

ALAN M. ARAKAWA
Mayor

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OFFICE OF THE MAYOR



COUNTY OF MAUI
CIVIL DEFENSE AGENCY
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
808.270.7285
808.270.7275 (fax)
civil.defense@co.maui.hi.us

August 8, 2016

ANNA M. FOUST
Emergency Management Officer

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Mike White, Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Alan Arakawa 8/11/16

Mayor

Date

SUBJECT: RESOLUTION NO: XXXX APPROVING THE SITING OF SIRENS IN MAUI COUNTY RELATING TO THE HAWAII STATE EMERGENCY OUTDOOR SIREN WARNING SYSTEM

Dear Chair White:

The attached resolution authorizes the Mayor to enter into lease agreements for the installation or replacement of outdoor warning sirens on County-owned property pursuant to the Memorandum of Agreement on April 16, 2014, between the County of Maui and the State of Hawaii, Department of Accounting and General Services (DAGS), and Department of Defense (DoD) to coordinate implementation, planning, design and construction of the Hawaii State Emergency Outdoor Siren Warning system.

This is one of the final steps before DAGS will issue a notice to proceed to the contractor to begin Phase I of the project.

If you have additional questions, please contact me at 270-7281 or via email at anna.foust@co.maui.hi.us.

Very Respectfully,

Anna Foust

Anna M. Foust
Emergency Management Officer

Attachments: Resolution
Appendix 1: Memorandum of Agreement
Exhibits 1-12: County Lease Agreements

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OFFICE OF THE
COUNTY CLERK

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COUNTY CLERK

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COUNTY COMMUNICATION NO. 16-189

Resolution

No. _____

APPROVING THE INSTALLATION OF SIRENS IN THE COUNTY OF MAUI RELATING TO THE HAWAII STATE EMERGENCY OUTDOOR SIREN WARNING SYSTEM

WHEREAS, the State of Hawaii, Department of Accounting and General Services, the Department of Defense, and the County of Maui (“County”) entered into a Memorandum of Agreement (“MOA”) on April 16, 2014, attached hereto as Appendix (1), to coordinate implementation, planning, design, and construction of the Hawaii State Emergency Outdoor Siren Warning system throughout the County; and

WHEREAS, twelve locations located on County-owned property have been selected for placement of emergency outdoor warning sirens, all of which are County properties as further described in Exhibits “1” through “12”, attached hereto and incorporated herein; and

WHEREAS, license agreements between the County and the State of Hawaii were contemplated in the MOA to authorize the placement of any emergency warning siren on County property; and

WHEREAS, the County has proposed lease agreements instead of license agreements; and

WHEREAS, it is understood that effective July 1, 2014, Hawaii Revised Statutes (“HRS”) Chapter 128, which is cited in the MOA, was repealed and replaced by HRS Chapter 127A, and that specific provisions of HRS Chapter 128 cited in the MOA are clearly addressed in HRS Chapter 127A; and

Resolution No. _____

WHEREAS, pursuant to Section 3.40.040, Maui County Code, a lease of real property exceeding five years must be authorized by the County Council by resolution and may be so authorized when such longer period is deemed necessary, is in the public interest, and is for the use of any agency of the State; and


WHEREAS, the twelve leases attached hereto fulfill the MOA and serve the public interest by improving and expanding emergency and civil defense communications in times of disaster or national emergency; and

WHEREAS, the twelve leases will remain in effect until such time as either party provides reasonable written notice to terminate the lease; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Mayor and the Director of Finance or their authorized representatives may execute these leases; and
2. That certified copies of this resolution be transmitted to the Mayor, the Emergency Management Officer, the Director of Finance, the Director of Parks and Recreation, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2016-0309

MEMORANDUM OF AGREEMENT

**BETWEEN THE
COUNTY OF MAUI
AND
STATE OF HAWAII**

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

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

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

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

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

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

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

d. **When overseeing design and construction phases of work for the DOD sirens and related equipment:**

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

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

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

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

COUNTY OF MAUI



ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:



ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:



CALEB ROWE
Deputy Corporation Counsel

APPROVED AS TO FORM:



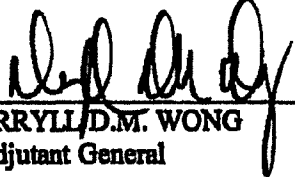
Deputy Attorney General

APPROVED AS TO FORM:



Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA107 Lae Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Lae Park, TMK: (2) 2-5-005:060 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 1 "

16 JUL 18 A8:26

STATE OF HAWAII
CIVIL DEFENSE DIV

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Lae Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA107 at Lae Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.


5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

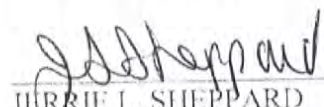
APPROVAL RECOMMENDED:

COUNTY OF MAUI


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency


By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309
MA107

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii

MA107

STATE OF HAWAII)
CITY AND)
County of Honolulu) SS.

On this 20th, day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of signing # Pages: 27
Notary Name: Victoria Tom Judicial Circuit: First
Doc. Description: Lease Agreement for
Siren MA 107 Lae Park

Notary Signature: Victoria Tom
Date: 7-20-2016





STATE OF HAWAII)
COUNTY OF MAUI) SS.
)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

SITE SKETCH

DATE: 10/10/2006

ISLAND: MAUI

SITE NUMBER: 107

SITE NAME: Lae Park

LEGEND

■ Utility Box

○ Stop Sign

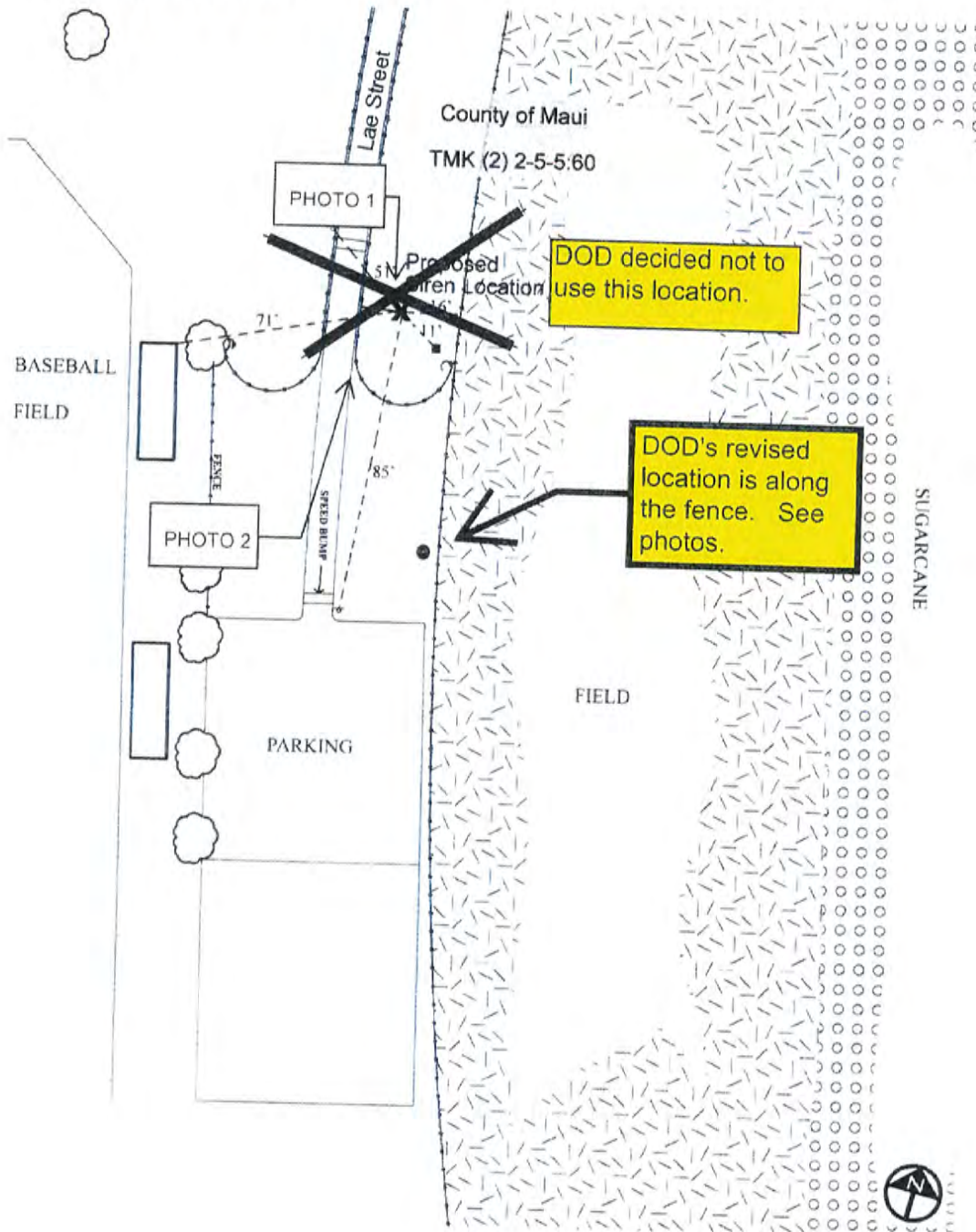
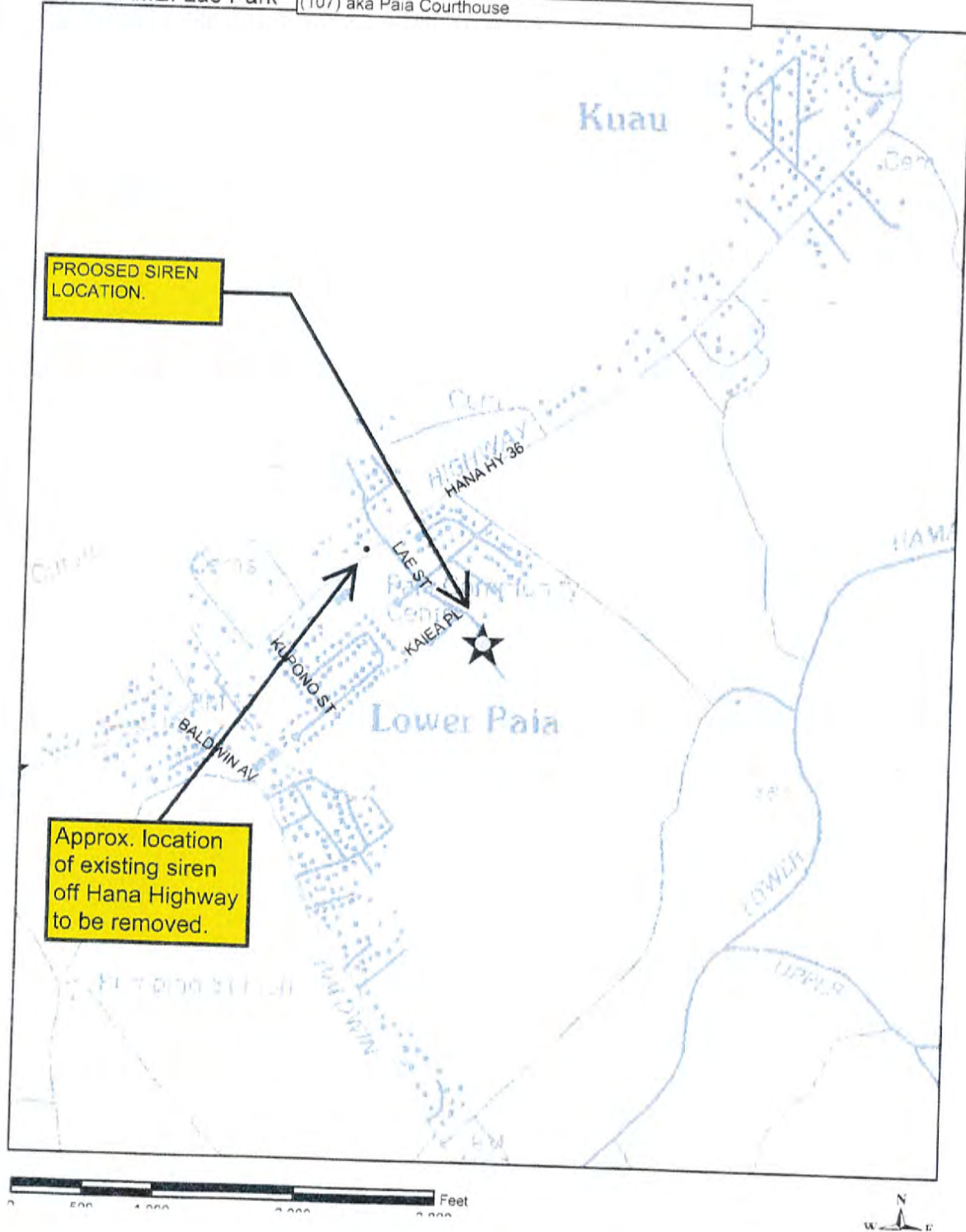


EXHIBIT "A"

SITE LOCATION MAP

ISLAND: Maui

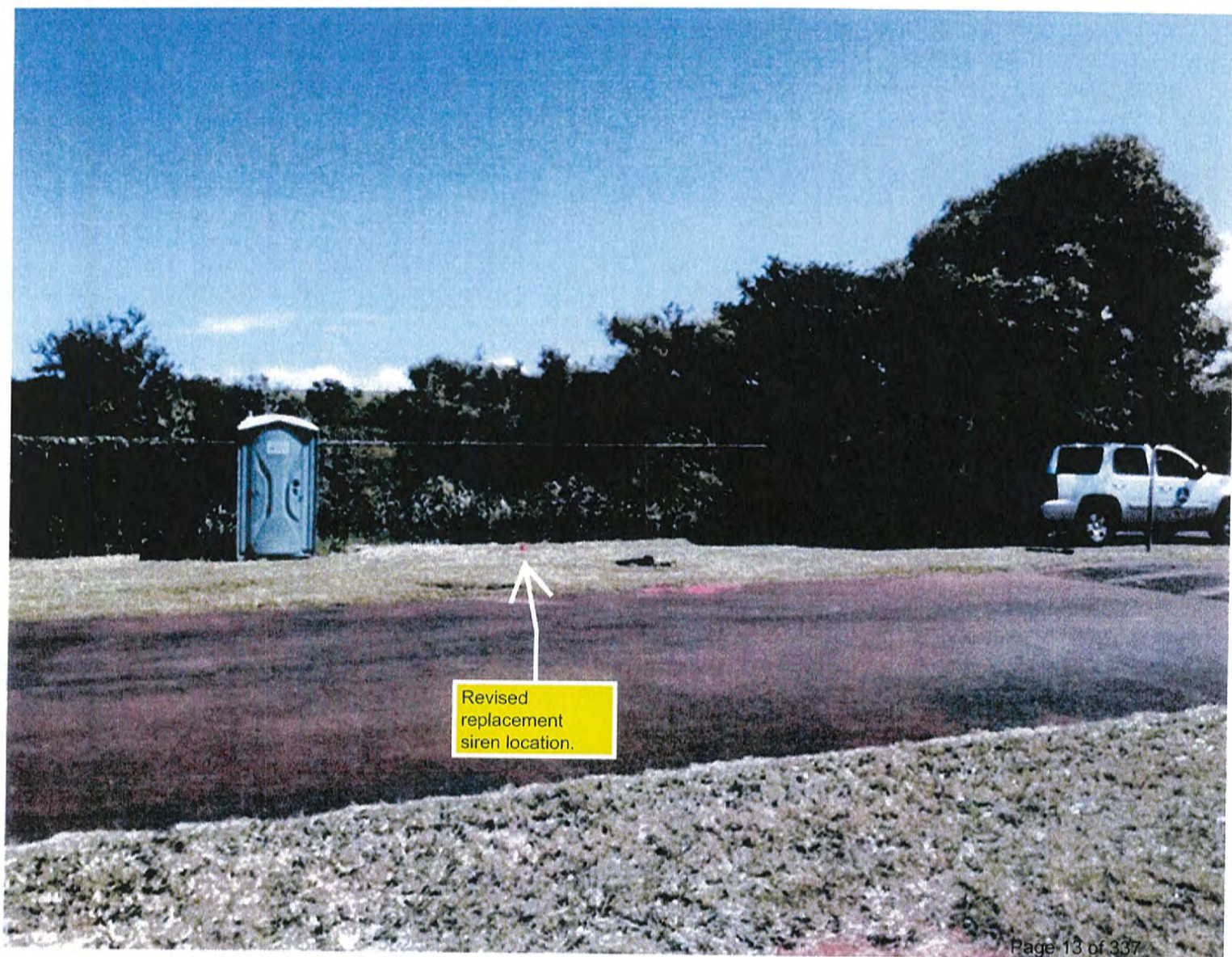
SITE NAME: Lae Park (107) aka Paia Courthouse







Revised
replacement siren
location.



SITE PHOTOGRAPHS

DATE: 10/10/2006

ISLAND: Maui

SITE NUMBER: 107

SITE NAME: Lae Park



DOD decided not to use this location.

PHOTO 1 Proposed siren site facing south east.



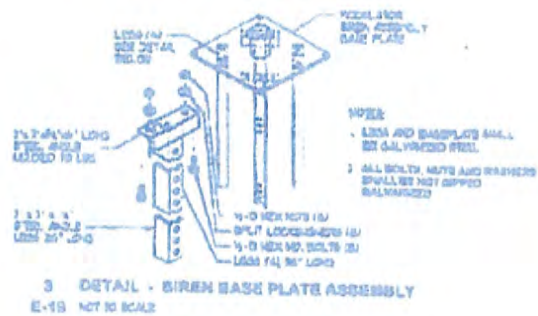
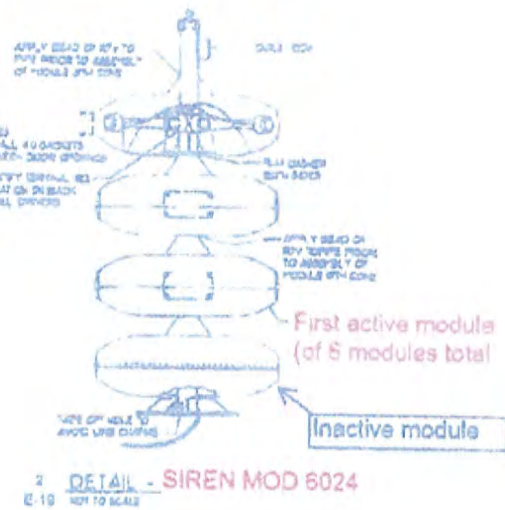
DOD decided not to use this location.

PHOTO 2 Proposed siren site facing north toward Paia town.

DATE/TIME: 10/10/2006 3:30pm
 ISLAND: [] KAUAI [] OAHU [x] MAUI [] MOLOKAI [] LANAI [] HAWAII
 SITE NUMBER: 107
 SITE NAME: Lae Park

GPS COORDS		WORK TYPE	PRIORITY ORDER	ACCESS	
N 20° 56' 34.091		[x] N - Add New	for ALTERNATIVES	[x] Public Road	[] Guardrails
W 156° 21' 49.232		[] E - Upgrade Existing	(1 as the highest)	[] Gates	[] No Road
		[] A - Choose Alternative	1	[] Fences	
LANDOWNER					PERMIT REQUIREMENTS
TMK: 225005060				[] Streets/	[] None
Name: County of Maui				Right of Way	[] CDUA
Address:				[x] Park	[x] SMA
Phone: 808-270-7626				[] Public	
Contact Person: Glenn Correa / John Buck				[] Private	
VEGETATION	SOIL	TERRAIN	SURROUNDING LAND USES		
[] B - Bare	[] SA - Sand	[] F - Flat	[x] R - Residential	[] I - Industrial	
[x] G - Grass	[] S - Silt	[x] SL - Sloped	[] V - Vacant Land	[] S - School	
[] T - Trees	[x] C - Clay	[] ST - Steep	[x] AG - Agricultural	[x] PK - Park	
[] S - Shrubs	[] CO - Coral		[] CO - Conservation	[] PS - Police Station	
[] Other	[] R - Rock		[] C - Commercial	[] FS - Fire Station	
	[] Other		[] H - Hotel	[] HO - Hospital	
VEG. TRIMMING	ANTENNA TYPE	POLE TYPE	[] GC - Golf Course		
[x] Yes	[] O - Omni Sinclair or equal	[x] H2			
[] No	[x] Y - Yagi to Puu Nianiau	[]	[] O - Other		
SIREN / SPEAKER TYPE / UNIT COUNT			LANDMARKS / DISTANCE		
[] MOD 3012H () unit [] DSA 117 () units			4 feet from guardrail		
[] MOD 3024H () unit [] DSA 121 () units			16 feet from chain linked fence		
[x] MOD 6024H (1) unit [] MOD 6048H () unit			71 feet from driveway		
[] Other () units			81 feet from backstop		
UTILITY Electrical Connection to/ Coordination with			11 feet from electrical timer (utility box)		
[x] Solar Energy [] Kauai Island Utility Corporation					
[] HECO [] Hawaiian Telcom					
[] HELCO [] Oceanic Time Warner Cable					
[] MECO [] Other (specify)					
FIELD NOTES					
Pauwela Paia site to be proposed for Lae Park; cabinet to face the fence (northeast); site is behind guardrail, across the road, and off driveway ; site address: Lae Street; TPA: 11.062 acres. Soil: loe silty clay up to 60 inches deep. (NRCS 1949) Onsite conditions may vary.					
EQUIPMENT ORIENTATION					
Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.					
all electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer					

EXHIBIT " B "



Siren Type MOD 6024

Figure 1: Schematic representation of the experimental design. The top part shows a timeline from 0 to 100 seconds. At 0s, 'Stimulus' is presented. At 10s, 'Response' is indicated. At 20s, 'Feedback' is shown. At 30s, 'Stimulus' is presented again. At 40s, 'Response' is indicated. At 50s, 'Feedback' is shown. At 60s, 'Stimulus' is presented. At 70s, 'Response' is indicated. At 80s, 'Feedback' is shown. At 90s, 'Stimulus' is presented. At 100s, 'Response' is indicated. The bottom part shows a table with columns for 'Stimulus', 'Response', and 'Feedback'. The rows are labeled 'Stimulus', 'Response', and 'Feedback'.

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. **COUNTY's responsibilities:**

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

FOR COUNTY CONTROLLED SITES:

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

3. **DAGS' responsibilities are as follows:**

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

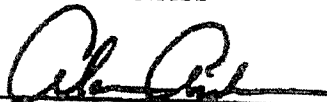
- d. When overseeing design and construction phases of work for the DOD sirens and related equipment:
- 1) If a siren site is located on State-owned property, DAGS shall be responsible for submitting an easement (on behalf of DOD) for the siren from the State Department of Land and Natural Resources.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

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


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

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

COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

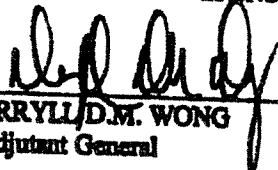
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA111 St. Theresa Church

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as St. Theresa Church, TMK: (2) 3-9-009:013 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 2 "

16 JUL 18 08:26

STATE OF HAWAII
CIVIL DEFENSE DIVISION

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within St. Theresa Church, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA111 at St. Theresa Church".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

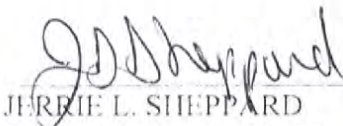
COUNTY OF MAUI



ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:




JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309

MA111

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii

MA111

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016 before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of signing # Pages: 28
Notary Name: Victoria Tom Judicial Circuit: First
Doc. Description: Lease Agreement for
Siren MA 111 St. Theresa Church

Notary Signature: Victoria Tom
Date: 7-20-2016



STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	# Pages:
Notary Name:	Judicial
Doc.	Circuit:
Description:	
Notary Signature:	
Date:	

