herein.
- h. LICENSEE shall keep and maintain the Premises and any and all equipment and personal properties of LICENSEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage, and other refuse resulting from its activities on the Premises.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

Deputy Attorney General

By _____
William J. Aila, Jr., Chairman
Hawaiian Homes Commission

LICENSOR .

APPROVED:

COUNTY OF MAUI

Department of Fire & Public
Safety

By _____
Michael P. Victorino, Mayor

LICENSEE

Department of Finance

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Maui

DIGEST

ORDINANCE NO. _____
BILL NO. 80 (2022)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS RELATED TO THE ACQUISITION OF A LICENSE FOR ACCESS, BUFFER, AND PARKING FOR THE UALAPU'E FIRE STATION, KAUNAKAKAI, HAWAII

This bill proposes to authorize the Mayor to enter into an intergovernmental agreement with the Department of Hawaiian Home Lands to authorize a non-exclusive license to use Hawaiian home lands for the purposes of ingress and egress, buffer zone, and parking for the recently acquired site of the Ualapu'e Fire Station located at 7541 Kamehameha V Highway, Kaunakakai, Molokai, TMK: (2) 5-6-002:002.


I, KATHY L. KAOHU, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 80 (2022) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 6th day of May, 2022, by the following vote:

AYES: Councilmembers Gabriel Johnson, Kelly T. King, Michael J. Molina, Tamara A.M. Paltin, Shane M. Sinenci, Yuki Lei K. Sugimura, Vice-Chair Keani N.W. Rawlins-Fernandez, and Chair Alice L. Lee.

NOES: None.

EXCUSED: Councilmember Natalie A. Kama.

DATED at Wailuku, Maui, Hawaii, this 9th of May, 2022.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.