SITE LOCATION MAP

ISLAND: Maui
SITE NUMBER: 111
SITE NAME: St. Theresa

TMK: (2) 3-9-009-013

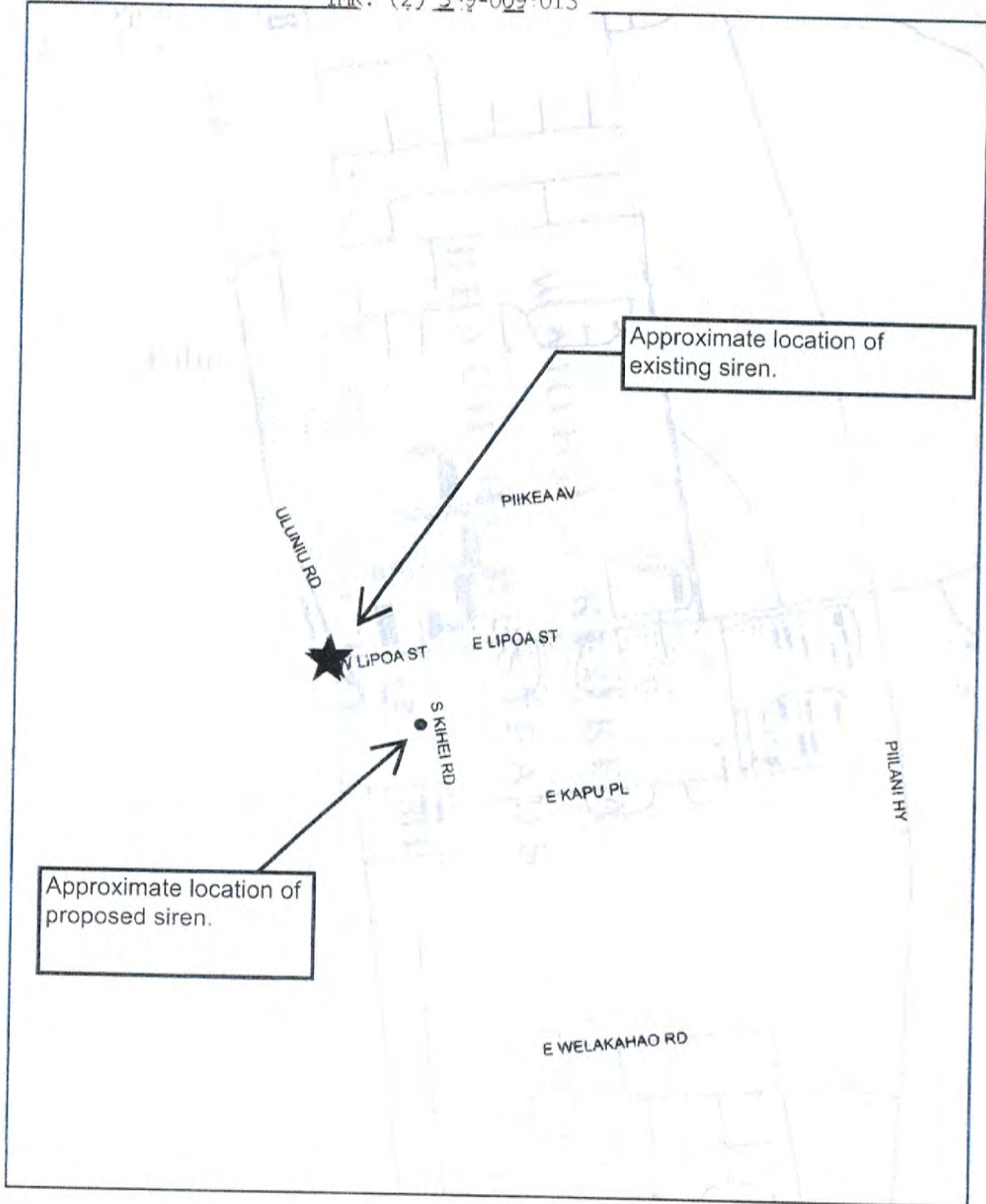
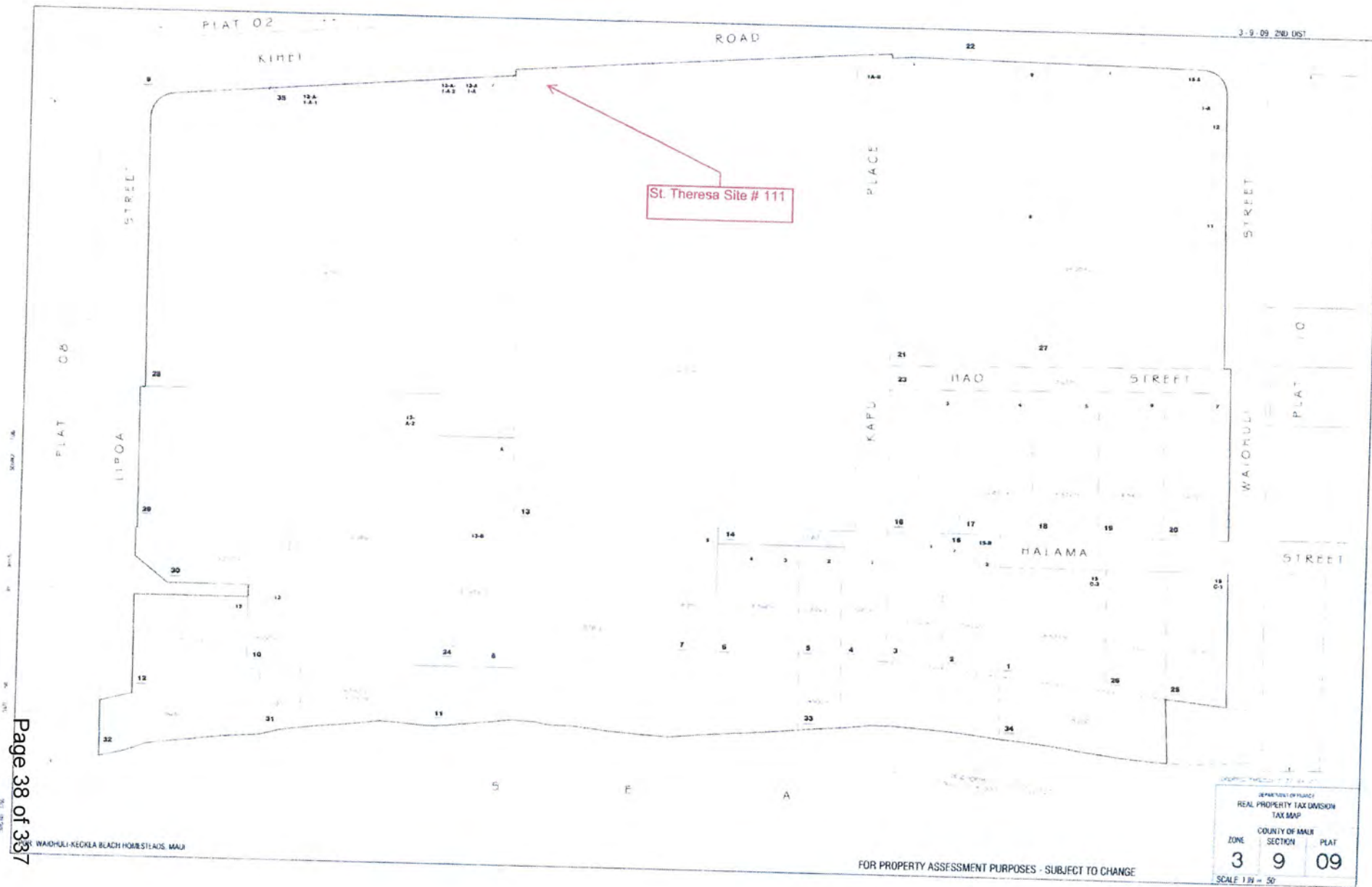
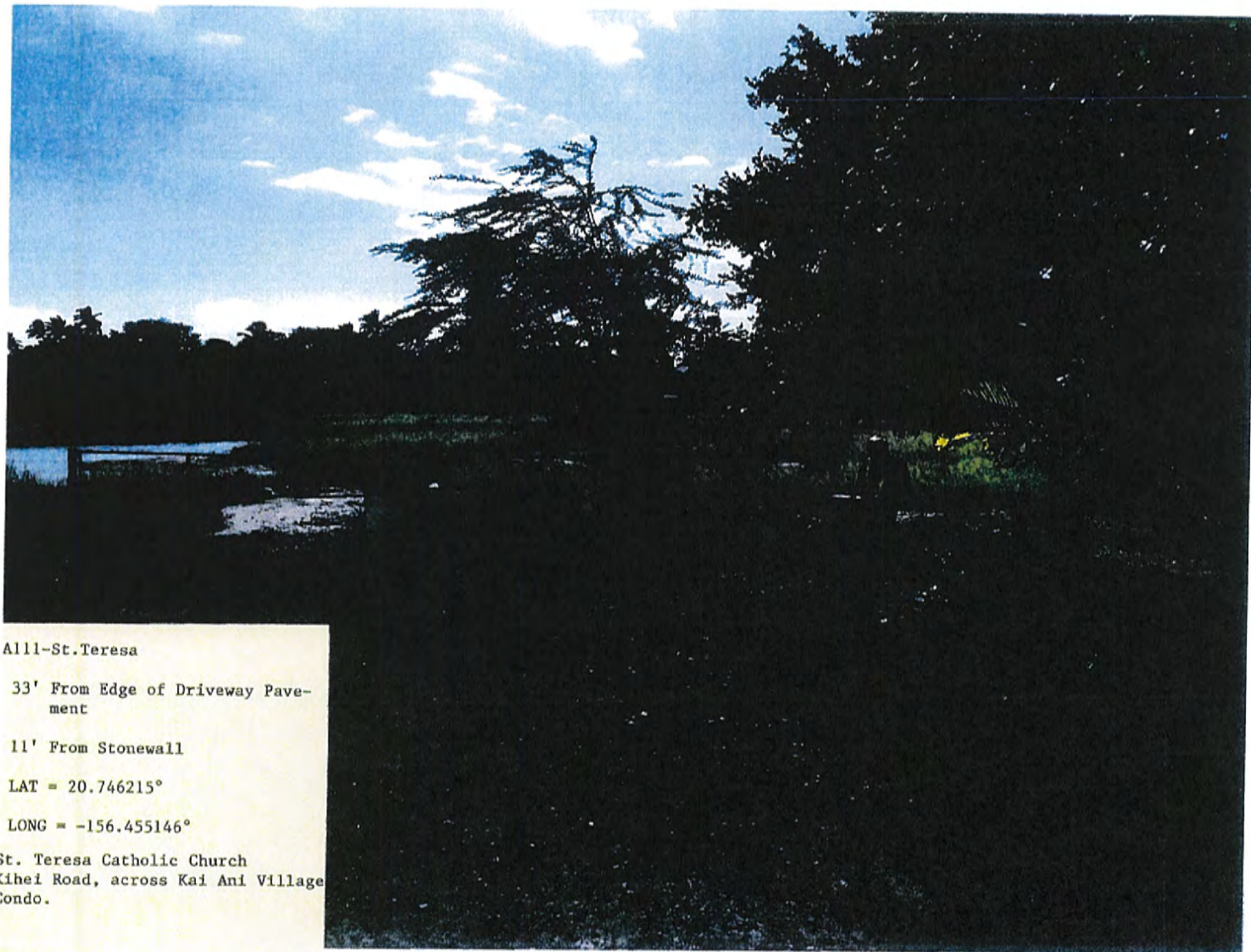


EXHIBIT "A"





A111-St.Teresa

33' From Edge of Driveway Pavement

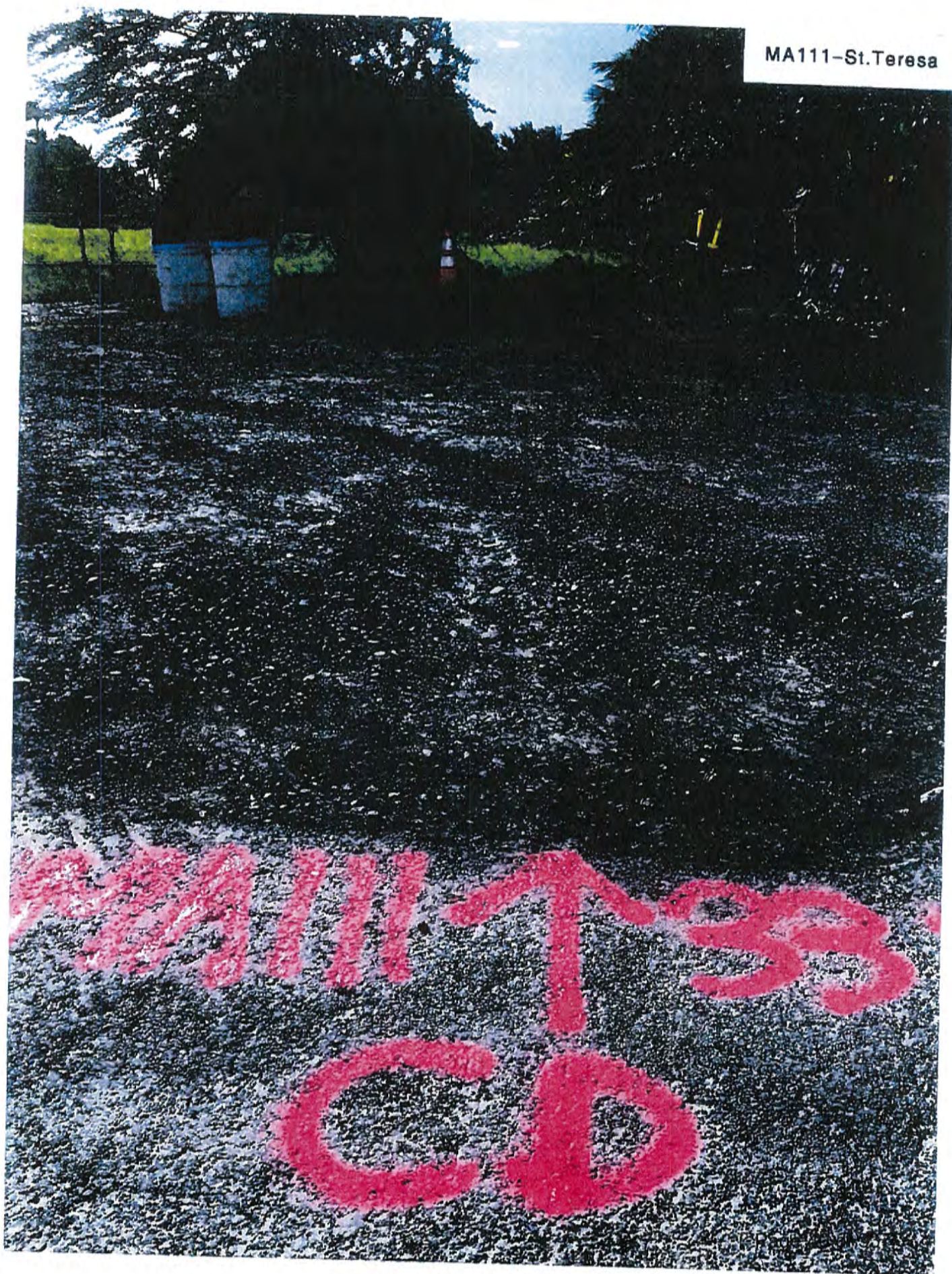
11' From Stonewall

LAT = 20.746215°

LONG = -156.455146°

St. Teresa Catholic Church
Gihei Road, across Kai Ani Village
Londo.

MA111-St.Teresa





Google earth

feet
meters

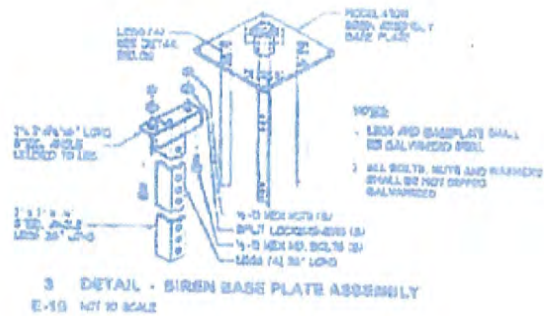
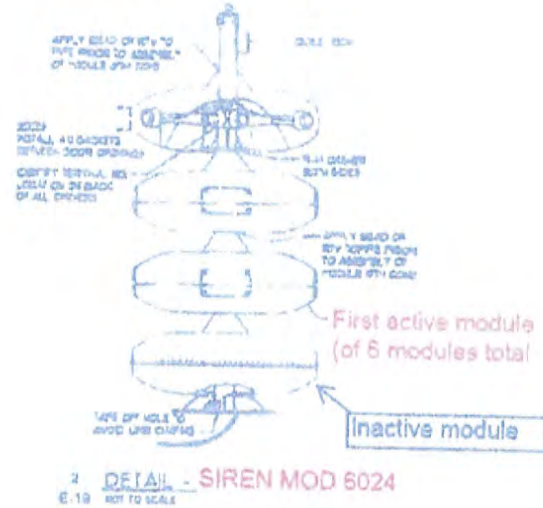
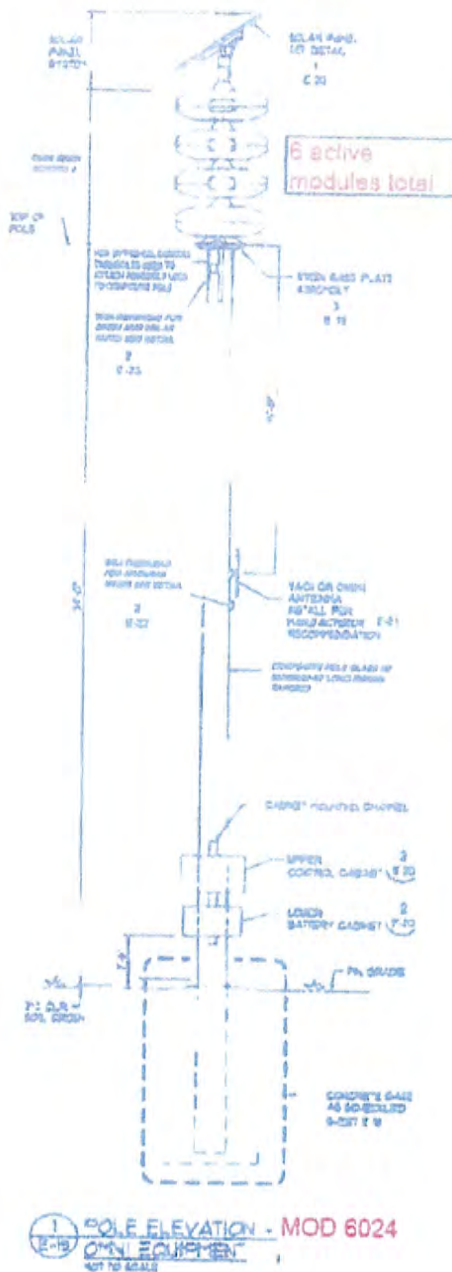








EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL
Siren Type MOD 6024



EXHIBIT B

COVENANTS, TERMS AND CONDITIONS

1. Right to Construct the Equipment. Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. Equipment. The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. Repair and Maintenance of the Equipment. Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. Damage. Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage cause by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

d. When overseeing design and construction phases of work for the DOD sirens and related equipment:

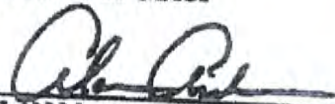
- 1) If a siren site is located on State-owned property, DAGS shall be responsible for submitting an easement (on behalf of DOD) for the siren from the State Department of Land and Natural Resources.
- 2) DAGS' consultants and contractors will process a right-of-entry permit for the installation of the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

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


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

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


COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

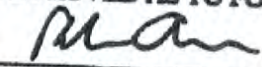
APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

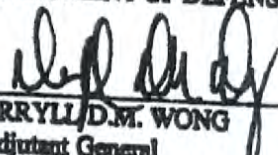
APPROVED AS TO FORM:


Deputy Attorney General

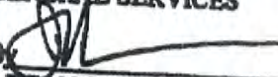
APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA112 Kalama Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Kalama Park, TMK: (2) 3-9-005:052 (por.) more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 3 "

16 JUL 18 A8:27

STATE OF HAWAII
CIVIL DEFENSE DIV

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Kalama Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA112 at Kalama Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI

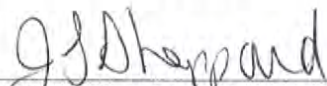


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By

ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309
MA112

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii

MA112

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of signing # Pages: 24
Notary Name: Victoria Tom Judicial Circuit: First
Doc. Description: Lease Agreement for
Siren MA 112 Kalama Park

Notary Signature: Victoria Tom
Date: 7-20-2016



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

SITE SKETCH

DATE: 10/9/2006
ISLAND: MAUI
SITE NUMBER: 112
SITE NAME: Kalama Park

LEGEND

☐ Utility Pole with Light

TMK 3-9-5: 52
Landowner: State of Hawaii
Site User: County of Maui under
EO 854.

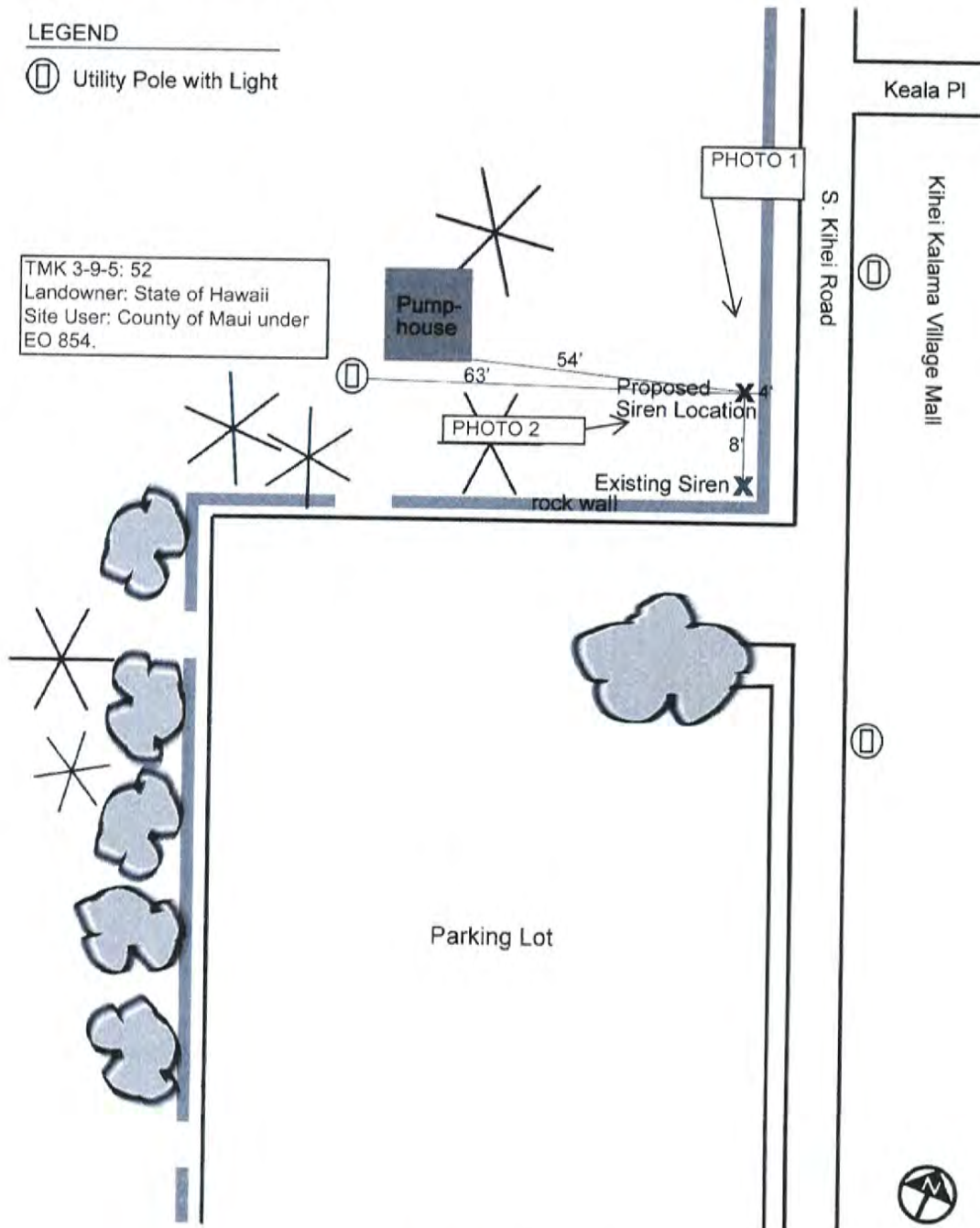
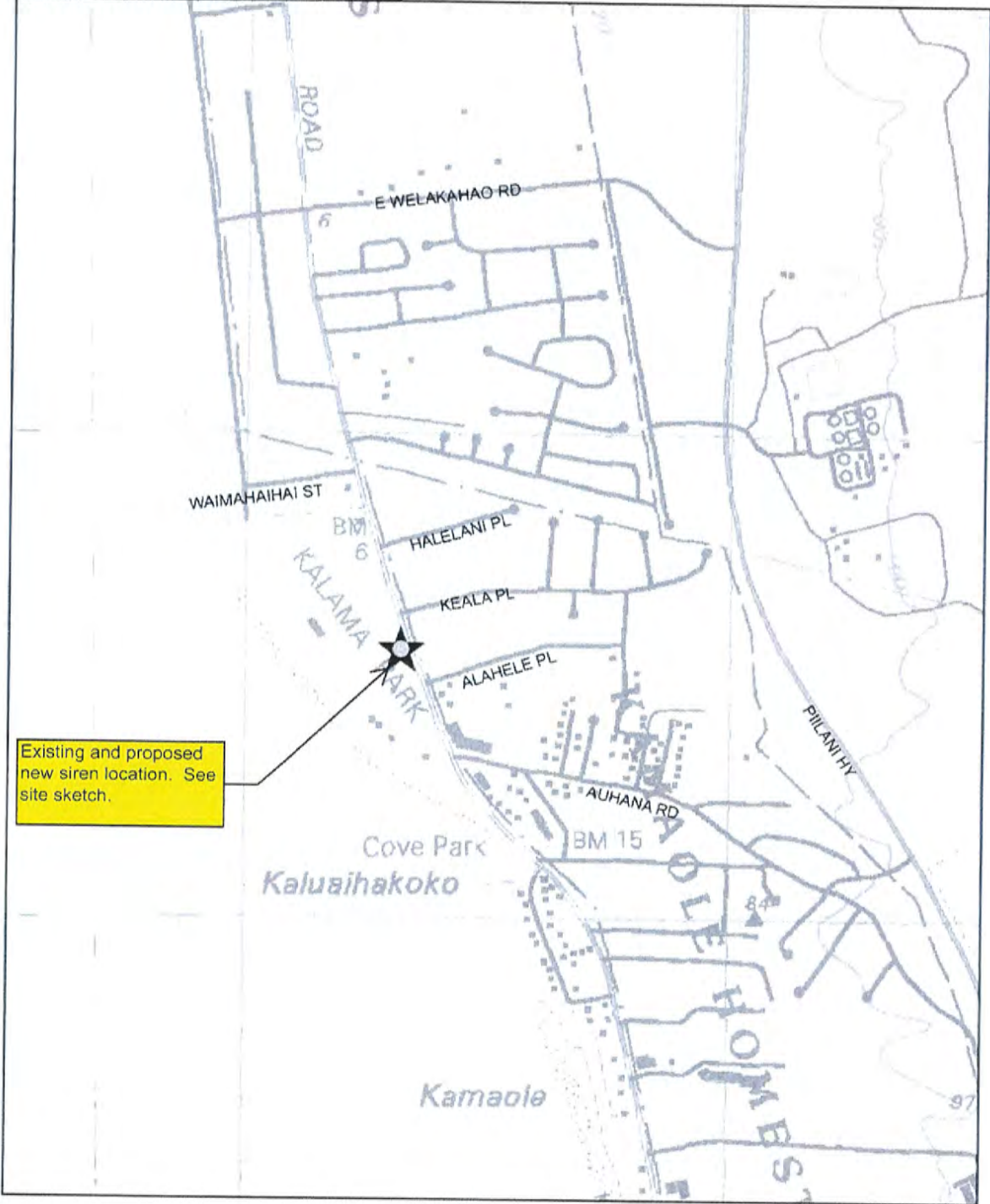


EXHIBIT "A"

11

SITE LOCATION MAP

ISLAND: Maui
SITE NAME: Kalama Park (112)



SITE PHOTOGRAPHS

DATE: 10/9/2006

ISLAND: Maui

SITE NUMBER: 112

SITE NAME: Kalama Park

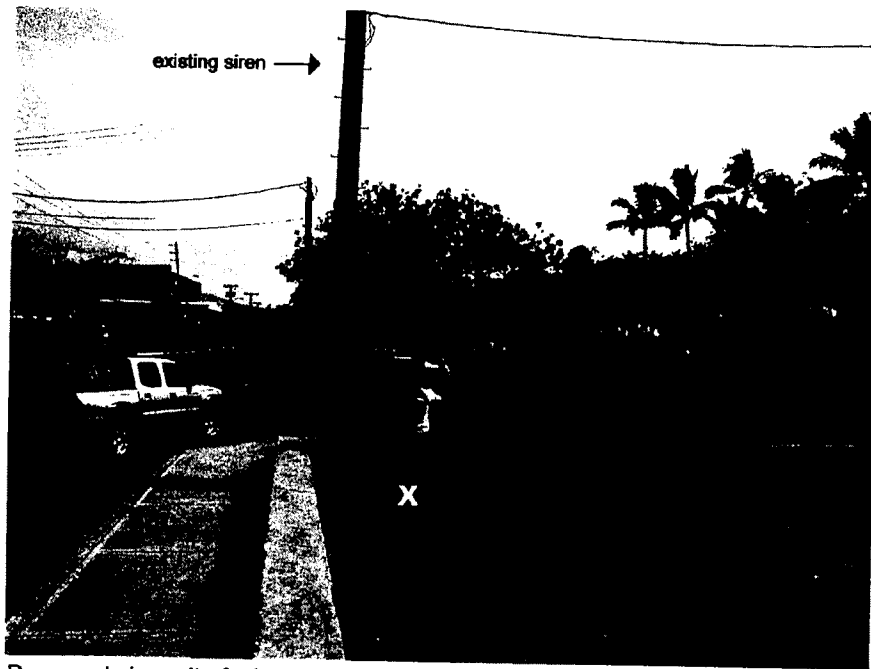


PHOTO 1 Proposed siren site facing south along South Kihei Road.

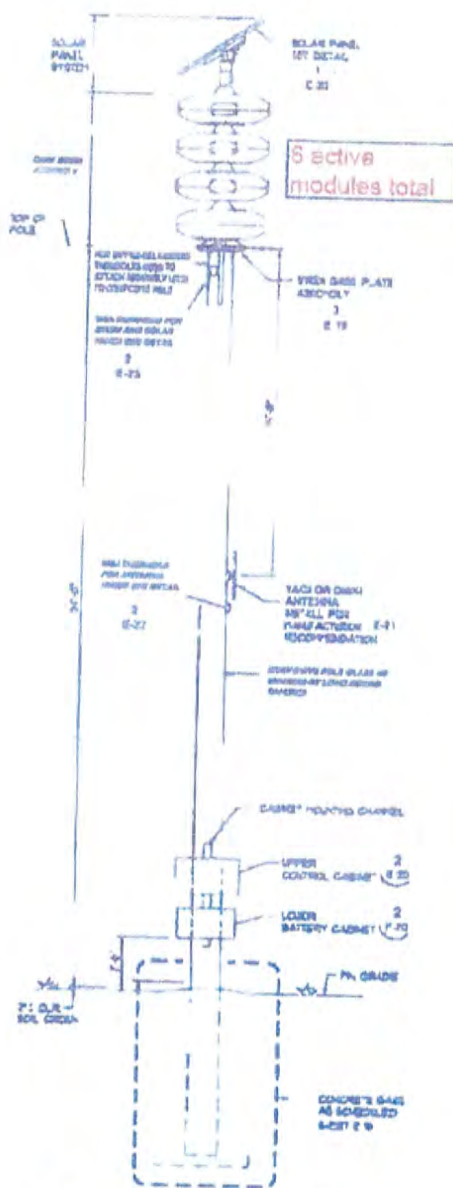


PHOTO 2 Proposed siren site facing east across South Kihei Road toward Kihei Kalama Village Mall.

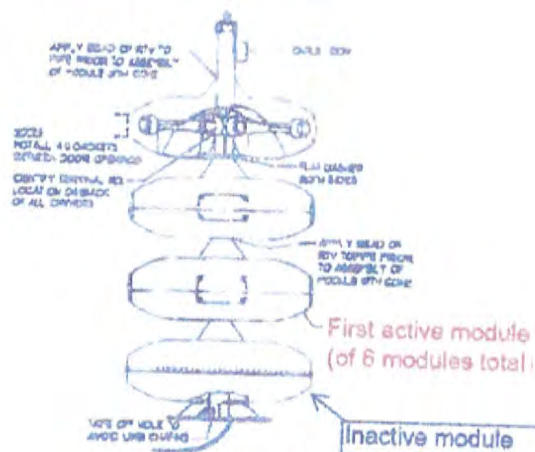
DATE/TIME: 10/9/2006 2:20pm
 ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
 SITE NUMBER: 112
 SITE NAME: Kalama Park

GPS COORDS.	WORK TYPE	PRIORITY ORDER	ACCESS
N 20 43' 54.484	<input type="checkbox"/> N - Add New	for ALTERNATIVES	<input checked="" type="checkbox"/> Public Road <input type="checkbox"/> Guardrails
W 156 27' 08.050	<input checked="" type="checkbox"/> E - Upgrade Existing	(1 as the highest)	<input checked="" type="checkbox"/> Gates <input type="checkbox"/> No Road
	<input type="checkbox"/> A - Choose Alternative	1	<input type="checkbox"/> Fences
LANDOWNER			PERMIT REQUIREMENTS
TMK: 239005052	Site User:	<input type="checkbox"/> Streets/	<input type="checkbox"/> None
Name: State of Hawai'i	County of Maui	Right of Way	<input type="checkbox"/> CDUA
Address:	DPR	<input checked="" type="checkbox"/> Park	<input checked="" type="checkbox"/> SMA
Phone: 984-8102	270-7626	<input checked="" type="checkbox"/> Public	
Contact Person: Philip Ohta	Glenn Correa / John	<input type="checkbox"/> Private	
VEGETATION	SOIL	TERRAIN	SURROUNDING LAND USES
<input type="checkbox"/> B - Bare	<input checked="" type="checkbox"/> SA - Sand	<input checked="" type="checkbox"/> F - Flat	<input checked="" type="checkbox"/> R - Residential <input type="checkbox"/> I - Industrial
<input checked="" type="checkbox"/> G - Grass	<input type="checkbox"/> S - Silt	<input type="checkbox"/> SL - Sloped	<input type="checkbox"/> V - Vacant Land <input type="checkbox"/> S - School
<input type="checkbox"/> T - Trees	<input type="checkbox"/> C - Clay	<input type="checkbox"/> ST - Steep	<input type="checkbox"/> AG - Agricultural <input checked="" type="checkbox"/> PK - Park
<input type="checkbox"/> S - Shrubs	<input checked="" type="checkbox"/> CO - Coral		<input type="checkbox"/> CO - Conservation <input type="checkbox"/> PS - Police Station
<input type="checkbox"/> Other	<input type="checkbox"/> R - Rock		<input checked="" type="checkbox"/> C - Commercial <input type="checkbox"/> FS - Fire Station
	<input type="checkbox"/> Other		<input type="checkbox"/> H - Hotel <input type="checkbox"/> HO - Hospital
VEG. TRIMMING	ANTENNA TYPE	POLE TYPE	
<input type="checkbox"/> Yes	<input type="checkbox"/> O - Omni Sinclair or equi	<input checked="" type="checkbox"/> H2	<input type="checkbox"/> GC - Golf Course
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Y - Yagi to Puu Nianiau	<input type="checkbox"/>	<input type="checkbox"/> O - Other
SIREN / SPEAKER TYPE / UNIT COUNT			LANDMARKS / DISTANCE
<input type="checkbox"/> MOD 3012H () units <input type="checkbox"/> DSA 117 () unit			8 feet from existing pole of siren
<input checked="" type="checkbox"/> MOD 3024H (4) unit <input type="checkbox"/> DSA 121 () unit			4 feet from rock wall
<input type="checkbox"/> MOD 6024H () units <input type="checkbox"/> MOD 6048H () units			155 feet from whale landmark
<input type="checkbox"/> Other () units			54 feet from pump house
UTILITY Electrical Connection to/ Coordination with			63 feet from utility pole to L of pump house
<input checked="" type="checkbox"/> Solar Energy <input type="checkbox"/> Kauai Island Utility Corporation			78 feet from Local Boy Snack Shop across st
<input type="checkbox"/> HECO <input type="checkbox"/> Hawaiian Telcom			85 feet from utility pole on same side of Kihei
<input type="checkbox"/> HELCO <input type="checkbox"/> Oceanic Time Warner Cable			Rd, centered in front of parking lot
<input type="checkbox"/> MECO <input type="checkbox"/> Other (specify)			
FIELD NOTES			
<p>New site to be moved (primarily for the ease of the new siren installation) from existing site along S. Kihei Rd; cabinet to face west toward the ocean; site address: 1900 S. Kihei Rd; Total Parcel Area: 36.4 acres. Soil type Jaucas fine loamy sand up to 60 inches deep. (NRCS 1932) onsite conditions may differ.</p> <p>Assume existing and proposed siren is within park area. Underlying landowner is State of Hawaii.</p> <p>Revised to indicate omni-dir 6024 siren per DOD request.</p>			
EQUIPMENT ORIENTATION			
<p>Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.</p> <p>All electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer</p>			

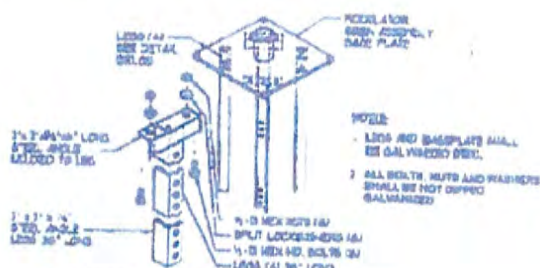
EXHIBIT B



1 POLE ELEVATION - MOD 6024
E-19 NOT TO SCALE



2 DETAIL - SIREN MOD 6024
E-19 NOT TO SCALE



3 DETAIL - SIREN BASE PLATE ASSEMBLY
E-19 NOT TO SCALE

Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASE PLATE DETAIL
Siren Type MOD 6024



EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. **COUNTY's responsibilities:**

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

FOR COUNTY CONTROLLED SITES:

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

3. **DAGS' responsibilities are as follows:**

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


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

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

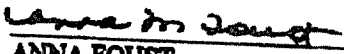
5. Termination. Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

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

COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency


APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

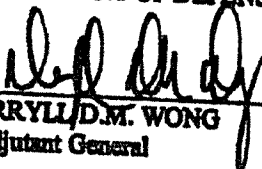
APPROVED AS TO FORM:


Deputy Attorney General

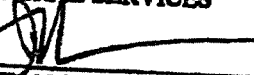
APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA113 Kamaole Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified Kamaole Park, TMK: (2) 3-9-005:030 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 4 "

16 JUL 18 A8 :27

STATE OF HAWAII
CIVIL DEFENSE DIVISION

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Kamaole Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA113 at Kamaole Park ".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI



ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By

ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

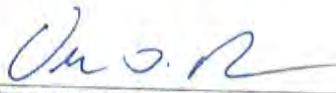


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309

MA113

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii
MA113

STATE OF HAWAII)
COUNTY OF HONOLULU) SS.

On this 20th day of July, 2016 before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>undated at time of signing</u>	# Pages: <u>28</u>
Notary Name: <u>Victoria Tom</u>	Judicial Circuit: <u>First</u>
Doc. Description: <u>Lease Agreement for</u> <u>Siren MA 113 Kamaole Park</u>	
Notary Signature: <u>Victoria Tom</u>	
Date: <u>7-20-2016</u>	





STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Kamaole Park (113)

TMK: (2) 3-9-005:030

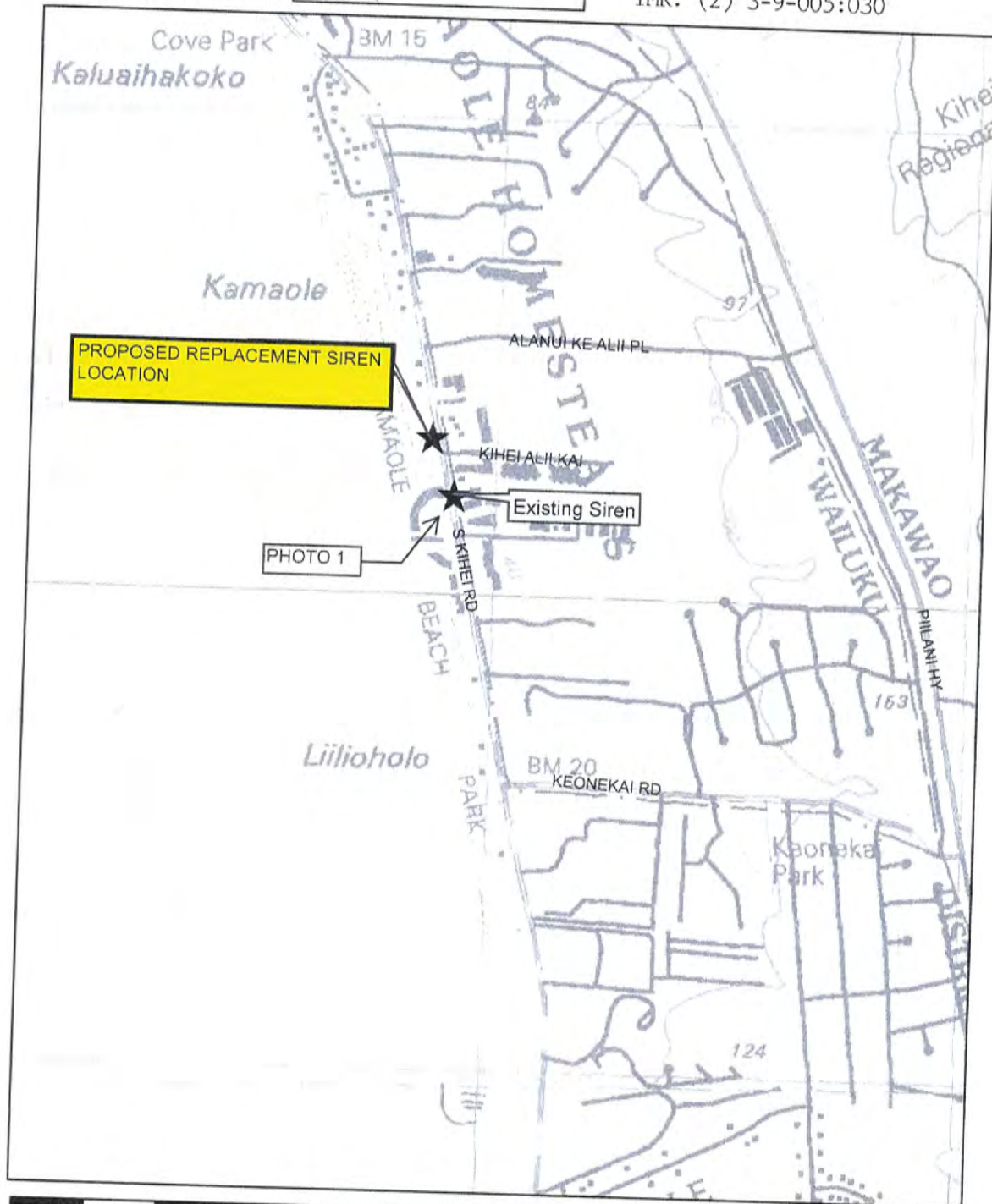


EXHIBIT " A "



SITE LOCATION PHOTO

ISLAND: Maui

SIREN NUMBER: MA113

SITE NAME: Kamaole Park



SITE PHOTOGRAPHS

DATE: 11/14/2006

ISLAND: Maui

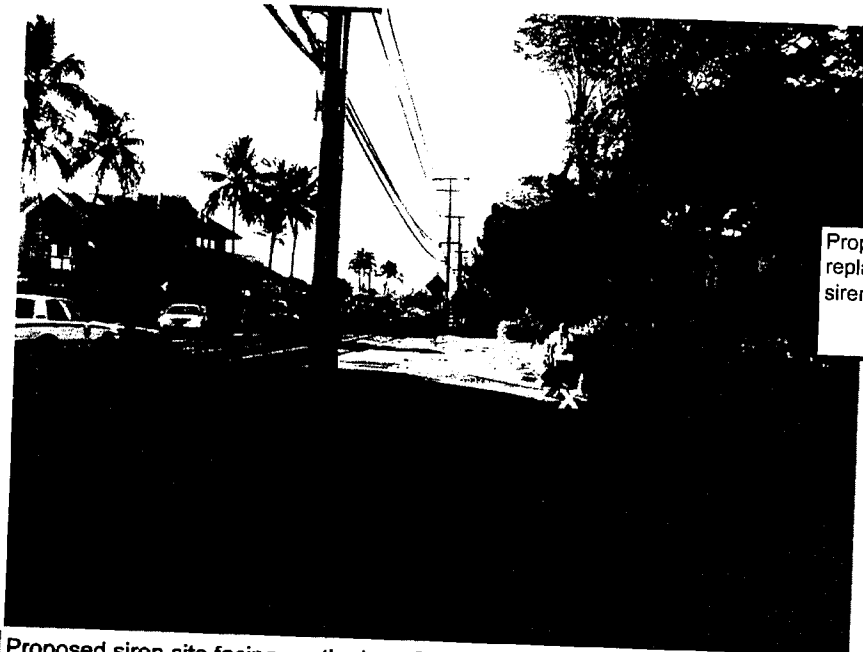
SITE NUMBER: 113

SITE NAME: Kamaole

Existing siren to be removed. This siren appears to be in the County right-of-way.

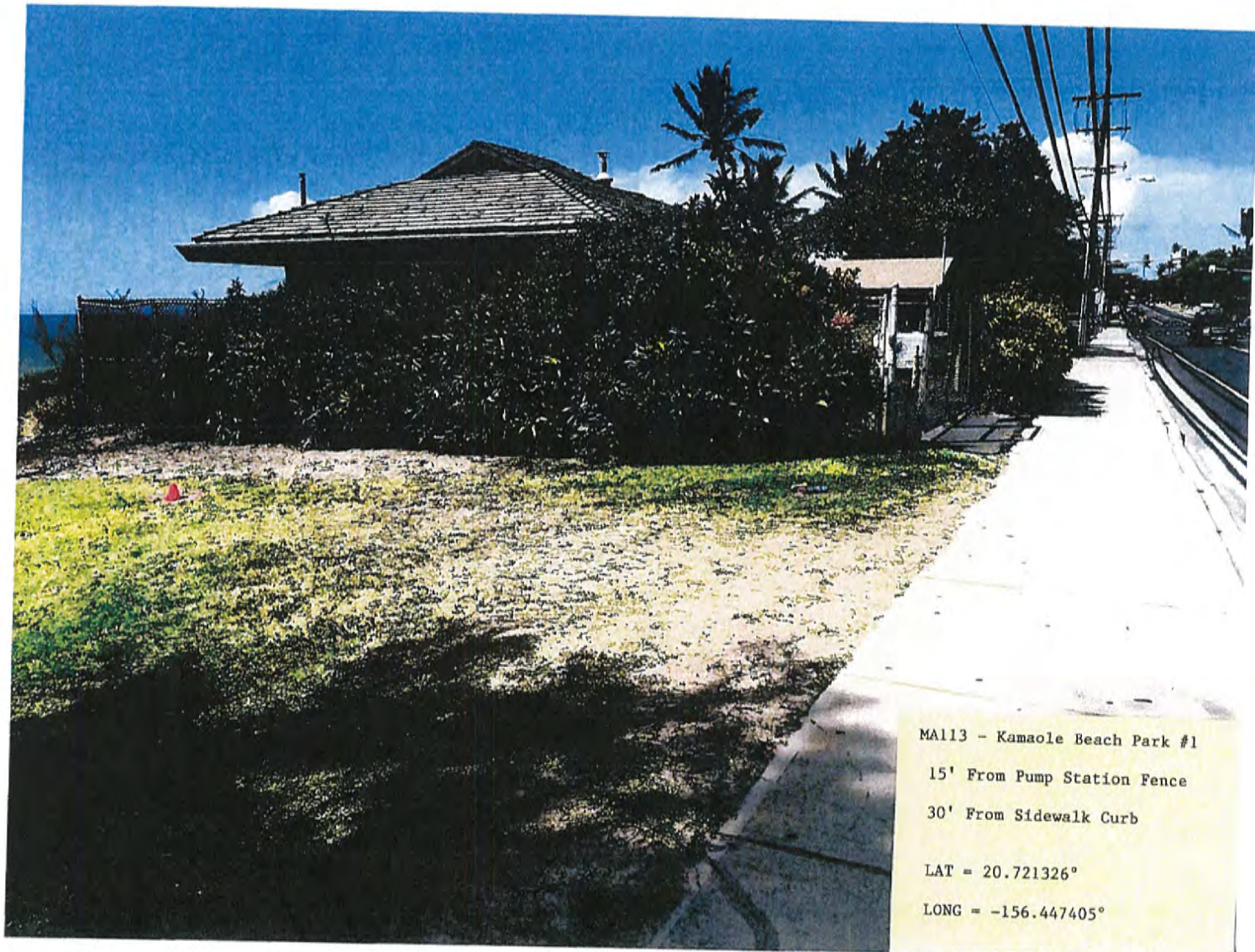


PHOTO 1 Existing siren facing northeast. Siren located near the parking lot of Hawaiian Natural Foods 2411 S. Kihei Road.



Proposed replacement siren location

PHOTO 2 Proposed siren site facing south along S. Kihei Road toward Wailea.



MA113 - Kamaole Beach Park #1

15' From Pump Station Fence

30' From Sidewalk Curb

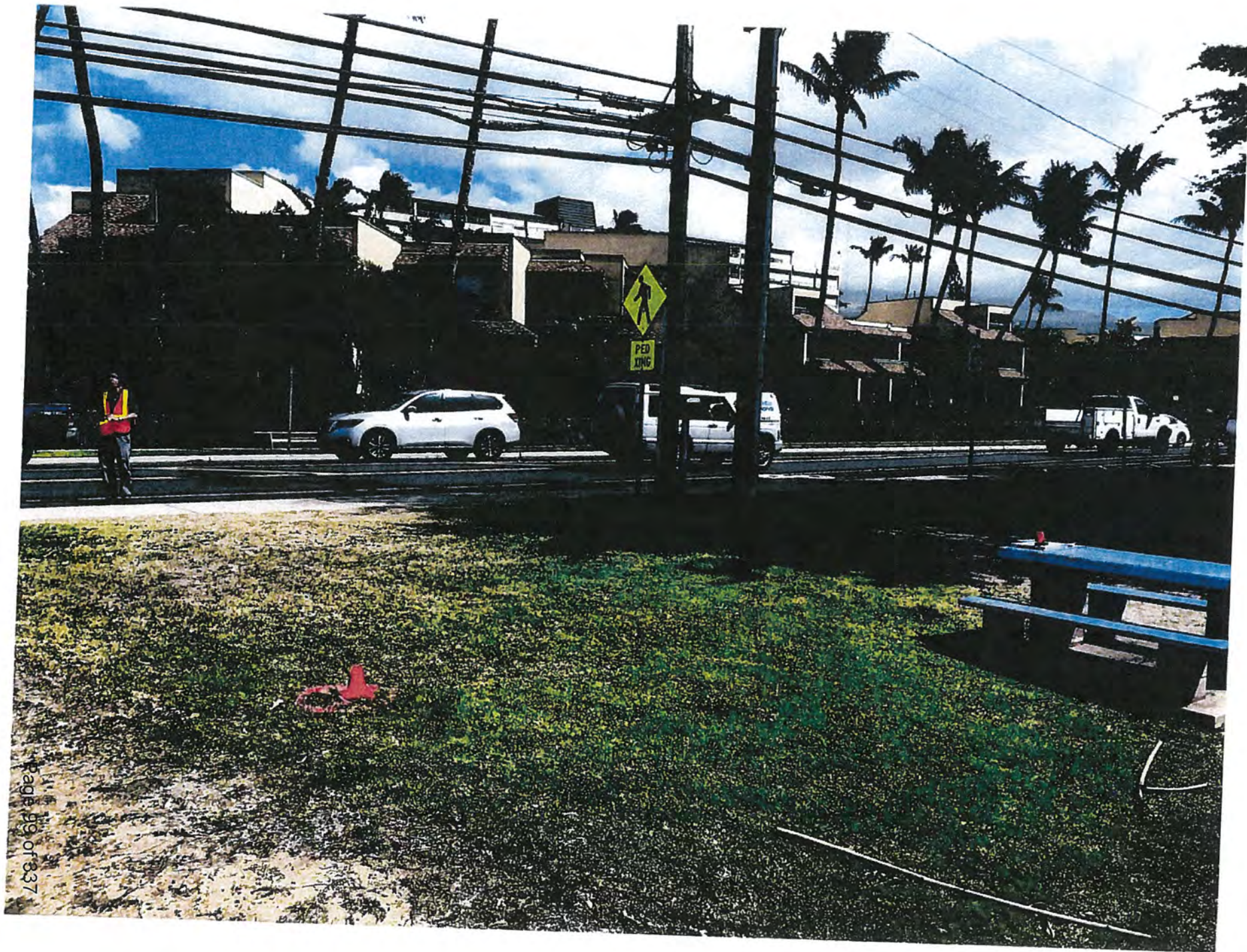
LAT = 20.721326°

LONG = -156.447405°



MA113 - Kamaole Beach Park #1-Kihei

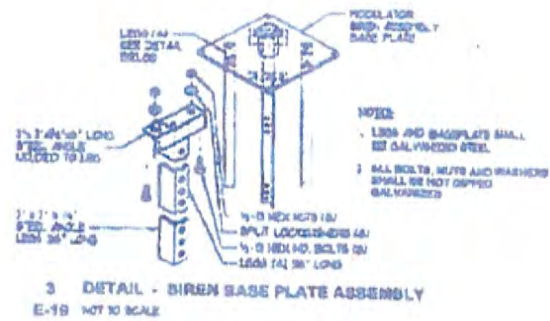
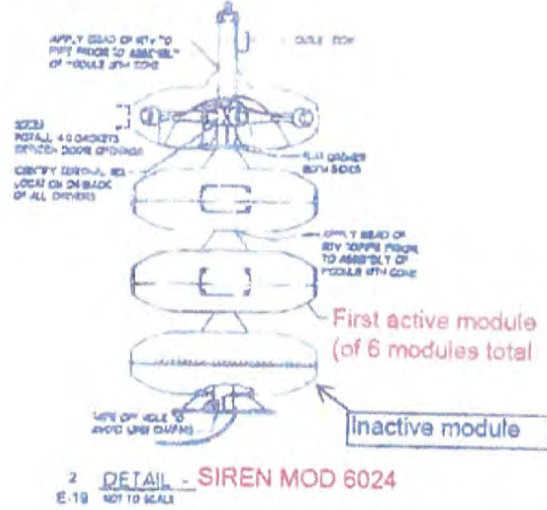
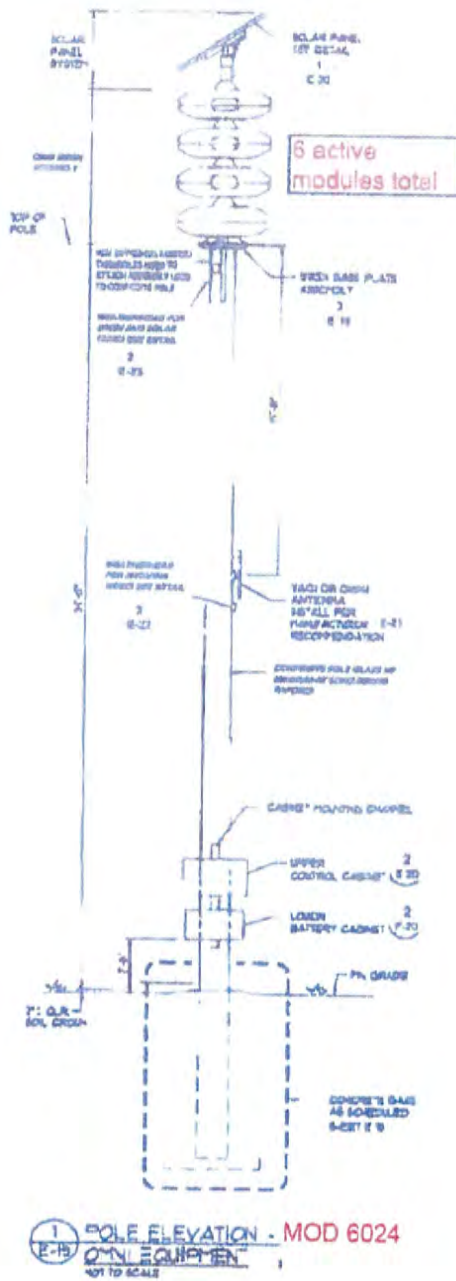




DATE/TIME: 11/14/2006 7:10am
 ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
 SITE NUMBER: 113
 SITE NAME: Kamaole Park

GPS COORDS	WORK TYPE	PRIORITY ORDER	ACCESS
N 20 23' 10.349	<input type="checkbox"/> N - Add New	for ALTERNATIVES	<input checked="" type="checkbox"/> Public Road <input type="checkbox"/> Guardrails
W 156 26' 48.252	<input checked="" type="checkbox"/> E - Upgrade Existing	(1 as the highest)	<input type="checkbox"/> Gates <input type="checkbox"/> No Road
	<input type="checkbox"/> A - Choose Alternative	1	<input type="checkbox"/> Fences
LANDOWNER (new site)			PERMIT REQUIREMENTS
TMK: 239005030			<input type="checkbox"/> Streets/
Name: State of Hawai'i, EO 822 to County of Maui, for a park			Right of Way
Address:			<input checked="" type="checkbox"/> Park
Phone: 891-2456			<input type="checkbox"/> Public
Contact Person: Mary Kielty (Parks District Supervisor)			<input type="checkbox"/> Private
VEGETATION	SOIL	TERRAIN	SURROUNDING LAND USES
<input type="checkbox"/> B - Bare	<input checked="" type="checkbox"/> SA - Sand	<input type="checkbox"/> F - Flat	<input checked="" type="checkbox"/> R - Residential <input type="checkbox"/> I - Industrial
<input checked="" type="checkbox"/> G - Grass	<input type="checkbox"/> S - Silt	<input checked="" type="checkbox"/> SL - Sloped	<input type="checkbox"/> V - Vacant Land <input type="checkbox"/> S - School
<input type="checkbox"/> T - Trees	<input type="checkbox"/> C - Clay	<input type="checkbox"/> ST - Steep	<input type="checkbox"/> AG - Agricultural <input type="checkbox"/> PK - Park
<input type="checkbox"/> S - Shrubs	<input checked="" type="checkbox"/> CO - Coral		<input type="checkbox"/> CO - Conservation <input type="checkbox"/> PS - Police Station
<input type="checkbox"/> Other	<input type="checkbox"/> R - Rock		<input checked="" type="checkbox"/> C - Commercial <input type="checkbox"/> FS - Fire Station
	<input type="checkbox"/> Other		<input checked="" type="checkbox"/> H - Hotel <input type="checkbox"/> HO - Hospital
VEG TRIMMING	ANTENNA TYPE	POLE TYPE	<input type="checkbox"/> GC - Golf Course
<input type="checkbox"/> Yes	<input type="checkbox"/> O - Omni Sinclair or equi	<input checked="" type="checkbox"/> H2	
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Y - Yagi to Puu Nianiau, N: 20 46' 43", W: 156 14' 51"		<input type="checkbox"/> O - Other
SIREN / SPEAKER TYPE / UNIT COUNT			LANDMARKS / DISTANCE
<input type="checkbox"/> MOD 3012H () unit <input type="checkbox"/> DSA 117 () unit			20' 6" from the outer edge of the curb (roadside)
<input type="checkbox"/> MOD 3024H () unit <input type="checkbox"/> DSA 121 () unit			14 feet from the edge of the sidewalk (inner, park side)
<input type="checkbox"/> MOD 6024H () unit <input type="checkbox"/> MOD 6048H () units			
<input checked="" type="checkbox"/> Other MOD 4016H (1) unit			150 feet from condominiums on east side of S. Kihei Road
UTILITY Electrical Connection to Coordination with			22 feet from the utility pole with light on west side of S. Kihei Road
<input checked="" type="checkbox"/> Solar Energy <input type="checkbox"/> Kauai Island Utility Corporation			56 feet from street crossing sign
<input type="checkbox"/> HECO <input type="checkbox"/> Hawaiian Telcom			41 feet from WARNING STRONG CURRENT sign on west side of S. Kihei Road
<input type="checkbox"/> HELCO <input type="checkbox"/> Oceanic Time Warner Cable			EQUIPMENT ORIENTATION
<input type="checkbox"/> MECO <input type="checkbox"/> Other (specify)			Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.
FIELD NOTES			
New site to be along S. Kihei Road in the southern portion of Kamaole Beach Park 1, roughly centered between two large Keawe trees. Site is to the north of the Kamaole Park 1 sign. Site is clear of electrical wiring. Need to tone for underground utilities. Cabinet to face south; New site address is on the 2300 block of S. Kihei Road. Total Parcel Area: 2.983 acres. Soil type: Jaucas Sand 26-60 inches (NRCS 1932). Onsite conditions may vary. Existing siren street address is 2411 S. Kihei Road (existing siren is on private property, and since the sidewalk has been installed there have been problems with this site).			
Existing siren site: Assume siren to be within the road ROW.			
All electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer			

EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASE PLATE DETAIL

Siren Type MOD 6024



EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. **COUNTY's responsibilities:**

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

FOR COUNTY CONTROLLED SITES:

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

3. **DAGS' responsibilities are as follows:**

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


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

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

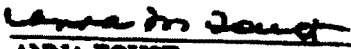
5. **Termination.** Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

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


COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

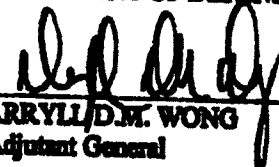
APPROVED AS TO FORM:


Deputy Attorney General

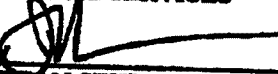
APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA114 Kilohana Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Kilohana Park, TMK: (2) 2-1-008:097 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 5 "

16 JUL 18 A8:27

STATE OF HAWAII
CIVIL DEFENSE DIV

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Kilohana Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA114 at Kilohana Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI




ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By

ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:




JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309
MA114

LESSEE:

STATE OF HAWAII

By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii
MA114

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date:	<u>undated at time of signing</u>	# Pages:	<u>28</u>
Notary Name:	<u>Victoria Tom</u>	Judicial Circuit:	<u>First</u>
Doc. Description:	<u>Lease Agreement for</u> <u>Siren MA 114 Kilaheua Park</u>		
Notary Signature:	<u>Victoria Tom</u>		
Date:	<u>7-20-2016</u>		





STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary _____	
Signature: _____	
Date: _____	

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Wailea Kilohana BWS (114)

TMK: (2) 2-1-008:097

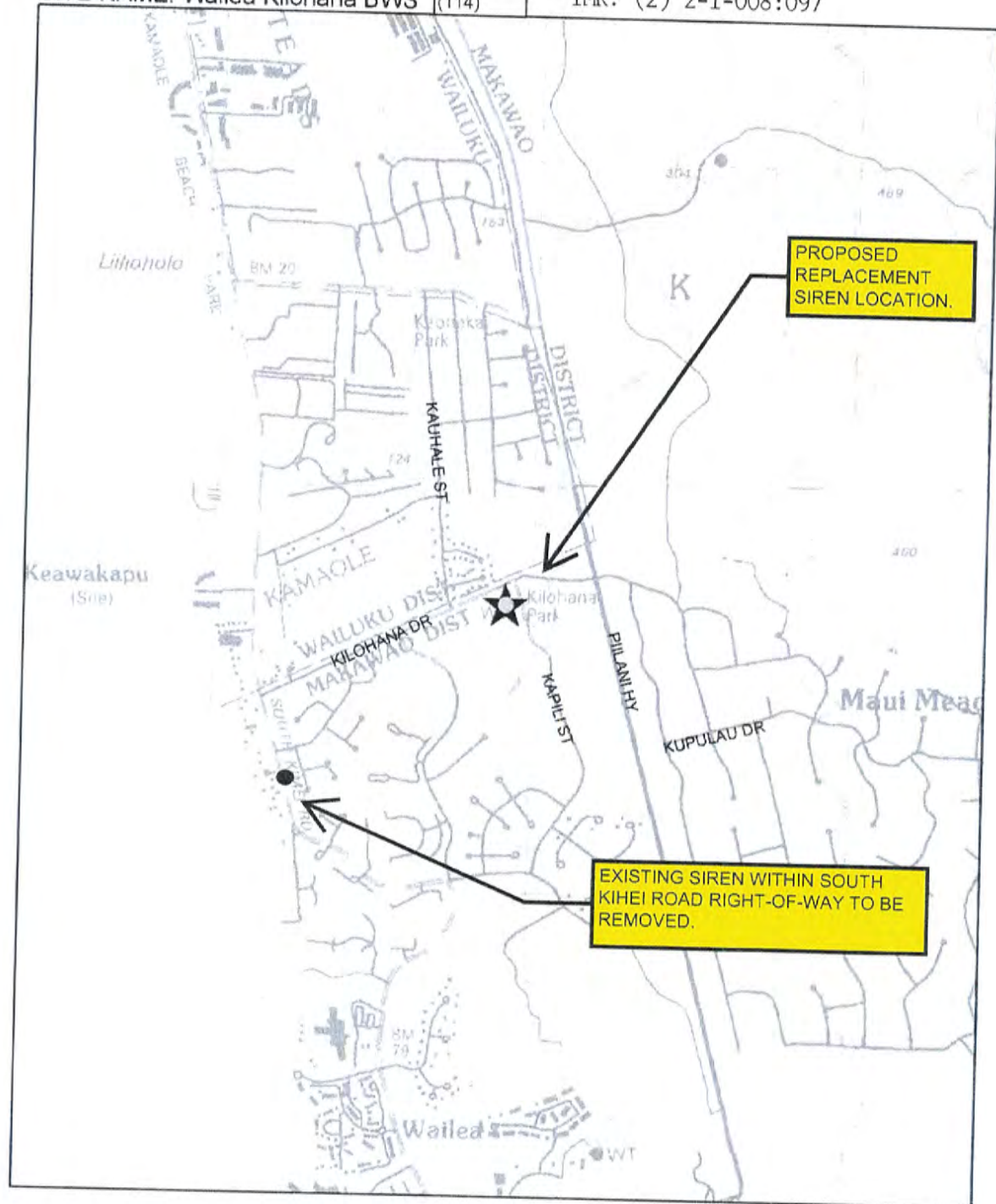
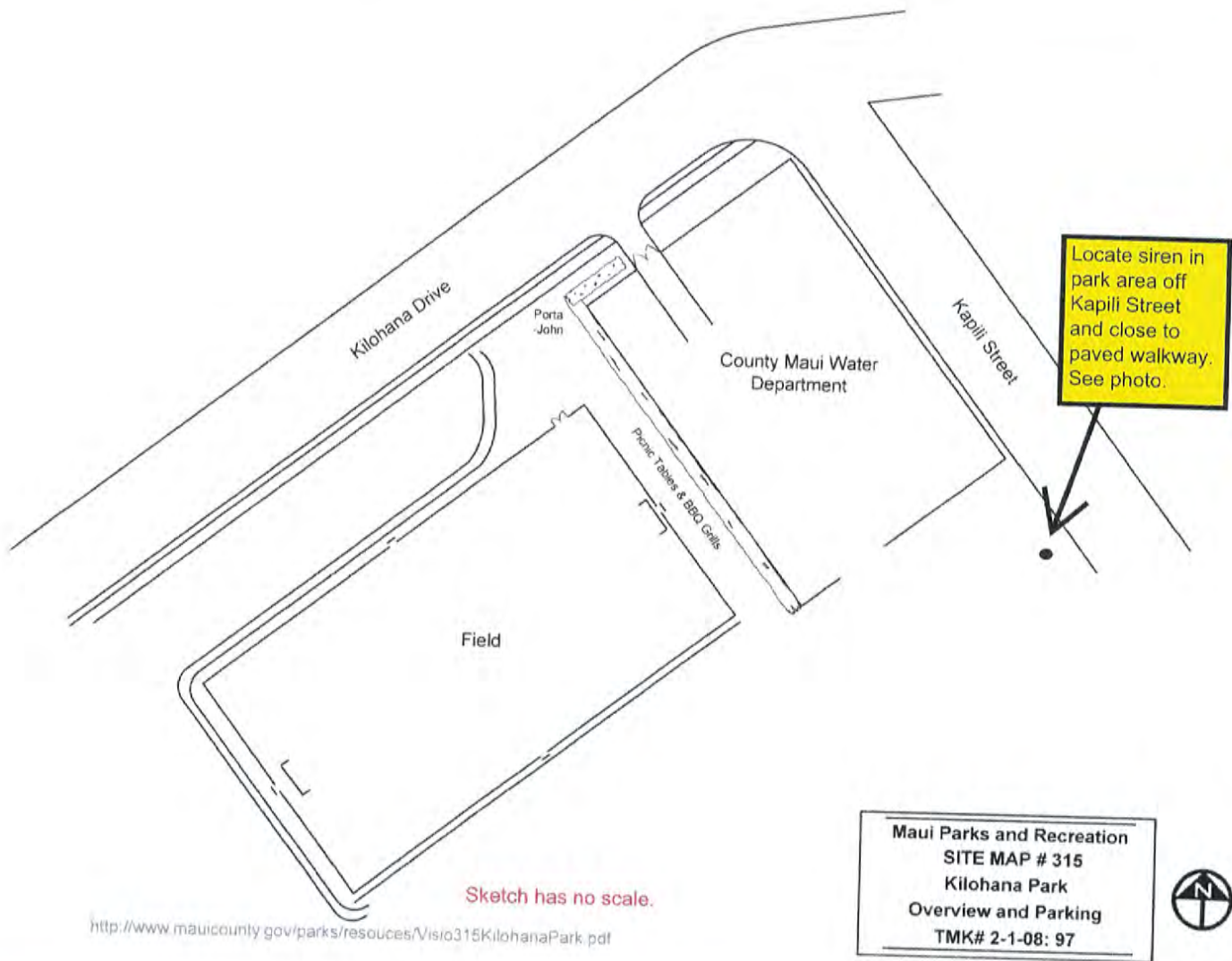
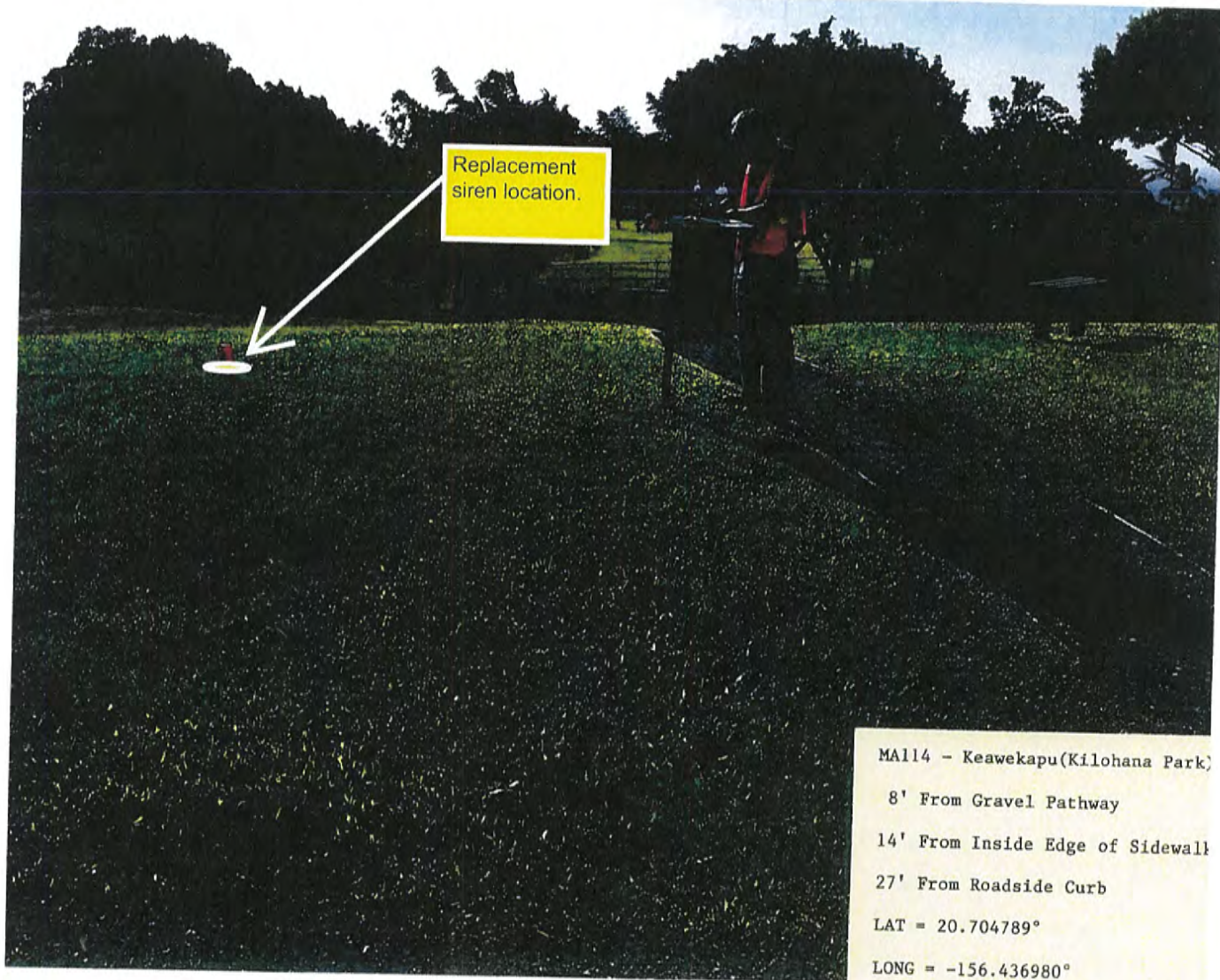


EXHIBIT " A "







MA114 - Keawekapu(Kilohana Park)

8' From Gravel Pathway

14' From Inside Edge of Sidewalk

27' From Roadside Curb

LAT = 20.704789°

LONG = -156.436980°



Replacement
siren location.





Replacement
siren location.

MA114 - Keawekapu(Kilohana Park)

8' From Gravel Pathway

14' From Inside Edge of Sidewall

27' From Roadside Curb

LAT = 20.704789°

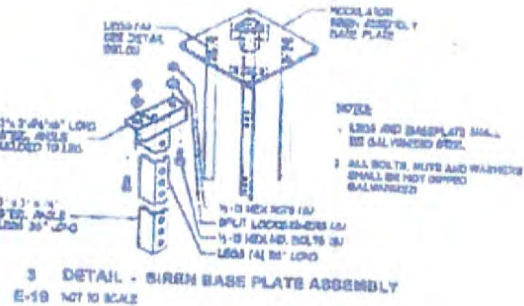
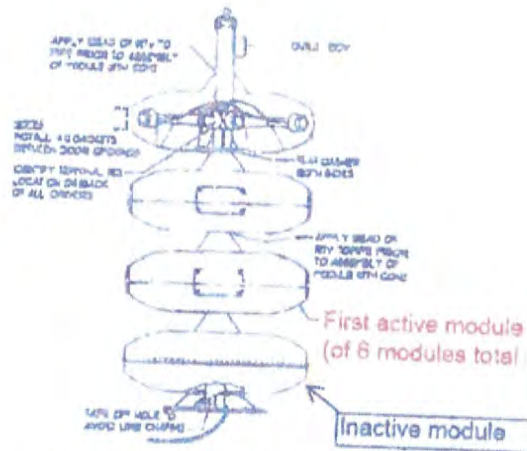
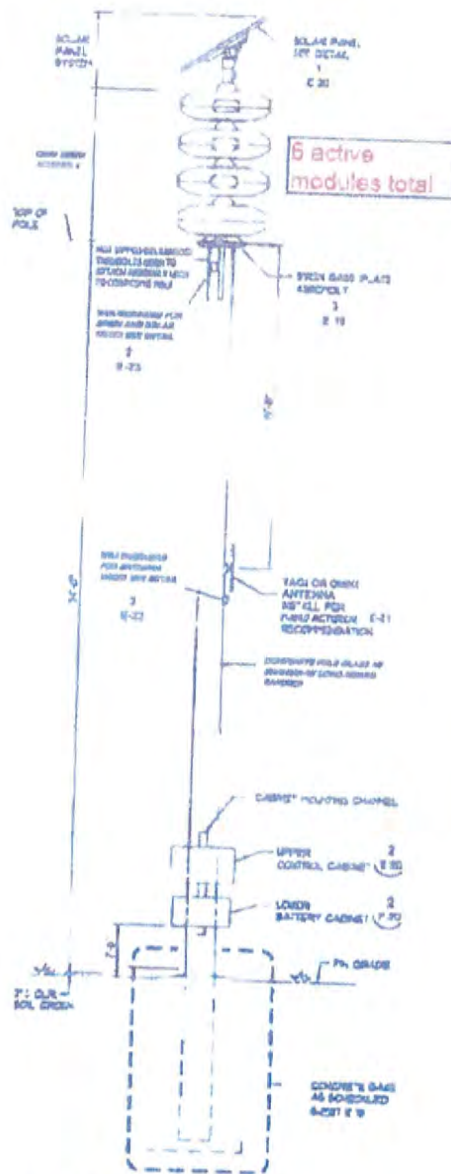
LONG = -156.436980°

Page 130 of 337

DATE/TIME: ~~10/3/2000~~ 10:00am
 ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
 SITE NUMBER: 114
 SITE NAME: Wailea Kilohana BWS

GPS COORDS.	WORK TYPE	PRIORITY ORDER	ACCESS
N 20 42' 17.923"	<input checked="" type="checkbox"/> N - Add New	for ALTERNATIVES	<input type="checkbox"/> Public Road <input type="checkbox"/> Guardrails
W 156 26' 14.603"	<input type="checkbox"/> E - Upgrade Existing	(1 as the highest)	<input checked="" type="checkbox"/> Gates <input type="checkbox"/> No Road
	<input type="checkbox"/> A - Choose Alternative	1	<input checked="" type="checkbox"/> Fences
LANDOWNER			PERMIT REQUIREMENTS
TMK: _____			<input type="checkbox"/> Streets/
Name: _____			Right of Way
Address: _____			<input type="checkbox"/> None
Phone: _____			<input type="checkbox"/> CDUA
Contact Person: _____			<input checked="" type="checkbox"/> SMA
			<input type="checkbox"/> Private
VEGETATION	SOIL	TERRAIN	SURROUNDING LAND USES
<input type="checkbox"/> B - Bare	<input type="checkbox"/> SA - Sand	<input checked="" type="checkbox"/> F - Flat	<input checked="" type="checkbox"/> R - Residential <input type="checkbox"/> I - Industrial
<input checked="" type="checkbox"/> G - Grass	<input type="checkbox"/> S - Silt	<input type="checkbox"/> SL - Sloped	<input type="checkbox"/> V - Vacant Land <input type="checkbox"/> S - School
<input type="checkbox"/> T - Trees	<input type="checkbox"/> C - Clay	<input type="checkbox"/> ST - Steep	<input type="checkbox"/> AG - Agricultural <input checked="" type="checkbox"/> PK - Park
<input type="checkbox"/> S - Shrubs	<input type="checkbox"/> CO - Coral		<input type="checkbox"/> CO - Conservation <input type="checkbox"/> PS - Police Station
<input type="checkbox"/> Other	<input checked="" type="checkbox"/> R - Rock		<input type="checkbox"/> C - Commercial <input checked="" type="checkbox"/> FS - Fire Station
	<input type="checkbox"/> Other		<input type="checkbox"/> H - Hotel <input type="checkbox"/> HO - Hospital
VEG. TRIMMING	ANTENNA TYPE	POLE TYPE	<input type="checkbox"/> GC - Golf Course
<input type="checkbox"/> Yes	<input type="checkbox"/> O - Omni Sinclair or equiv	<input checked="" type="checkbox"/> H2	<input type="checkbox"/> O - Other
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Y - Yagi to the County	<input type="checkbox"/>	
SIREN / SPEAKER TYPE / UNIT COUNT			LANDMARKS / DISTANCE
<input checked="" type="checkbox"/> DSA 121 (3) units, 30°, 210°, and 300°			16 feet from chain linked fence along the developing area
Per DOD use UV6024.			31 feet from chain linked fence along the park
			41 feet from the water tank
			166 feet from the utility pole at the entrance
UTILITY Electrical Connection to/ Coordination with			
<input checked="" type="checkbox"/> Solar Energy <input type="checkbox"/> Kauai Island Utility Corporation			
<input type="checkbox"/> HECO <input type="checkbox"/> Hawaiian Telcom			
<input type="checkbox"/> HELCO <input type="checkbox"/> Oceanic Time Warner Cable			
<input type="checkbox"/> MECO <input type="checkbox"/> Other (specify) _____			
FIELD NOTES			
New site is proposed on Maui Department of Water Supply land, behind water tank, in south corner of fenced in area; cabinet to be pointed (southwest) toward the park; need to tone for underground utilities; no overhead wires or trees in area; DWS planning representative needs to be contacted; the Keawekapu site is to be changed to Wailea Kilohana DWS location; site address is Kilohana Drive; Total Parcel area: 0.62 acres. Soil: Makena loam, stoney complex up to 40 inches deep, A'a beneath. (NRCS 1978) Onsite conditions may vary. Additional contact: Maui Parks District Supervisor Mary Kielty 891-2456.			
EQUIPMENT ORIENTATION			
Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.			
all electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer			

EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL

Siren Type MOD 6024



EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

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

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


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

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


COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

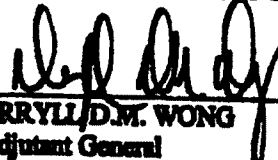
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA116 Kahului School Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Kahului School Park, TMK: (2) 3-8-007:041 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 6 "

STATE OF HAWAII
CIVIL DEFENSE DIV

16 JUL 18 18:28

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Kahului School Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA116 at Kahului School Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.


5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

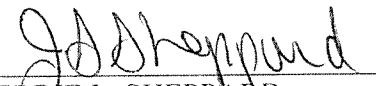
APPROVAL RECOMMENDED:

COUNTY OF MAUI


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By _____
ALAN M. ARAKAWA
Its Mayor

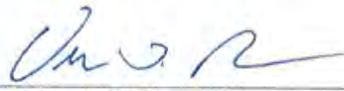
APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309
MA116

LESSEE:

STATE OF HAWAII

By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii

MA116

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of signing # Pages: 24
Notary Name: Victoria Tom Judicial Circuit: First
Doc. Description: Lease Agreement for
Siren MA 116 Kahului School Park

Notary Signature: Victoria Tom
Date: 7-20-2016





STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

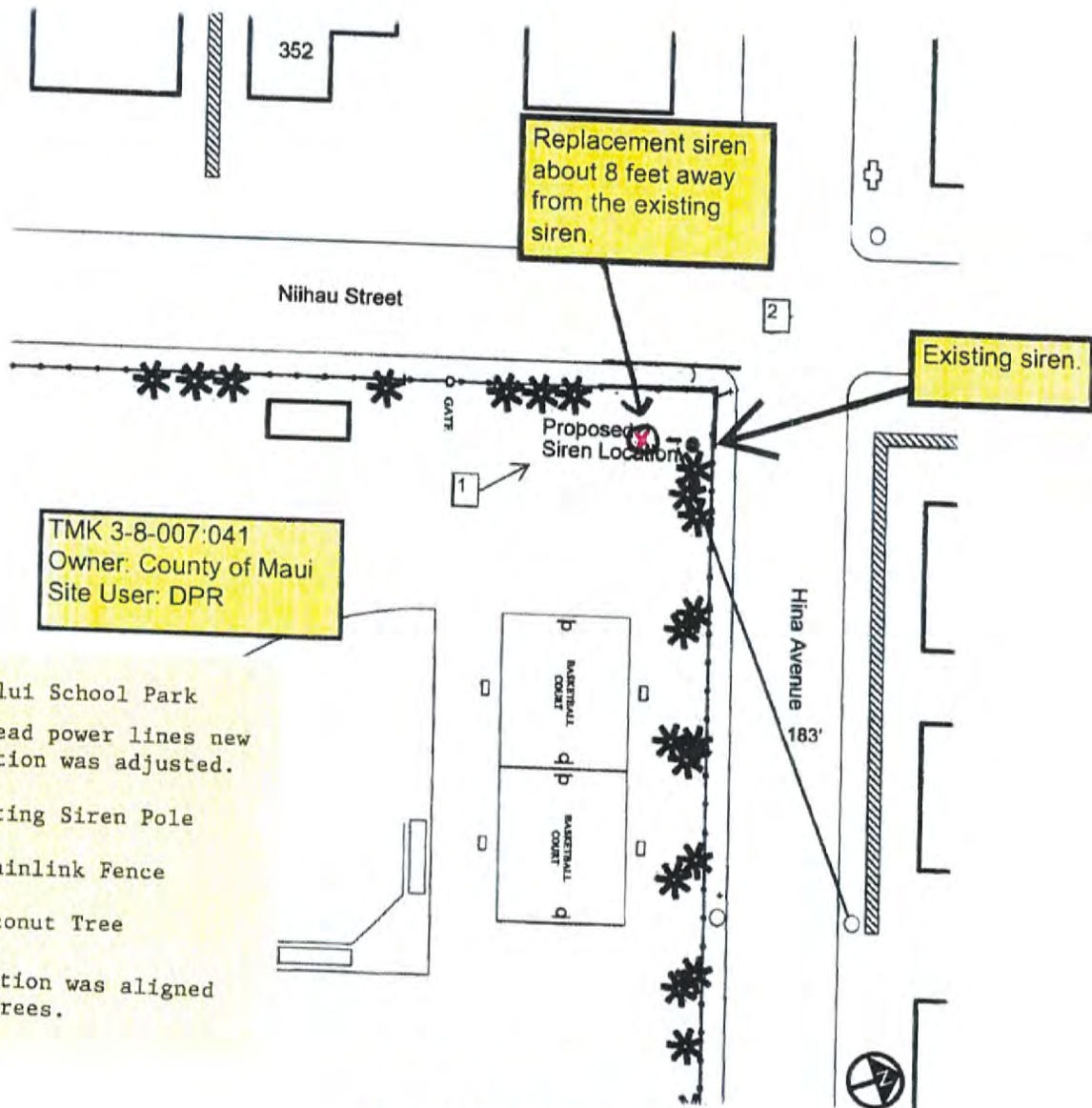
Notary Signature: _____	
Date: _____	

SITE SKETCH

DATE: 10/11/2006
ISLAND: MAUI
SITE NUMBER: 116
SITE NAME: Kahului School Park

LEGEND

- Utility Pole
- ⊕ Fire Hydrant



MA116 - Kahului School Park
Due to overhead power lines new siren's location was adjusted.

8' From Existing Siren Pole

18.5' From Chainlink Fence

31.5' From Coconut Tree

New Siren Location was aligned with Coconut Trees.

Sketch has no scale.

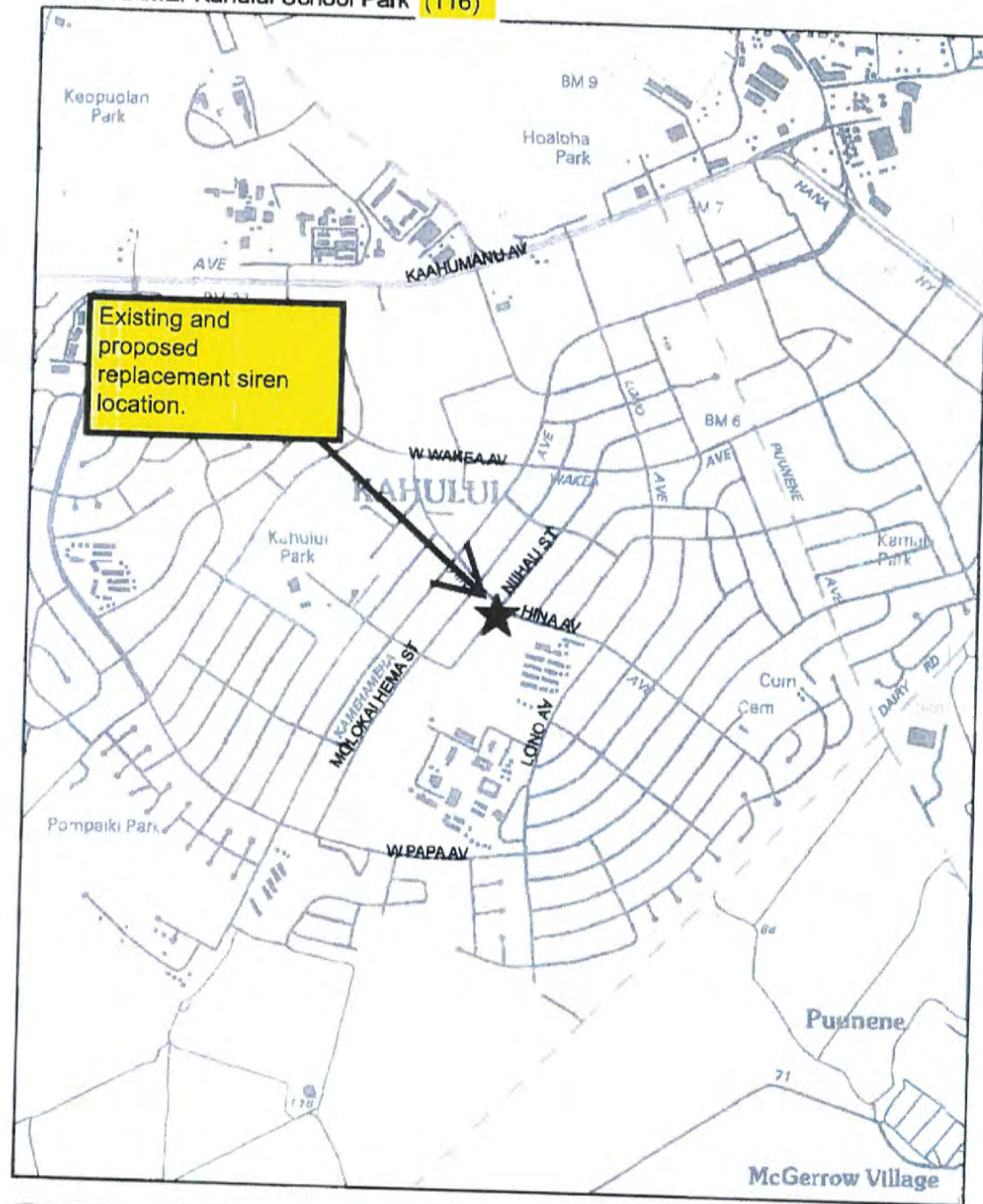
EXHIBIT "A"

EXHIBIT " _____ "

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Kahului School Park (116)





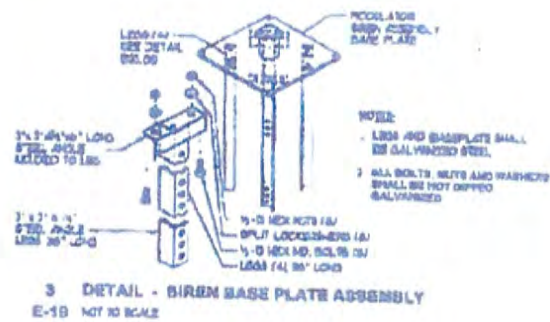
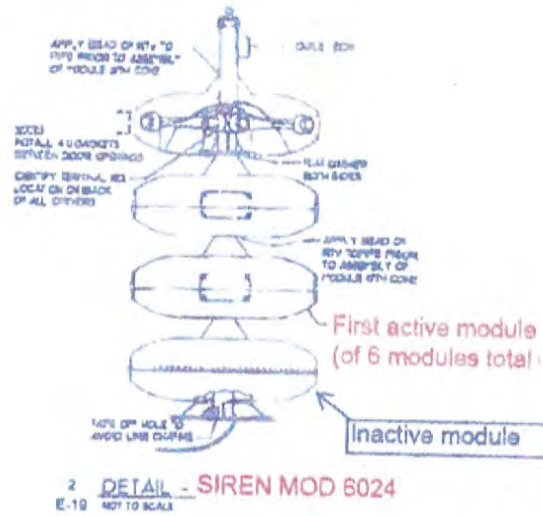
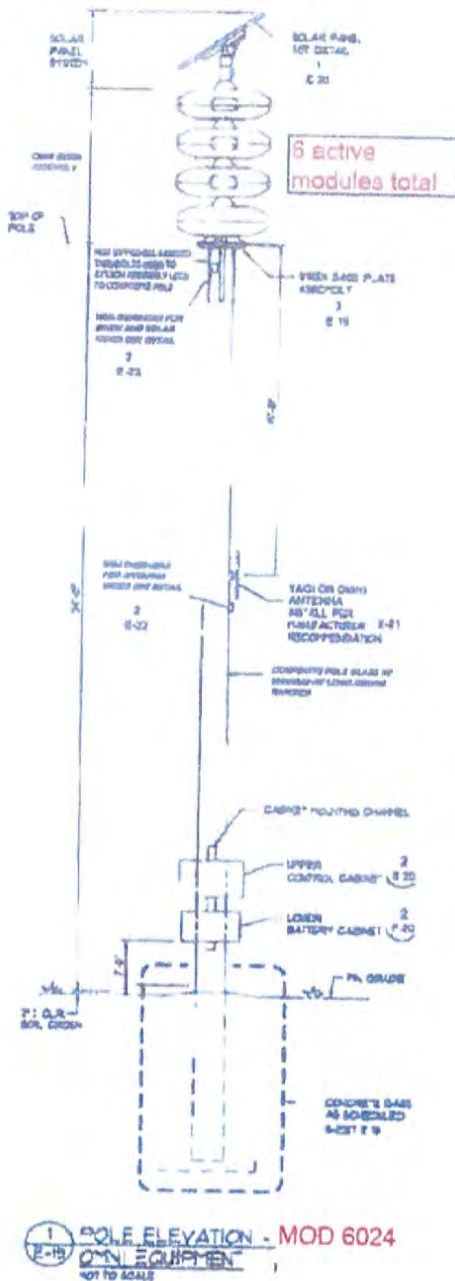
Google earth

feet
meters





EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASE PLATE DETAIL
Siren Type MOD 6024



EXHIBIT B

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

**BETWEEN THE
COUNTY OF MAUI**

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

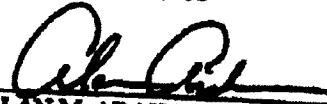
- d. When overseeing design and construction phases of work for the DOD sirens and related equipment:
- 1) If a siren site is located on State-owned property, DAGS shall be responsible for submitting an easement (on behalf of DOD) for the siren from the State Department of Land and Natural Resources.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

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

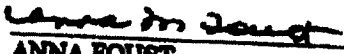
5. **Termination.** Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

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


COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency


APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

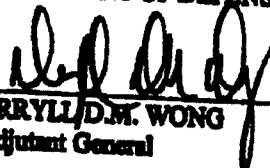
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA139 Hale Piilani Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Hale Piilani Park, TMK: (2) 3-8-004:031 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 7 "

STATE OF HAWAII
CIVIL DEFENSE DIV

16 JUL 18 A8:28

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Hale Piilani Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA139 at Hale Piilani Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI



ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By

ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:




JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309

MA139

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii

MA139

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>undated at time of signing</u>	# Pages: <u>25</u>
Notary Name: <u>Victoria Tom</u>	Judicial Circuit: <u>First</u>
Doc. Description: <u>Lease Agreement for</u> <u>Siren MA 139 Hale Piilani Park</u>	
Notary Signature: <u>Victoria Tom</u>	
Date: <u>7-20-2016</u>	



STATE OF HAWAII)
COUNTY OF MAUI) SS.
)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

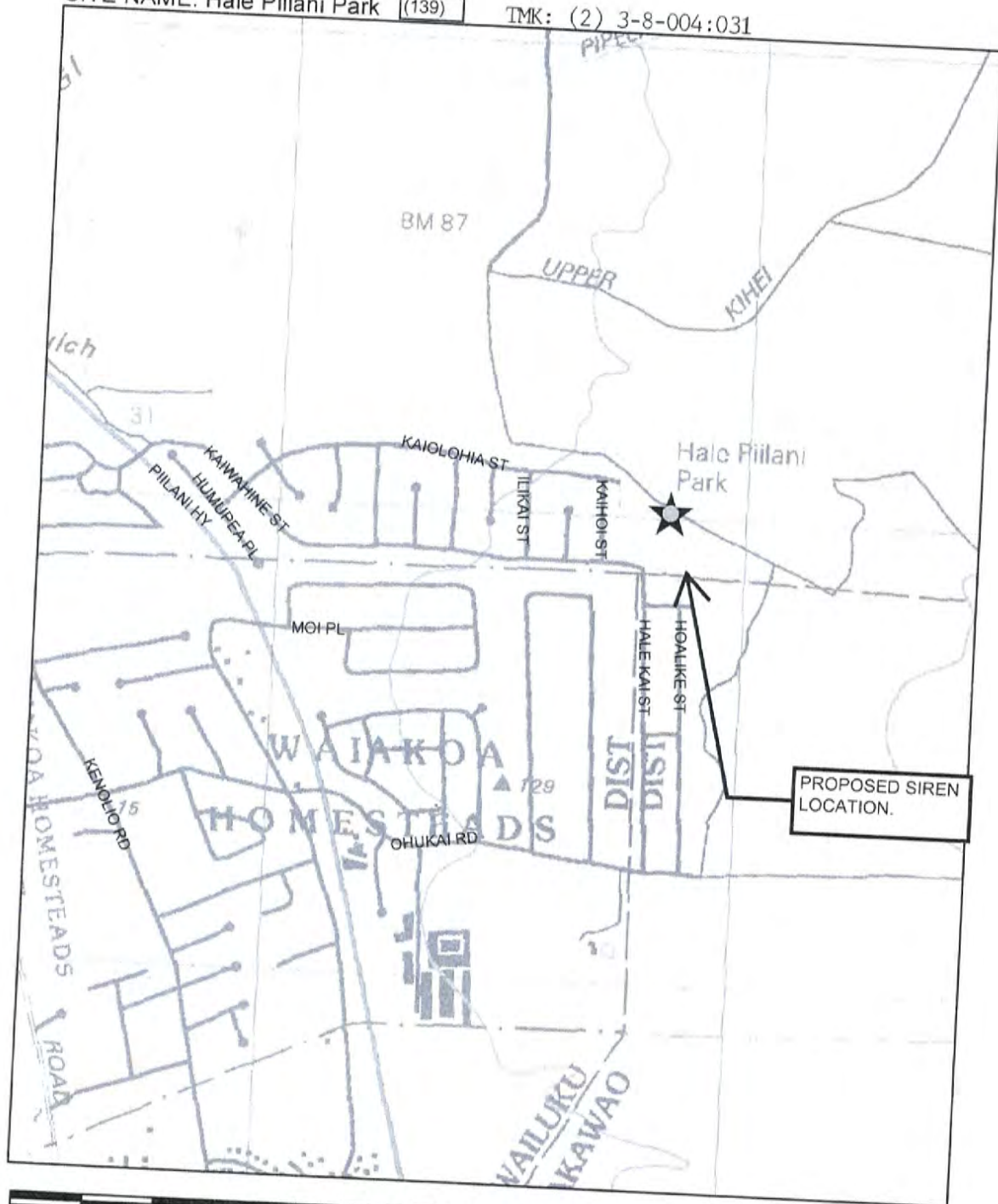
Notary Signature: _____	
Date: _____	

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Hale Piilani Park (139)

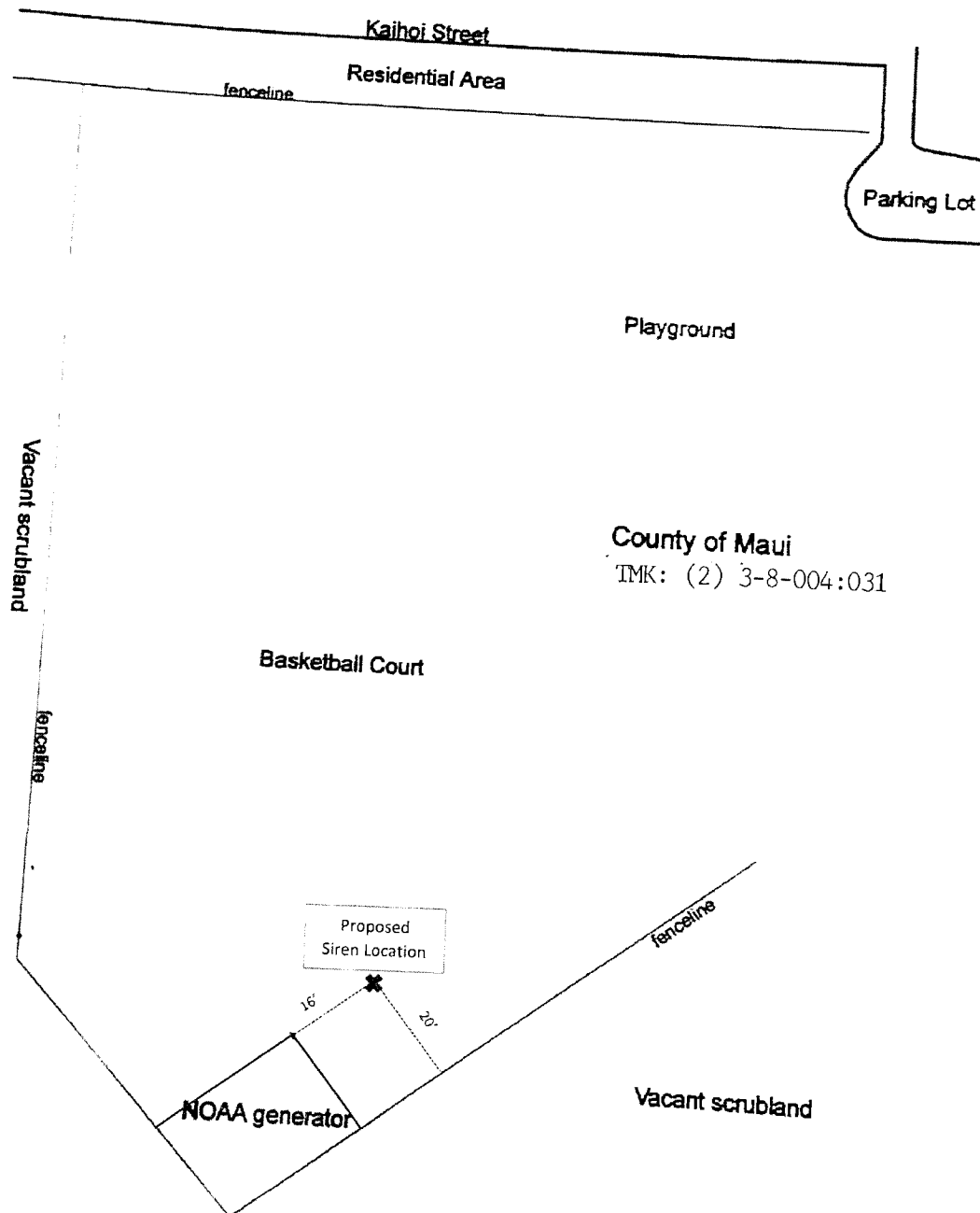
TMK: (2) 3-8-004:031



0 500 1,000 2,000 3,000 Feet

EXHIBIT "A"





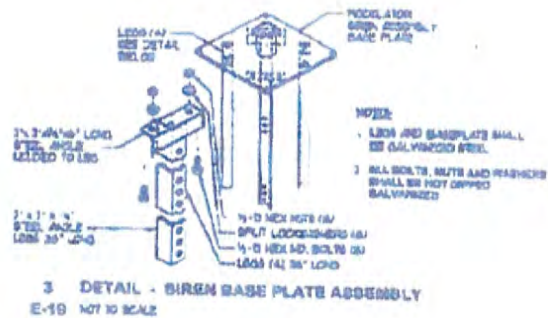
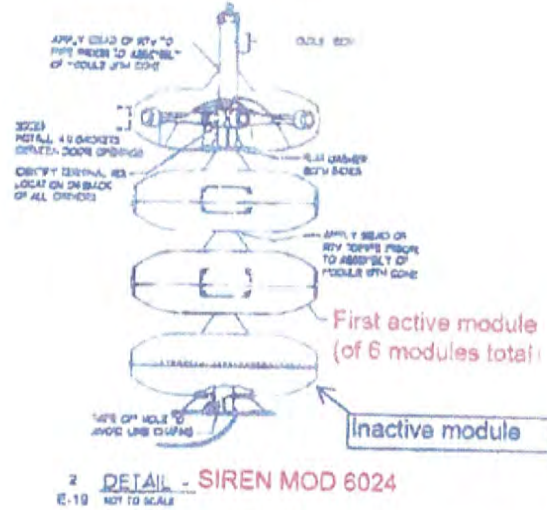
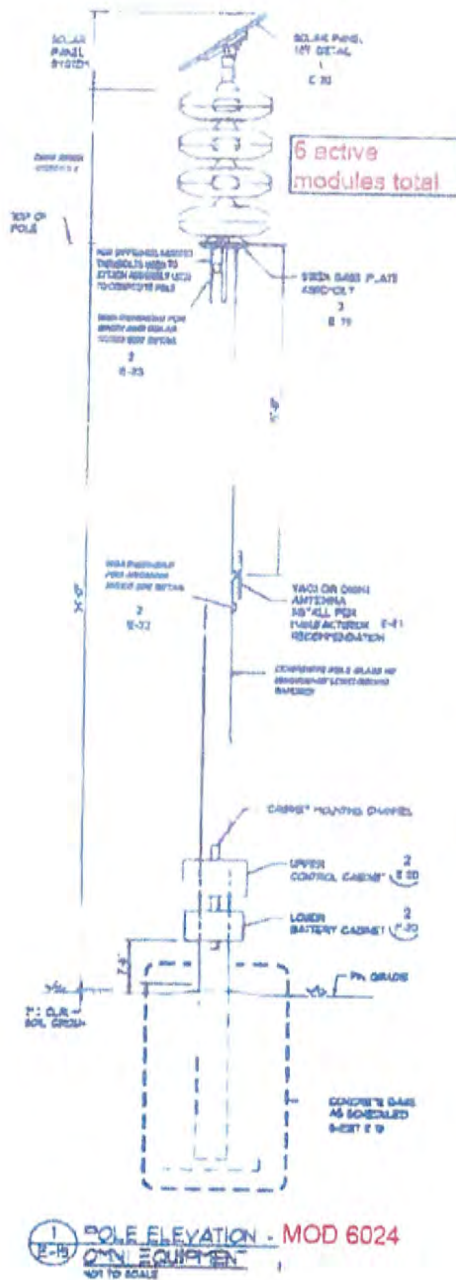




DATE/TIME: 10/9/2006 9:05am
 ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
 SITE NUMBER: 139
 SITE NAME: Hale Piilani Park

GPS COORDS.	WORK TYPE	PRIORITY ORDER	ACCESS	
N 20 46' 51.424	<input checked="" type="checkbox"/> N - Add New	for ALTERNATIVES	<input checked="" type="checkbox"/> Public Road	<input type="checkbox"/> Guardrails
W 156 26' 47.605	<input type="checkbox"/> E - Upgrade Existing	(1 as the highest)	<input type="checkbox"/> Gates	<input type="checkbox"/> No Road
	<input type="checkbox"/> A - Choose Alternative	1	<input type="checkbox"/> Fences	
LANDOWNER			PERMIT REQUIREMENTS	
TMK: 238004031			<input type="checkbox"/> Streets/	
Name: County of Maui			Right of Way	
Address: 700 Halia Nakoa Street Unit 2 Wailuku 96793			<input checked="" type="checkbox"/> Park	
Phone: 270-7626			<input type="checkbox"/> Public	
Contact Person: Glenn Correa or John Buck			<input type="checkbox"/> Private	
VEGETATION	SOIL	TERRAIN	SURROUNDING LAND USES	
<input checked="" type="checkbox"/> B - Bare	<input type="checkbox"/> SA - Sand	<input checked="" type="checkbox"/> F - Flat	<input checked="" type="checkbox"/> R - Residential	<input type="checkbox"/> I - Industrial
<input type="checkbox"/> G - Grass	<input type="checkbox"/> S - Silt	<input type="checkbox"/> SL - Sloped	<input checked="" type="checkbox"/> V - Vacant Land	<input type="checkbox"/> S - School
<input type="checkbox"/> T - Trees	<input checked="" type="checkbox"/> C - Clay	<input type="checkbox"/> ST - Steep	<input type="checkbox"/> AG - Agricultural	<input checked="" type="checkbox"/> PK - Park
<input type="checkbox"/> S - Shrubs	<input type="checkbox"/> CO - Coral		<input type="checkbox"/> CO - Conservation	<input type="checkbox"/> PS - Police Station
<input type="checkbox"/> Other	<input checked="" type="checkbox"/> R - Rock		<input type="checkbox"/> C - Commercial	<input type="checkbox"/> FS - Fire Station
	<input type="checkbox"/> Other		<input type="checkbox"/> H - Hotel	<input type="checkbox"/> HO - Hospital
VEG. TRIMMING	ANTENNA TYPE	POLE TYPE	<input type="checkbox"/> GC - Golf Course	
<input type="checkbox"/> Yes	<input type="checkbox"/> O - Omni	<input checked="" type="checkbox"/> H2		
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Y - Yagi to Puu Nianiau, N: 20 46' 43", W: 156 14' 51"			
SIREN / SPEAKER TYPE / UNIT COUNT			LANDMARKS / DISTANCE	
<input type="checkbox"/> MODH 3012H () units <input type="checkbox"/> DSA 117 () units			38 feet from NOAA infrastructure	
<input type="checkbox"/> MOD 3024H () units <input type="checkbox"/> DSA 121 () units			8 feet from chain linked fence	
<input checked="" type="checkbox"/> MOD 6024H (1) units <input type="checkbox"/> MOD 6048H () units			116 feet from closest basketball backboard	
<input type="checkbox"/> Other () units			357 feet from residence directly across field from site	
UTILITY Electrical Connection to/ Coordination with				
<input checked="" type="checkbox"/> Solar Energy <input type="checkbox"/> Kauai Island Utility Corporation				
<input type="checkbox"/> HECO <input type="checkbox"/> Hawaiian Telcom				
<input type="checkbox"/> HELCO <input type="checkbox"/> Oceanic Time Warner Cable				
<input type="checkbox"/> MECO <input type="checkbox"/> Other (specify)				
FIELD NOTES				
Siren originally sited for Kihei Commercial Center is to be located here at Hale Pi'ilani Park. Site near NOAA infrastructure, on the far (east) side of the park from the parking lot, behind the basketball court. Cabinet to face the residences (west). Soil: Waiakoa extremely stony silty clay loam up to 33 inches deep, bedrock beneath. (NRCS 1978) Onsite conditions may vary.				
The 2010 tax records show that this parcel is owned by County of Maui.				
EQUIPMENT ORIENTATION				
Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.				
All electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer				

EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL
Siren Type MOD 6024



EXHIBIT B

COVENANTS, TERMS AND CONDITIONS

1. Right to Construct the Equipment. Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. Equipment. The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. Repair and Maintenance of the Equipment. Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. Damage. Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

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

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

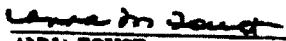
5. **Termination.** Any party to this MOA shall have the privilege, with or without cause, to cancel or amend this MOA at any time upon written notice given thirty (30) days in advance of such termination.

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


COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

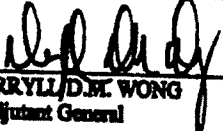
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYL D. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA145 Keokea Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Keokea Park, TMK: (2) 2-2-003:031 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 8 "

16 JUL 18 A8:29

STATE OF HAWAII
CIVIL DEFENSE DIV

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Keokea Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA145 at Keokea Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.


5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

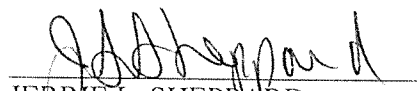
APPROVAL RECOMMENDED:

COUNTY OF MAUI


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By _____
ALAN M. ARAKAWA
Its Mayor


APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309

MA145

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii
MA145

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of signing # Pages: 24
Notary Name: Victoria Tom Judicial Circuit: First
Doc. Description: Lease Agreement for
Siren MA 145 Keokea Park

Notary Signature: Victoria Tom
Date: 7-20-2016





STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary _____	
Signature: _____	
Date: _____	

SITE SKETCH

DATE: 10/12/2006

ISLAND: MAUI

SITE NUMBER: 145

SITE NAME: Keokea Park

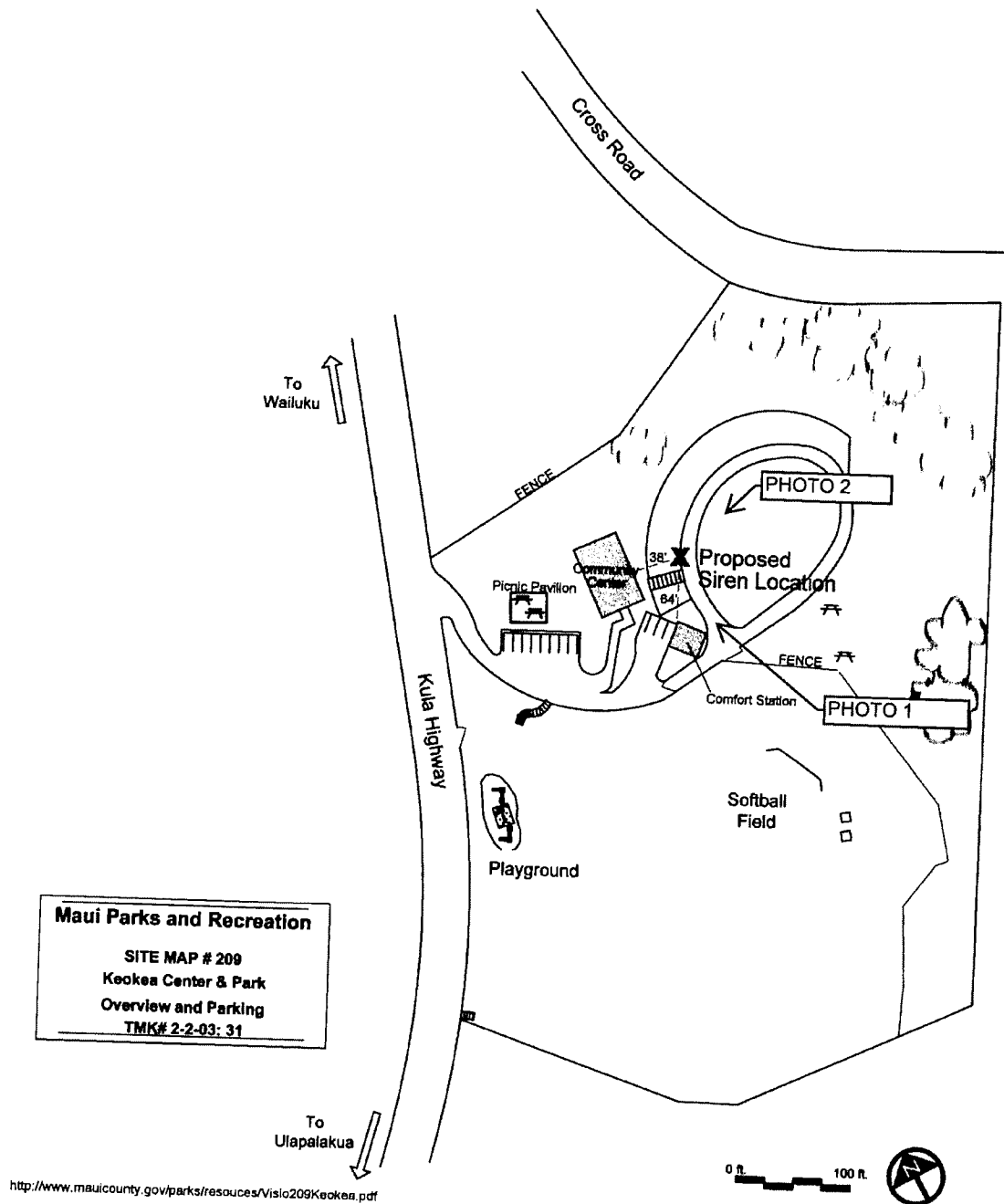
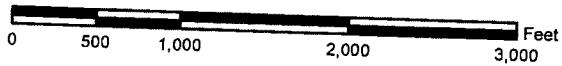
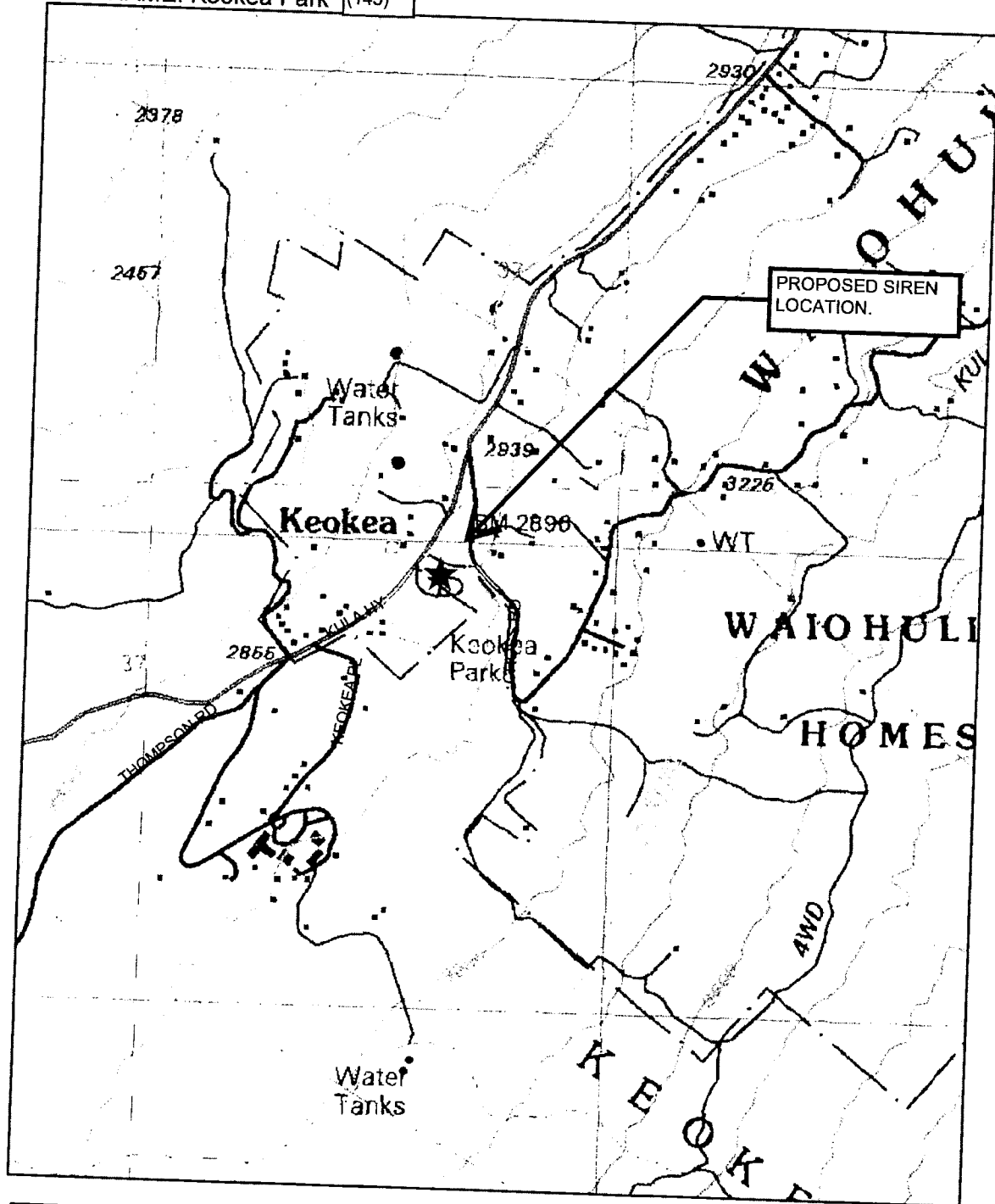


EXHIBIT "A"

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Keokea Park (145)



SITE PHOTOGRAPHS

DATE: 10/12/2006

ISLAND: Maui

SITE NUMBER: 145

SITE NAME: Keokea Park



PHOTO 1 Proposed siren site facing west towards Kula Highway.

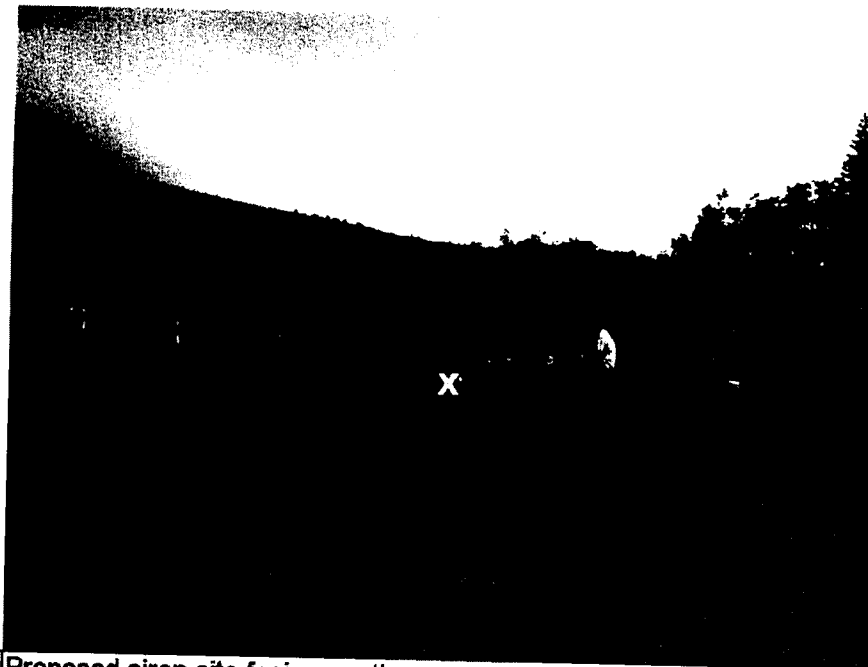
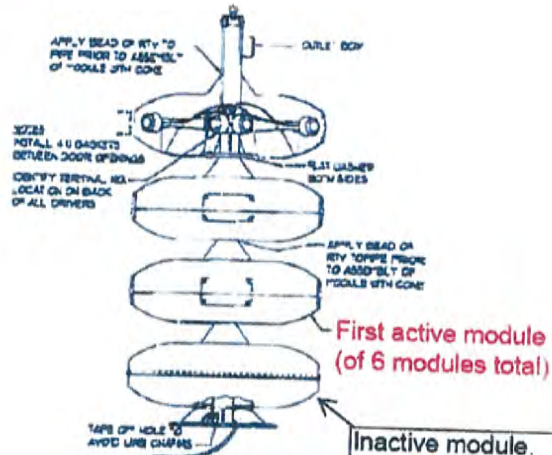
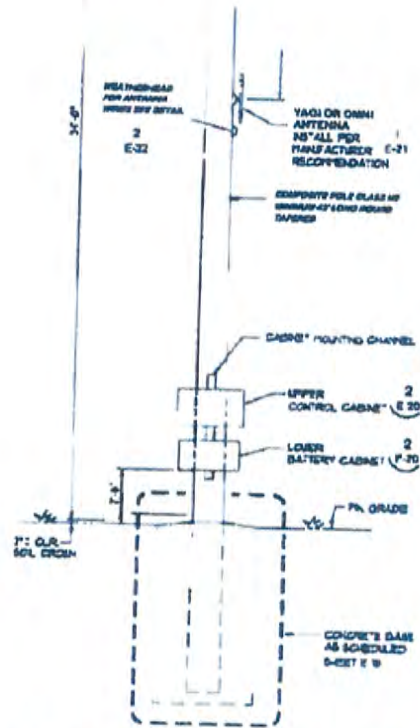
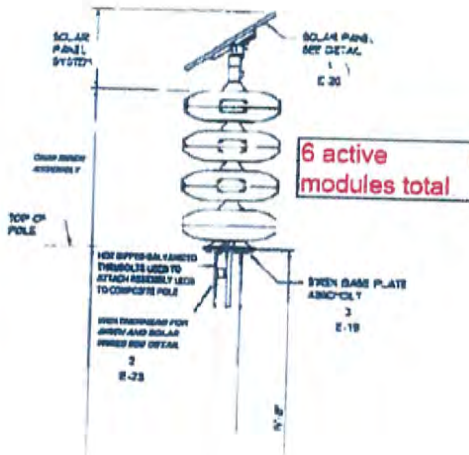


PHOTO 2 Proposed siren site facing south.

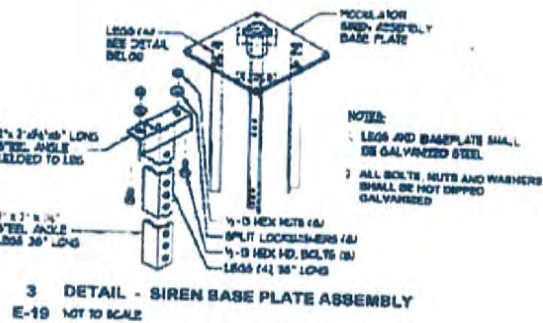
DATE/TIME: 10/12/2006 11:45am
 ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
 SITE NUMBER: 145
 SITE NAME: Keokea Park

GPS COORDS:		WORK TYPE	PRIORITY ORDER	ACCESS	
N 20 42' 43.838		<input checked="" type="checkbox"/> N - Add New	for ALTERNATIVES (1 as the highest) 1	<input type="checkbox"/> Public Road	<input type="checkbox"/> Guardrails
W 156 21' 13.548		<input type="checkbox"/> E - Upgrade Existing		<input checked="" type="checkbox"/> Gates	<input type="checkbox"/> No Road
		<input type="checkbox"/> A - Choose Alternative		<input type="checkbox"/> Fences	
LANDOWNER					
TMK: 222003031		State of Hawaii/County of Maui by EO 632		PERMIT REQUIREMENTS	
Name:				<input type="checkbox"/> Streets/ Right of Way	
Address:				<input checked="" type="checkbox"/> Park	
Phone: 572-8122				<input checked="" type="checkbox"/> Public	
Contact Person: Willard Asato		District Supervisor		<input type="checkbox"/> Private	
VEGETATION		SOIL	TERRAIN	SURROUNDING LAND USES	
<input type="checkbox"/> B - Bare	<input type="checkbox"/> SA - Sand	<input checked="" type="checkbox"/> F - Flat	<input checked="" type="checkbox"/> R - Residential	<input type="checkbox"/> I - Industrial	
<input checked="" type="checkbox"/> G - Grass	<input checked="" type="checkbox"/> S - Silt	<input type="checkbox"/> SL - Sloped	<input type="checkbox"/> V - Vacant Land	<input type="checkbox"/> S - School	
<input type="checkbox"/> T - Trees	<input type="checkbox"/> C - Clay	<input type="checkbox"/> ST - Steep	<input checked="" type="checkbox"/> AG - Agricultural	<input checked="" type="checkbox"/> PK - Park	
<input type="checkbox"/> S - Shrubs	<input type="checkbox"/> CO - Coral		<input type="checkbox"/> CO - Conservation	<input type="checkbox"/> PS - Police Station	
<input type="checkbox"/> Other	<input checked="" type="checkbox"/> R - Rock		<input type="checkbox"/> C - Commercial	<input type="checkbox"/> FS - Fire Station	
	<input type="checkbox"/> Other		<input type="checkbox"/> H - Hotel	<input type="checkbox"/> HO - Hospital	
			<input type="checkbox"/> GC - Golf Course		
VEG TRIMMING		ANTENNA TYPE	POLE TYPE		
<input type="checkbox"/> Yes	<input type="checkbox"/> O - Omni Sinclair or equi	<input checked="" type="checkbox"/> H2			
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Y - Yagi to Puu Nianiau	<input type="checkbox"/>			
SIREN / SPEAKER TYPE / UNIT COUNT					
<input type="checkbox"/> MOD 3012H () unit		<input type="checkbox"/> DSA 117 () units		LANDMARKS / DISTANCE	
<input type="checkbox"/> MOD 3024H () unit		<input type="checkbox"/> DSA 121 () units		6 feet from 2nd concrete pillar	
<input checked="" type="checkbox"/> MOD 6024H (1) unit		<input type="checkbox"/> MOD 6048H () unit		38 feet from community center building	
<input type="checkbox"/> Other () units				23 feet from wooden fence parallel to driveway	
				25 feet from concrete drain "box"	
UTILITY Electrical Connection to/ Coordination with:				83 feet from wire fence	
<input checked="" type="checkbox"/> Solar Energy		<input type="checkbox"/> Kauai Island Utility Corporation		475 feet from soccer field goalie box	
<input type="checkbox"/> HECO		<input type="checkbox"/> Hawaiian Telcom		64 feet from comfort station	
<input type="checkbox"/> HELCO		<input type="checkbox"/> Oceanic Time Warner Cable			
<input type="checkbox"/> MECO		<input type="checkbox"/> Other (specify)			
FIELD NOTES					
Keokea Park was chosen for the new Kula Hwy/ Maukanani Road, Kula siren; new site to be in park, near upper 3-car parking area, behind community center building; cabinet to face comfort station (west); need to tone for underground utilities, free of wires, trees; site address is 218 Lower Kula Rd, Total Parcel Area is 6.7 acres. Soil Type: Kula loam up to 54 inches deep weathered andesite & basalt beneath (NRCS 1978). Onsite conditions may vary.					
EQUIPMENT ORIENTATION					
Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.					
all electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer					

EXHIBIT B



2 DETAIL - SIREN MOD 6024
E-19 NOT TO SCALE



3 DETAIL - SIREN BASE PLATE ASSEMBLY
E-19 NOT TO SCALE

1 POLE ELEVATION - MOD 6024
E-19 NOT TO SCALE

Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL Siren Type MOD 6024

Scale	1" = 10'	1" = 10'	1" = 10'
Scale	NOT TO SCALE	NOT TO SCALE	NOT TO SCALE

EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. Right to Construct the Equipment. Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. Equipment. The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. Repair and Maintenance of the Equipment. Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. Damage. Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

**BETWEEN THE
COUNTY OF MAUI
AND
STATE OF HAWAII**

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. **COUNTY's responsibilities:**

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

FOR COUNTY CONTROLLED SITES:

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

3. **DAGS' responsibilities are as follows:**

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


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

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


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

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


COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

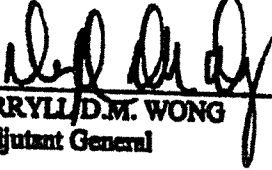
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA146 Haliimaile Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Haliimaile Park, TMK: (2) 2-5-008:001 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 9 "

16 JUL 18 A8:29

STATE OF HAWAII
CIVIL DEFENSE DI

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Haliimaile Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA146 at Haliimaile Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI



ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By

ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:




JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309

MA146


LESSEE:

STATE OF HAWAII

By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii
MA146

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of signing # Pages: 28
Notary Name: Victoria Tom Judicial Circuit: First
Doc. Description: Lease Agreement for
Siren MA 146 Haliimaile Park

Notary Signature: Victoria Tom
Date: 7-20-2016



STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

SITE SKETCH

DATE: 10/12/2006

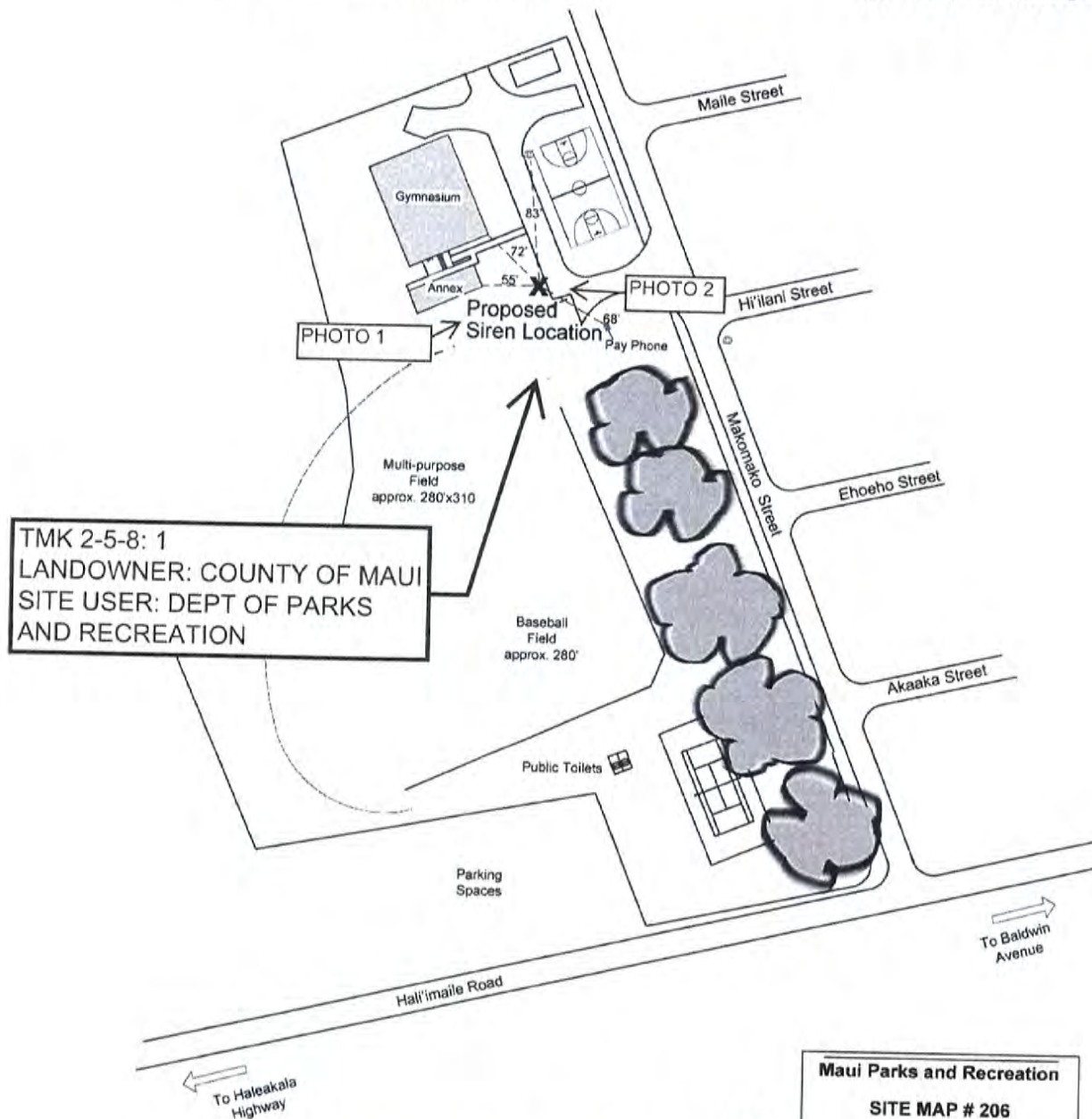
ISLAND: MAUI

SITE NUMBER: 146

SITE NAME: Hali'imaile Park

LEGEND

Utility Pole with Light



<http://www.mauicounty.gov/parks/resouces/Visio206HaliimailePark2.pdf>



Maui Parks and Recreation

SITE MAP # 206

Hali'imaile Park

Overview and Parking

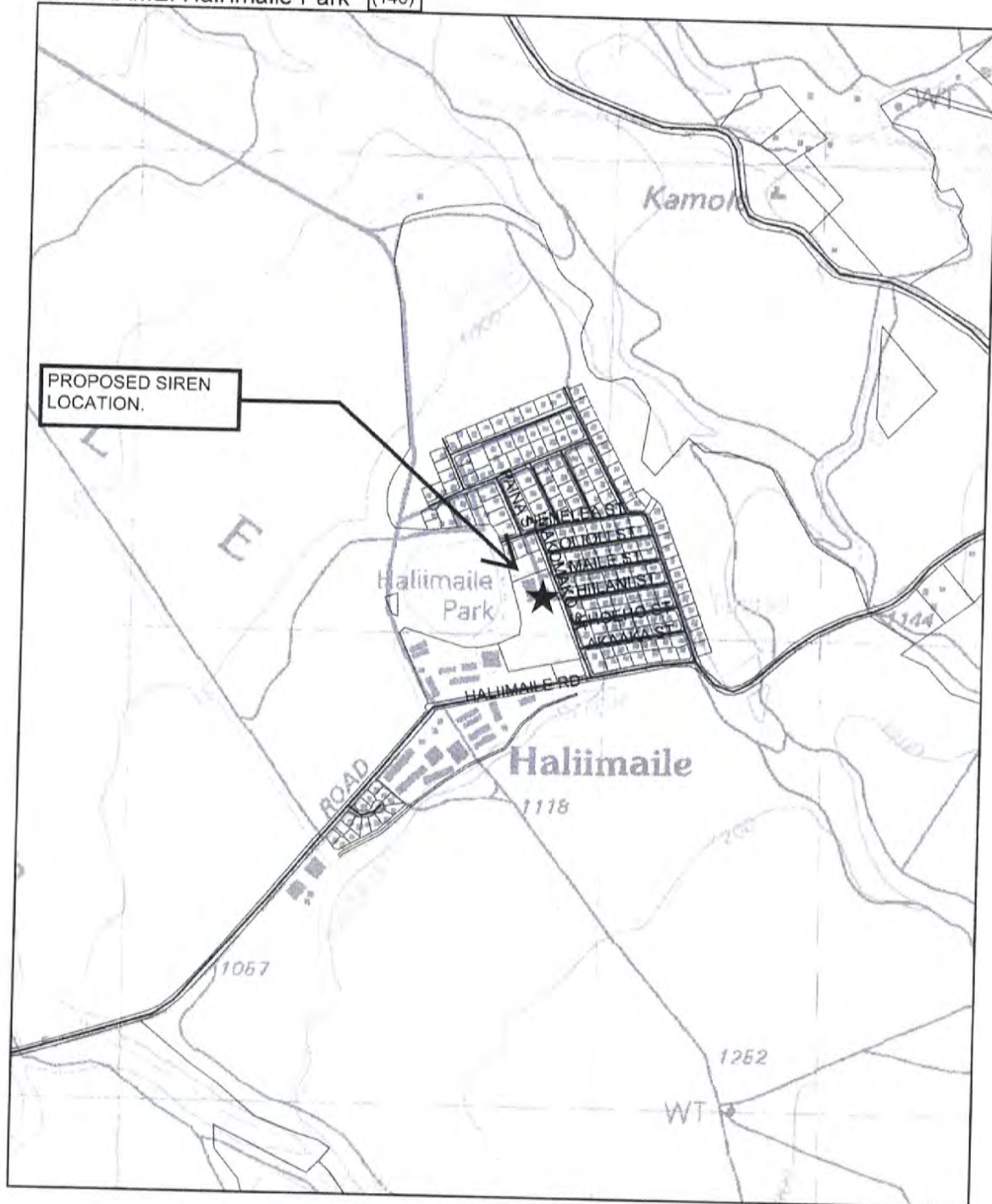
TMK# 2-5-08: 01, 06

EXHIBIT " A "

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Hali'imaile Park (146)



SITE PHOTOGRAPHS

DATE: 10/12/2006

ISLAND: Maui

SITE NUMBER: 146

SITE NAME: Hali'imaile Park



PHOTO 1 Proposed siren site facing east across Makomako Street.

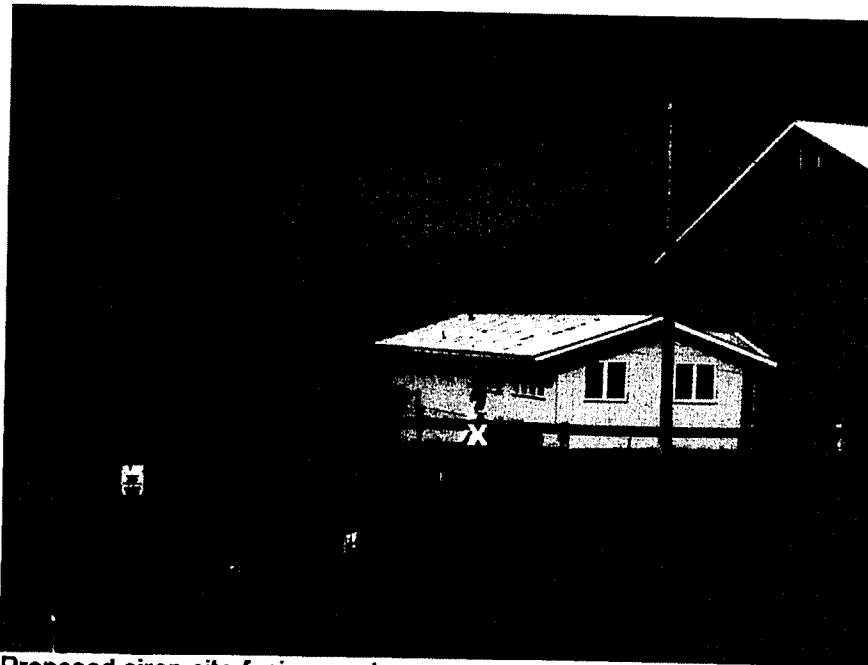


PHOTO 2 Proposed siren site facing west.



MA146 - Haliimaile Park Siren

LAT = 20.870203°

LONG = -156.338931°

6' From Chainlink Fence

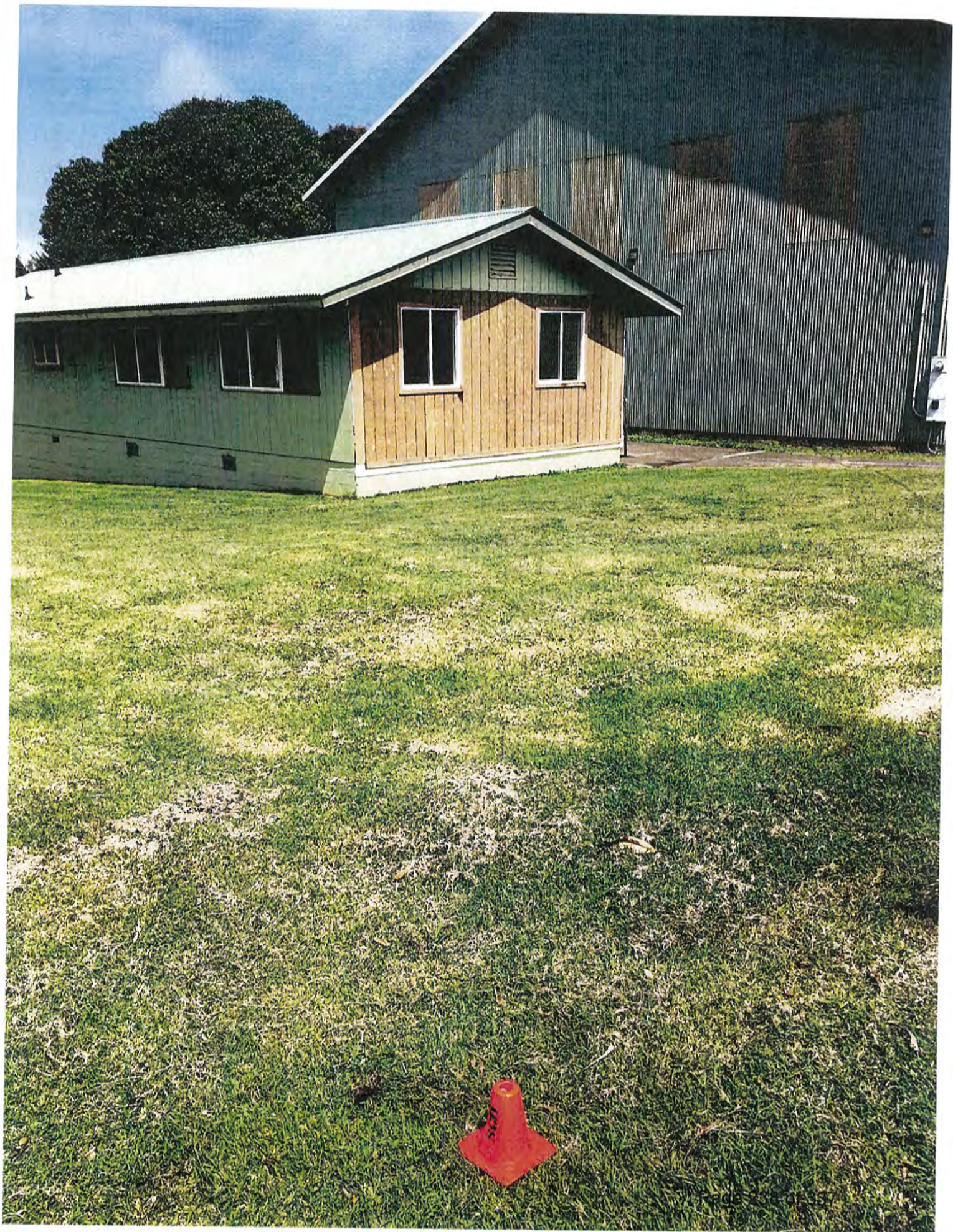
15' From Guard Rail

19' From Utility Pole

Page 235 of 337



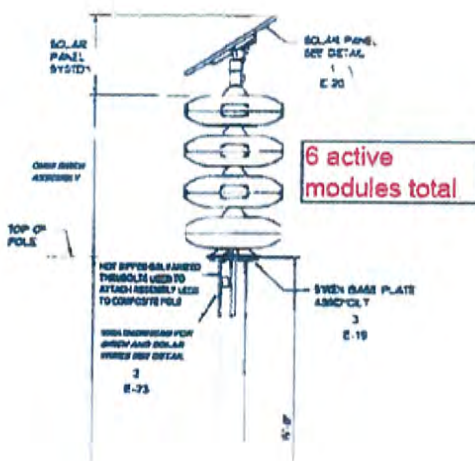




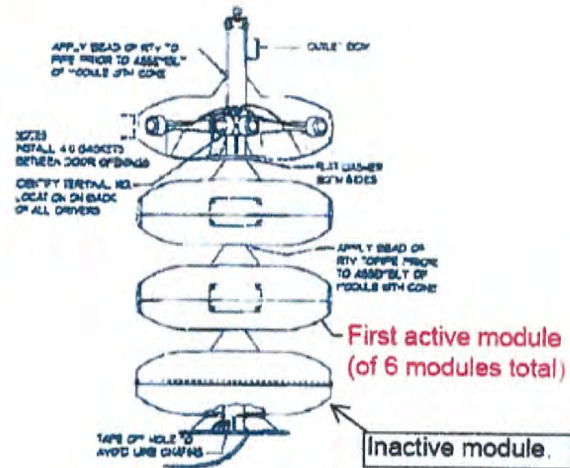
DATE/TIME: 10/12/2006 8:30am
ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
SITE NUMBER: 146
SITE NAME: Hali'imaile Park

GPS COORDS.		WORK TYPE		PRIORITY ORDER		ACCESS	
N 20 52' 12.821		<input checked="" type="checkbox"/> N - Add New		for ALTERNATIVES		<input checked="" type="checkbox"/> Public Road	
W 156 20' 20.191		<input type="checkbox"/> E - Upgrade Existing		<i>(1 as the highest)</i>		<input type="checkbox"/> Gates	
		<input type="checkbox"/> A - Choose Alternative		1		<input type="checkbox"/> Fences	
LANDOWNER						PERMIT REQUIREMENTS	
TMK: 225008001		Name: County of Maui		<input type="checkbox"/> Streets/ Right of Way		<input type="checkbox"/> None	
Address: Makomako Street		Phone: 572-8122		<input checked="" type="checkbox"/> Park		<input type="checkbox"/> CDUA	
Contact Person: Willard Asato		District Supervisor		<input checked="" type="checkbox"/> Public		<input type="checkbox"/> SMA	
<input type="checkbox"/> Private							
VEGETATION		SOIL		TERRAIN		SURROUNDING LAND USES	
<input type="checkbox"/> B - Bare		<input type="checkbox"/> SA - Sand		<input type="checkbox"/> F - Flat		<input checked="" type="checkbox"/> R - Residential	
<input checked="" type="checkbox"/> G - Grass		<input type="checkbox"/> S - Silt		<input checked="" type="checkbox"/> SL - Sloped		<input type="checkbox"/> V - Vacant Land	
<input type="checkbox"/> T - Trees		<input checked="" type="checkbox"/> C - Clay		<input type="checkbox"/> ST - Steep		<input type="checkbox"/> AG - Agricultural	
<input type="checkbox"/> S - Shrubs		<input type="checkbox"/> CO - Coral				<input type="checkbox"/> CO - Conservation	
<input type="checkbox"/> Other		<input type="checkbox"/> R - Rock				<input type="checkbox"/> C - Commercial	
		<input type="checkbox"/> Other				<input type="checkbox"/> H - Hotel	
						<input type="checkbox"/> I - Industrial	
						<input type="checkbox"/> S - School	
						<input checked="" type="checkbox"/> PK - Park	
						<input type="checkbox"/> PS - Police Station	
						<input type="checkbox"/> FS - Fire Station	
						<input type="checkbox"/> HO - Hospital	
VEG. TRIMMING		ANTENNA TYPE		POLE TYPE		<input type="checkbox"/> GC - Golf Course	
<input type="checkbox"/> Yes		<input type="checkbox"/> O - Omni Sinclair or equi		<input checked="" type="checkbox"/> H2			
<input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Y - Yagi to Puu Nianiau		<input type="checkbox"/>		<input type="checkbox"/> O - Other	
SIREN / SPEAKER TYPE / UNIT COUNT						LANDMARKS / DISTANCE	
<input type="checkbox"/> MOD 3012H () unit						3 feet from concrete pillar of wooden fence	
<input checked="" type="checkbox"/> MOD 3024H (1) unit						7 feet from chain linked fence	
<input type="checkbox"/> MOD 6024H () unit						55 feet from green annex building	
<input type="checkbox"/> Other () units						13 feet from nearby utility pole	
UTILITY Electrical Connection to/ Coordination with						83 feet from light pole near basketball court	
<input checked="" type="checkbox"/> Solar Energy						68 feet from telephone booth	
<input type="checkbox"/> HECO						72 feet from corner of gymnasium	
<input type="checkbox"/> HELCO							
<input type="checkbox"/> MECO							
<input type="checkbox"/> Kauai Island Utility Corporation							
<input type="checkbox"/> Hawaiian Telcom							
<input type="checkbox"/> Oceanic Time Warner Cable							
<input type="checkbox"/> Other (specify) _____							
FIELD NOTES							
Site located near basketball court/gymnasium parking area; siren pole needs to be buried to the depth of at least 10 feet; concerned about slope; do not disturb landscaping (Croton); careful with installation-- there are overhead lines; need to tone for underground utilities; cabinet to face chain linked fence (south). Park is 5.8 acres. Soil Type: Haliimaile silty clay up to 65 inches deep (NRSC 2003). Onsite conditions may vary.							
EQUIPMENT ORIENTATION							
Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.							
all electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer							

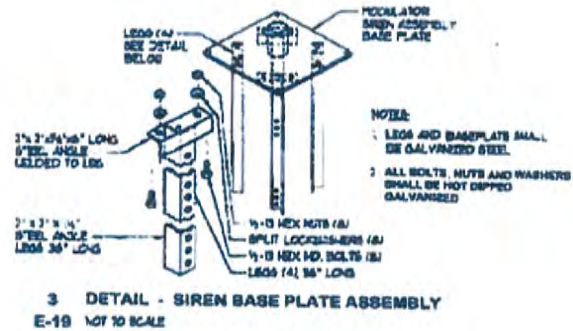
EXHIBIT B



1 POLE ELEVATION - MOD 6024
E-19 NOT TO SCALE



2 DETAIL - SIREN MOD 6024
E-19 NOT TO SCALE



3 DETAIL - SIREN BASE PLATE ASSEMBLY
E-19 NOT TO SCALE

Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL

Siren Type MOD 6024



EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. **COUNTY's responsibilities:**

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

FOR COUNTY CONTROLLED SITES:

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

3. **DAGS' responsibilities are as follows:**

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


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

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


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

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

COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

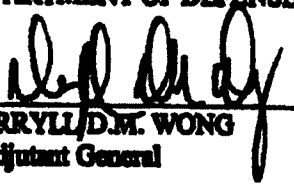
APPROVED AS TO FORM:


Deputy Attorney General

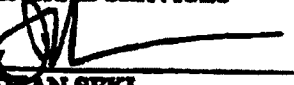
APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA150 Mokuhau Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Mokuhau Park, TMK: (2) 3-4-035:057 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 10 "

16 JUL 18 08:29

STATE OF HAWAII
CIVIL DEFENSE DEPT

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Mokuau Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA150 at Mokuahau Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.


5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By _____
ALAN M. ARAKAWA
Its Mayor

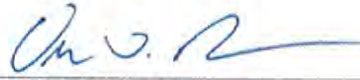
APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309

MA150

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii

MA150

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION		
Doc. Date:	<u>undated at time of signing</u>	# Pages: <u>25</u>
Notary Name:	<u>Victoria Tom</u>	Judicial Circuit: <u>First</u>
Doc. Description:	<u>Lease Agreement for Siren</u> <u>MA 150 Mokuhau Park</u>	
Notary Signature:	<u>Victoria Tom</u>	
Date:	<u>7-20-2016</u>	





STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

SITE SKETCH

DATE: 11/13/2006

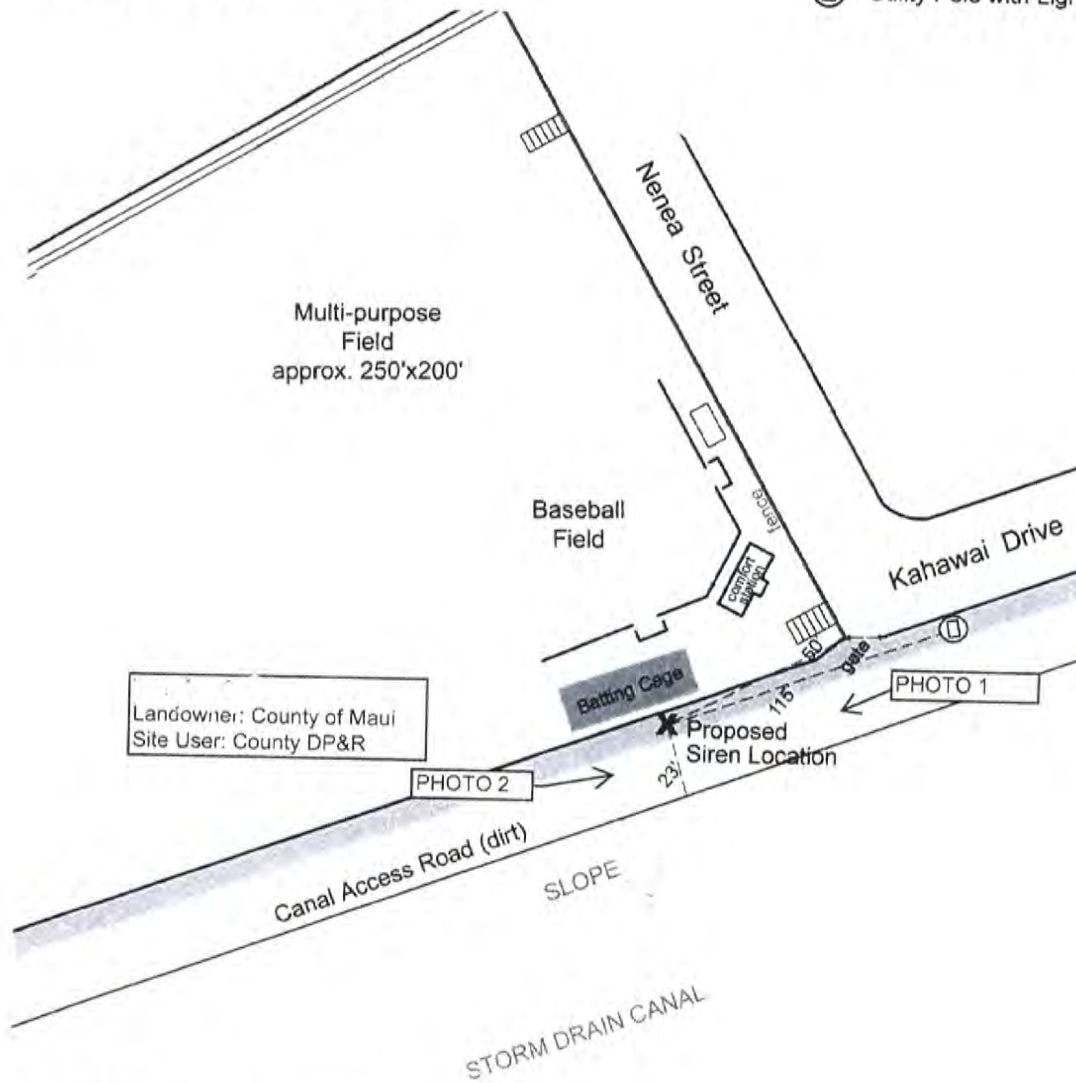
ISLAND: MAUI

SITE NUMBER: 150

SITE NAME: Mokuahau Park

LEGEND

① Utility Pole with Light



Maui Parks and Recreation

SITE MAP # 116

MOKUHAU PARK
Overview & Parking

TMK: (2) 3-4-035:057

<http://www.mauicounty.gov/parks/maui/central/MokuahauPark.htm>

0 ft. 100 ft.



EXHIBIT " A "



Proposed Siren Location

Reports

Parcel

View in: [Pictometry](#) | [Google Earth](#) | [Bing Maps](#) | [Google Maps](#)

Parcel Information

Selected Parcel	34925057000
	(Click for Complete Card)
Land Size	1.19 Acres
Name	COUNTY OF MAUI
Mailing Address	00000
Situs/Physical Address	0 NENE ST
Assd Land Value	\$11,900.00
Assd Building Value	\$5,600.00
Total Assd Value	\$17,500.00
Exempt Value	\$17,500.00
Taxable Value	\$0.00

Recent Sale Information

Date	Price	Vac/Imp	Qual

Parcel List

Legend

Measure

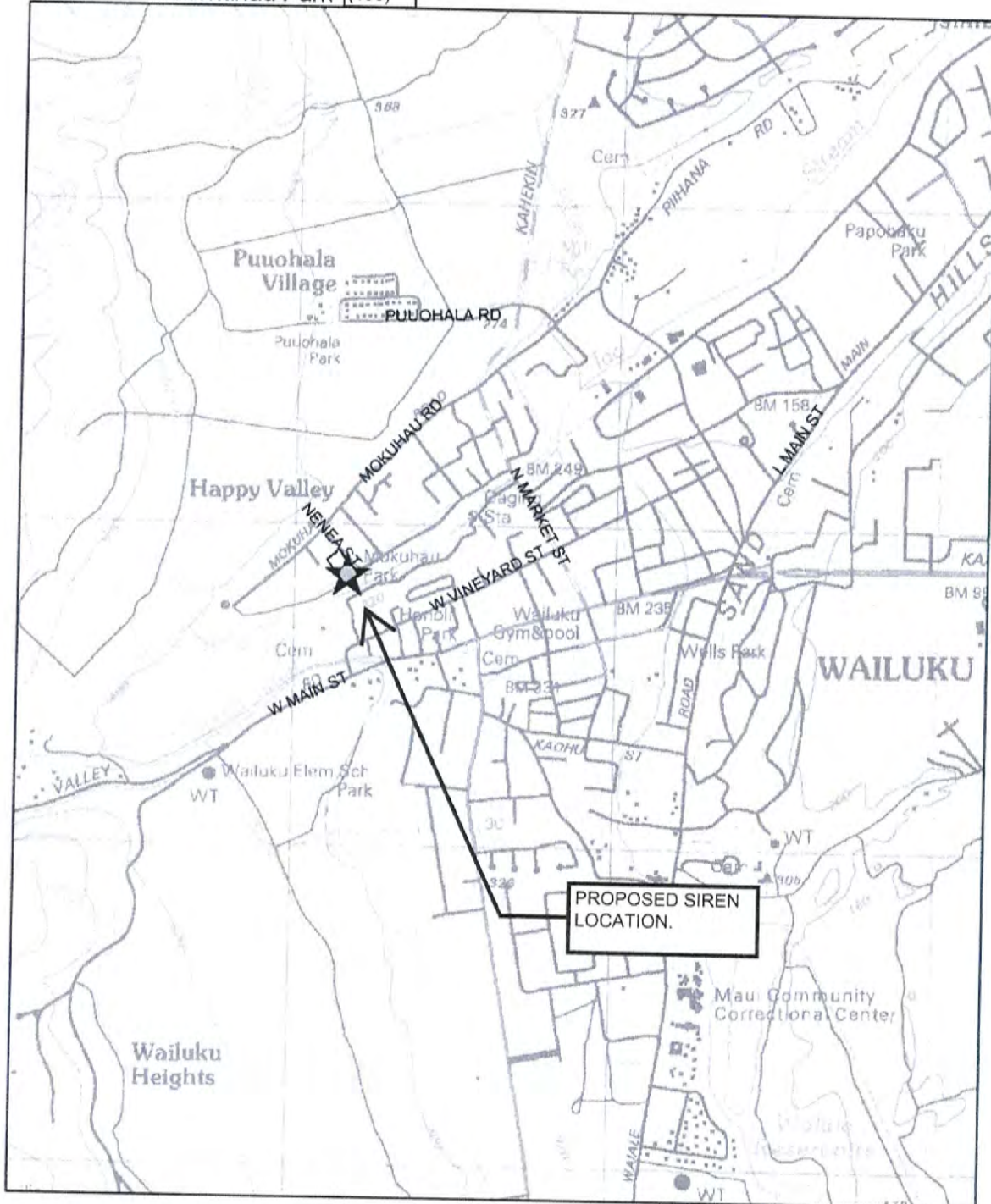
Page 337 of 337

Imagery ©2016, DigitalGlobe | Terms of Use | Report a map error

SITE LOCATION MAP

ISLAND: Maui

SITE NAME: Mokuohau Park (150)



0 750 1,500 3,000 4,500 Feet



SITE PHOTOGRAPHS

DATE: 11/13/2006

ISLAND: Maui

SITE NUMBER: 150

SITE NAME: Mokuahau Park



PHOTO 1 Proposed siren site facing southwest towards Iao Valley.

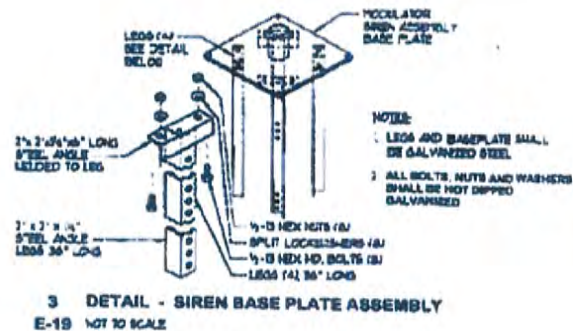
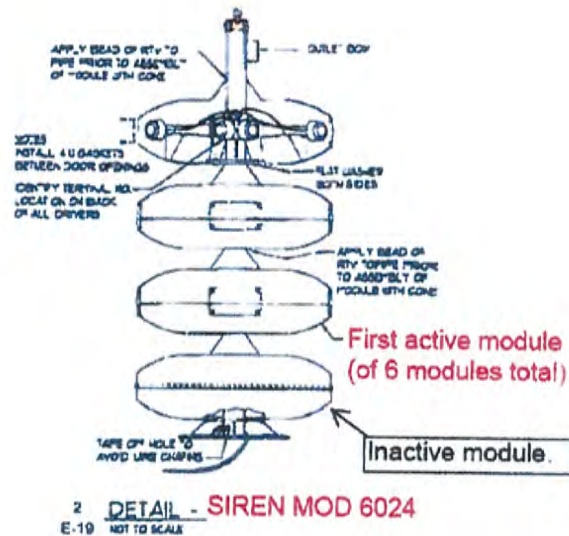
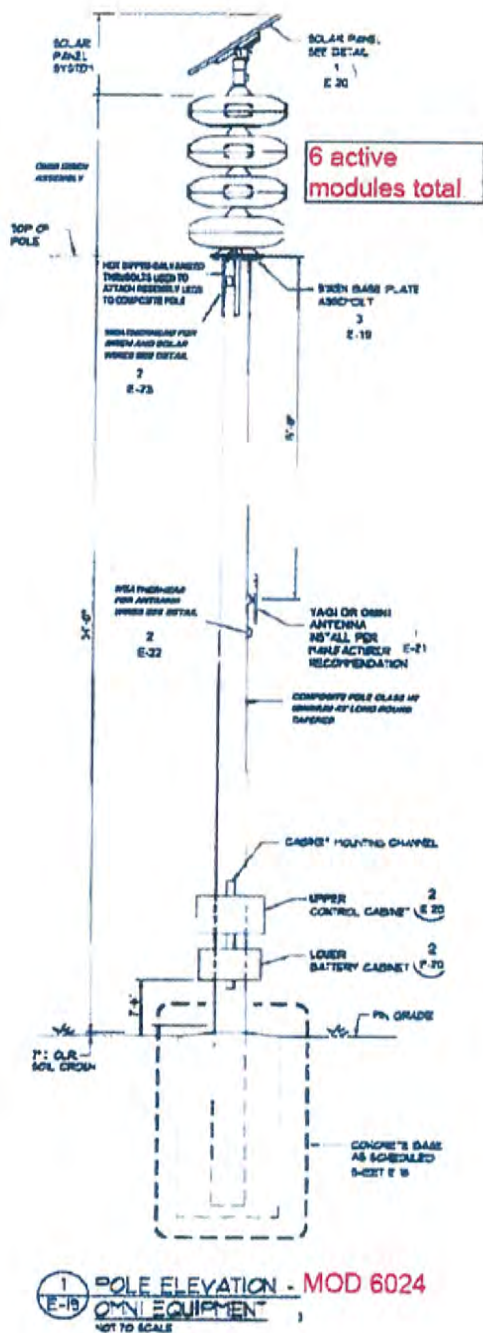


PHOTO 2 Proposed siren site facing northeast.

DATE/TIME: 11/13/2006 10:45am
 ISLAND: ☐ KAUAI ☐ OAHU ☒ MAUI ☐ MOLOKAI ☐ LANAI ☐ HAWAII
 SITE NUMBER: 150
 SITE NAME: Mokuahau Park

GPS COORDS.	WORK TYPE	PRIORITY ORDER	ACCESS
N 20 53' 19.454	<input checked="" type="checkbox"/> N - Add New	for ALTERNATIVES	<input type="checkbox"/> Public Road <input type="checkbox"/> Guardrails
W 156 30' 31.350	<input type="checkbox"/> E - Upgrade Existing	(1 as the highest)	<input checked="" type="checkbox"/> Gates <input type="checkbox"/> No Road
	<input type="checkbox"/> A - Choose Alternative	1	<input type="checkbox"/> Fences
LANDOWNER			PERMIT REQUIREMENTS
TMK:	234035057		<input type="checkbox"/> Streets/ Right of Way
Name:	County of Maui		<input type="checkbox"/> None
Address:			<input checked="" type="checkbox"/> Park
Phone:	270-7232		<input checked="" type="checkbox"/> Public
Contact Person:	Pat Rocco (District Supervisor)		<input type="checkbox"/> Private
VEGETATION	SOIL	TERRAIN	SURROUNDING LAND USES
<input checked="" type="checkbox"/> B - Bare	<input type="checkbox"/> SA - Sand	<input checked="" type="checkbox"/> F - Flat	<input checked="" type="checkbox"/> R - Residential <input type="checkbox"/> I - Industrial
<input type="checkbox"/> G - Grass	<input type="checkbox"/> S - Silt	<input type="checkbox"/> SL - Sloped	<input type="checkbox"/> V - Vacant Land <input type="checkbox"/> S - School
<input type="checkbox"/> T - Trees	<input type="checkbox"/> C - Clay	<input type="checkbox"/> ST - Steep	<input type="checkbox"/> AG - Agricultural <input checked="" type="checkbox"/> PK - Park
<input type="checkbox"/> S - Shrubs	<input type="checkbox"/> CO - Coral		<input type="checkbox"/> CO - Conservation <input type="checkbox"/> PS - Police Station
<input type="checkbox"/> Other	<input checked="" type="checkbox"/> R - Rock		<input type="checkbox"/> C - Commercial <input type="checkbox"/> FS - Fire Station
	<input type="checkbox"/> Other		<input type="checkbox"/> H - Hotel <input type="checkbox"/> HO - Hospital
VEG. TRIMMING	ANTENNA TYPE	POLE TYPE	
<input type="checkbox"/> Yes	<input type="checkbox"/> O - Omni Sinclair or equi	<input checked="" type="checkbox"/> H2	<input type="checkbox"/> GC - Golf Course
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Y - Yagi to the County Building		<input type="checkbox"/> O - Other
SIREN / SPEAKER TYPE / UNIT COUNT			LANDMARKS / DISTANCE
<input type="checkbox"/> MOD 3012H () unit <input type="checkbox"/> DSA 117 () unit			7' from chain link fence pole
<input checked="" type="checkbox"/> MOD 3024H (1) unit <input type="checkbox"/> DSA 121 () unit			50' from yellow access gate
<input type="checkbox"/> MOD 6024H () unit <input type="checkbox"/> MOD 6048H () units			115' from closest utility pole with street light
<input type="checkbox"/> Other () units			23' from edge of drop/storm drain
UTILITY Electrical Connection to/ Coordination with			
<input checked="" type="checkbox"/> Solar Energy <input type="checkbox"/> Kauai Island Utility Corporation			
<input type="checkbox"/> HECO <input type="checkbox"/> Hawaiian Telcom			
<input type="checkbox"/> HELCO <input type="checkbox"/> Oceanic Time Warner Cable			
<input type="checkbox"/> MECO <input type="checkbox"/> Other (specify)			
FIELD NOTES			
Mokuahau Park is at the intersection of Nenea St and Kahawai Dr; new site is between the batting cage (south side) and the storm drain canal; cabinet is to face the storm drain (south); County Parks Department to approve this site; Soil Type: Stony Alluvial Land (NRCS 1978). Onsite conditions may vary.			
<div>Assume the site is on parks land, TMK 3-4-5: 57, and not in the drainage channel.</div>			
EQUIPMENT ORIENTATION			
Pls. Indicate which equipment to be salvaged, where to be salvaged, and whom to be salvaged by.			
all electronics, mechanical relays, siren heads to be delivered to Civil Defense at State Civil Defense 3949 Diamond Head Road Bldg 90 Attn: Assistant Telecommunications Officer			

EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL

Siren Type MOD 6024

Sheet 1	Sheet 2	Sheet 3	Sheet 4
NOT TO SCALE	NOT TO SCALE	NOT TO SCALE	NOT TO SCALE

EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. **COUNTY's responsibilities:**

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

FOR COUNTY CONTROLLED SITES:

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

3. **DAGS' responsibilities are as follows:**

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


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

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


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

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

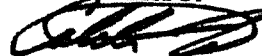
COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

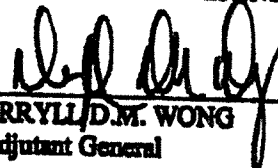
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA415 Kelaweia Mauka III Park

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified Kelaweia Mauka III Park, TMK: (2) 4-5-034:046 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 11 "

16 JUL 18 A8:29

STATE OF HAWAII
CIVIL DEFENSE DIV

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Kelaweia Mauka III Park, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA415 at Kelaweau Mauka III Park".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

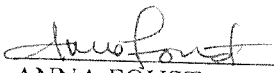
5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

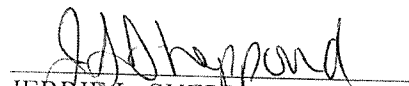
APPROVAL RECOMMENDED:

COUNTY OF MAUI


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

By 
ALAN M. ARAKAWA
Its Mayor


APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309


MA415

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii
MA415

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii

Print Name: Victoria Tom

My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION

Doc. Date:	<u>undated at time of signing</u>	# Pages:	<u>26</u>
Notary Name:	<u>Victoria Tom</u>	Judicial Circuit:	<u>First</u>
Doc. Description:	<u>Lease Agreement for</u> <u>Siren MA 415 Kelauea Mautu III</u> <u>Park</u>		
Notary Signature:	<u>Victoria Tom</u>		
Date:	<u>7-20-2016</u>		





ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
БІЛІМ, ҒЫЛЫМ ЖӘНЕ САПА
МОНАСТЫР

STATE OF HAWAII)
COUNTY OF MAUI) SS.
)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii
Print Name: _____
My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

ISLAND: Maui
SIREN NUMBER: MA415
SITE NAME: Kelaweia Mauka III Park



Page 289 of 337

EXHIBIT



SITE LOCATION PHOTO

ISLAND: Maui

SIREN NUMBER: MA415

SITE NAME: Kelaweia Mauka III Park





Kelawea Mauka Park Siren MA415

7' From Chainlink Fence facing
Lahainaluna Road

8' From Wooden Guard Rail

8' From Edge of Parking Lot
Pavement

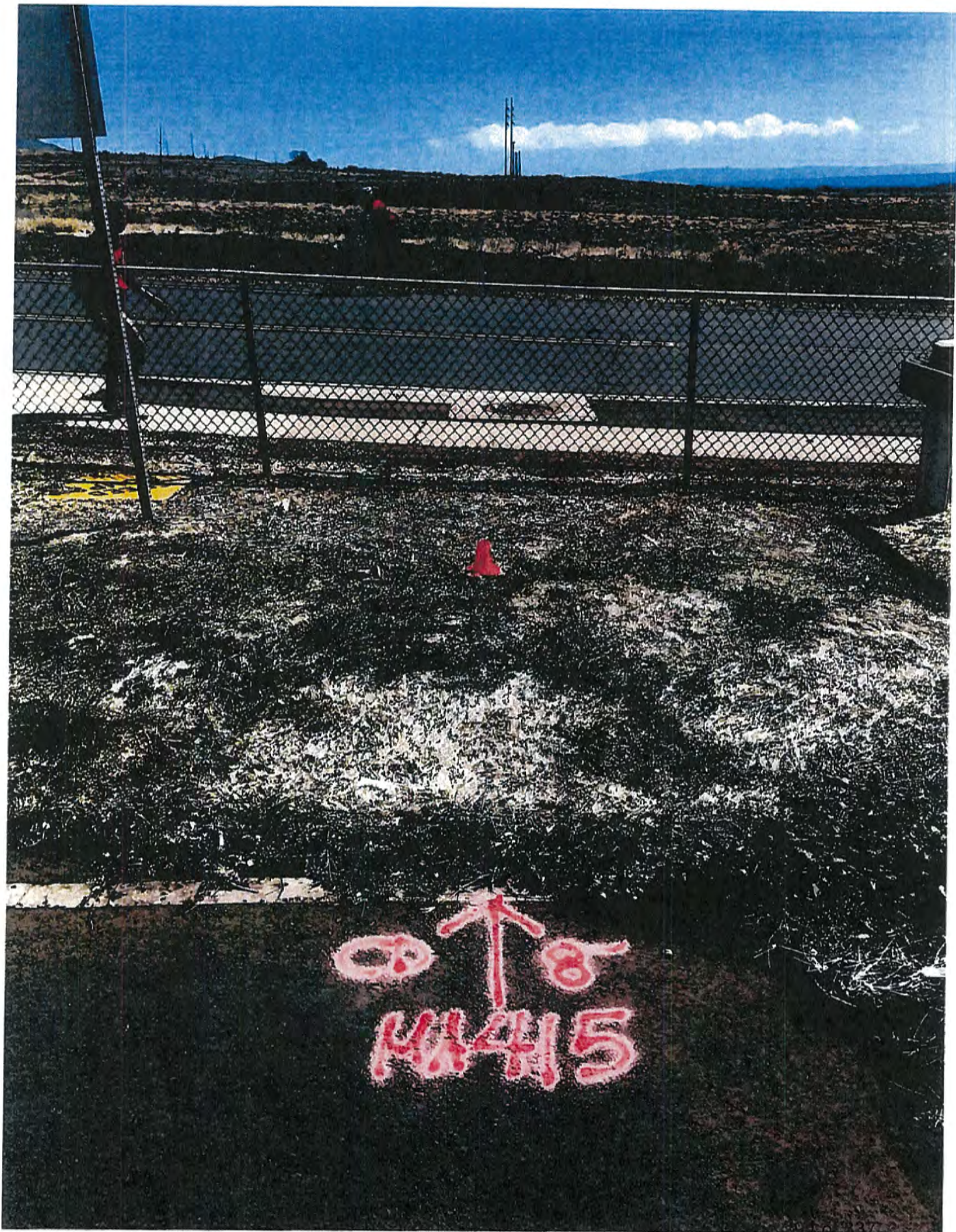
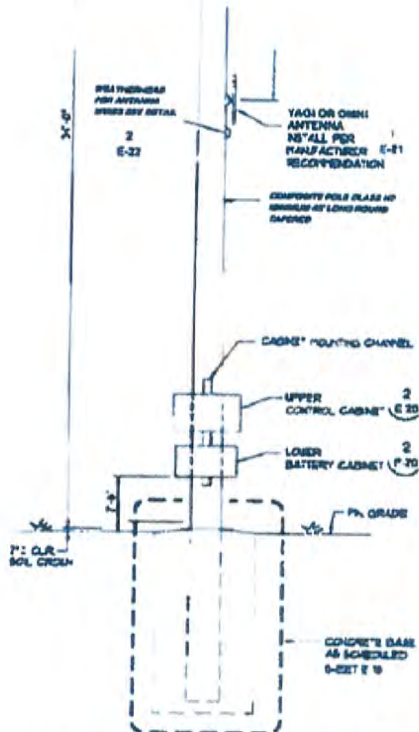
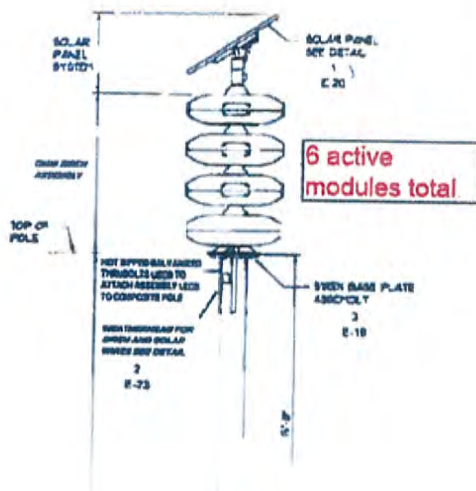
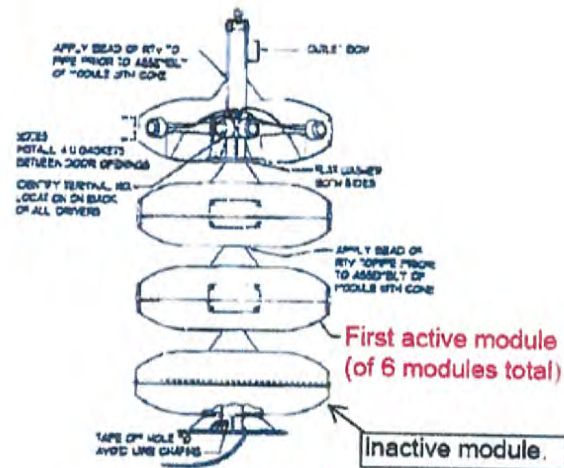




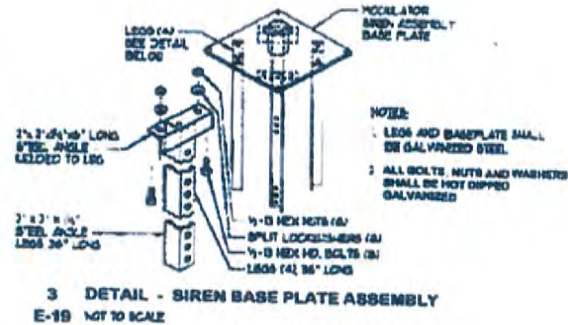
EXHIBIT B



1 POLE ELEVATION - MOD 6024
E-19 NOT TO SCALE



2 DETAIL - SIREN MOD 6024
E-19 NOT TO SCALE



3 DETAIL - SIREN BASE PLATE ASSEMBLY
E-19 NOT TO SCALE

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

DATE	1/20/02	Drawn by	WJH
SCALE	NOT TO SCALE	SHEET	1

EXHIBIT "B"

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

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

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


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

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

COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Mand Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel


APPROVED AS TO FORM:


Deputy Attorney General

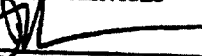
APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYLL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller

LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA502 Kaunakakai

THIS LEASE AGREEMENT entered into this _____ day of _____, 201____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "Lessor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter referred to as "Lessee," and collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Memorandum of Agreement (MOA) on April 16, 2014, a copy of which is appended hereto as Appendix (1), regarding coordination and implementation, including planning, design and construction, of Hawaii State Emergency Outdoor Siren Warning Systems throughout the County of Maui; and

WHEREAS, the MOA provides that Lessee shall initiate a License Agreement with Lessor to address the specific issues for existing and new siren sites; and

WHEREAS, Lessor desires the instrument for this purpose be composed as a grant of a Lease of Real Property, pursuant to Maui County Code Sections 3.40.020 and 3.40.040, instead of a License; and

WHEREAS, Lessor is the owner or manager of a certain parcel of land identified and approved as a location for the installation, operation and maintenance of an emergency warning siren as specified in the MOA, which parcel is identified as Kaunakakai, TMK: (2) 5-3-003:012 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

EXHIBIT " 12 "

16 JUL 18 A8:30

STATE OF HAWAII
CIVIL DEFENSE DIV

WHEREAS, Lessee desires to Lease a portion of the parcel identified, hereinafter referred to as the "Siren Site", for the installation, operation and maintenance of an emergency warning siren as specified in the MOA (see Appendix 1), to provide civil defense disaster warnings and communication, together with improvements, equipment, facilities and appurtenances related thereto as more particularly described in Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, Lessor does not object to granting Lessee a non-exclusive Lease of the Siren Site provided Lessee fully complies with the terms and conditions set forth below and in the Exhibits attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor does hereby grant a Lease of County Real Property to Lessee, and Lessee hereby accepts said lease, on the terms and conditions set forth below and in Exhibits "A", "B" and "C", attached hereto and made a part hereof.

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

2. Grant of Lease. Lessor hereby grants Lessee a revocable non-exclusive Lease to install, operate and maintain a civil defense, disaster, emergency warning siren and communication device, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in the Siren Site within Kaunakakai, and the right of ingress to and egress from said Siren Site and Equipment. This Lease shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel. Lessee shall obtain Lessor's approval of the final location for siting of the equipment.

3. Terminology. The Siren Site subject to this Lease, as detailed in Exhibit "A", is hereby officially designated as "Siren Number MA502 at Kaunakakai".

4. Lease Term. This Lease shall become effective on the day and year first above written, and shall continue in full force and effect until such time that either Lessor or Lessee elects to terminate this Lease upon giving reasonable written notice to the other Party. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.


5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency


By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
2016-0309
MA502

LESSEE:

STATE OF HAWAII
By its Department of Defense

By 
VERN MIYAGI
Hawaii Emergency Management Agency
Administrator

APPROVED AS TO FORM:


MICHAEL S. VINCENT
Deputy Attorney General
State of Hawaii
MA502

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 20th day of July, 2016, before me personally appeared Vern Miyagi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

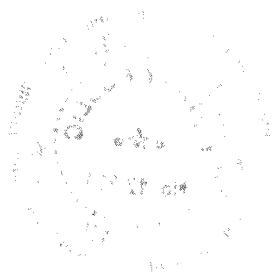
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Victoria Tom
Notary Public, State of Hawaii
Print Name: Victoria Tom
My commission expires: 9-2-2016

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>undated at time of signing</u>	# Pages: <u>25</u>
Notary Name: <u>Victoria Tom</u>	Judicial Circuit: <u>First</u>
Doc. Description: <u>Lease Agreement for</u> <u>Siren MA 502 Kaunakakai</u>	
Notary Signature: <u>Victoria Tom</u>	
Date: <u>7-20-2016</u>	





STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	

Notary Signature: _____	
Date: _____	

SITE LOCATION PHOTO

ISLAND: Maui

SIREN NUMBER: MA502

SITE NAME: Kaunakakai

TMK: (2) 5-3-003:012



EXHIBIT " A "

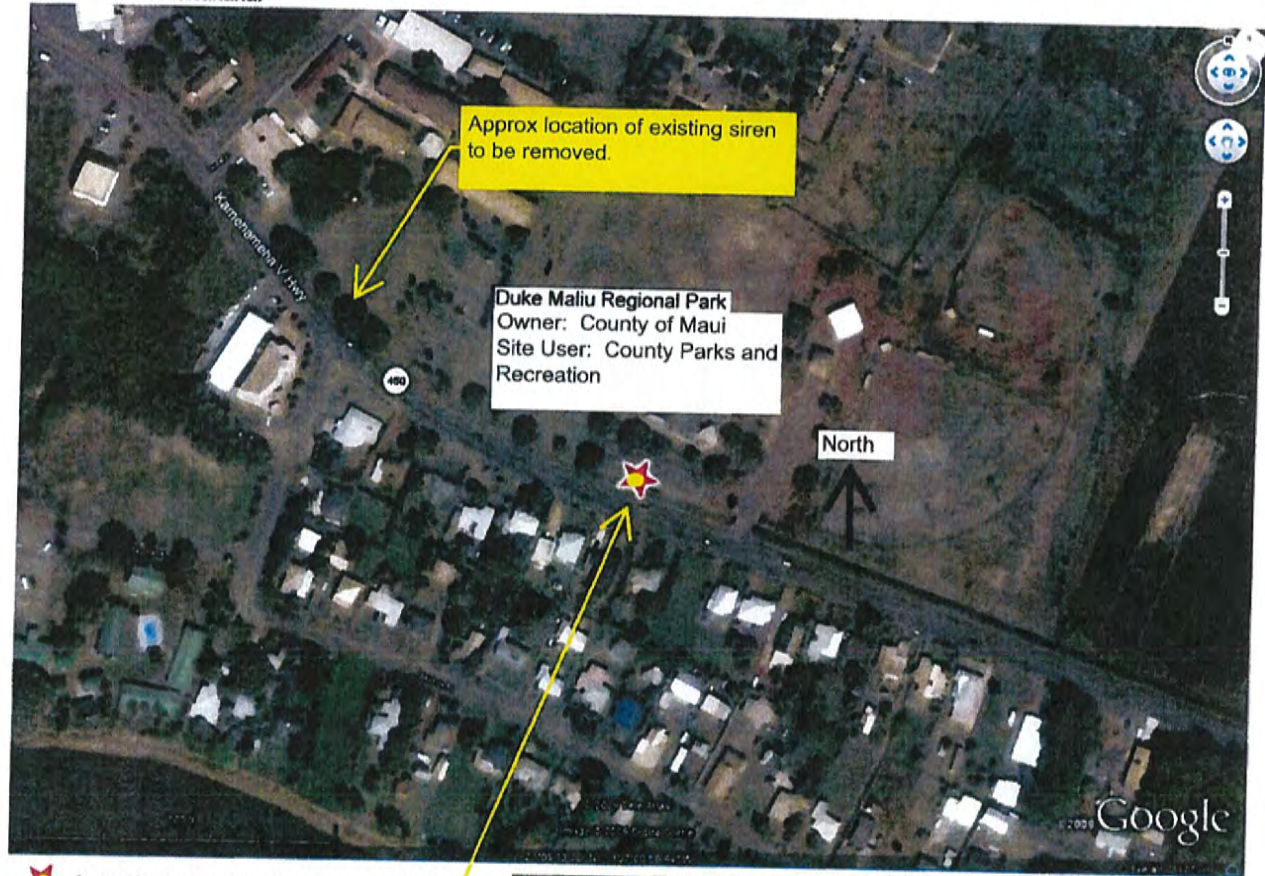
EXHIBIT _____







ISLAND: Molokai
SITE NUMBER: 502
SITE NAME: Kaunakakai

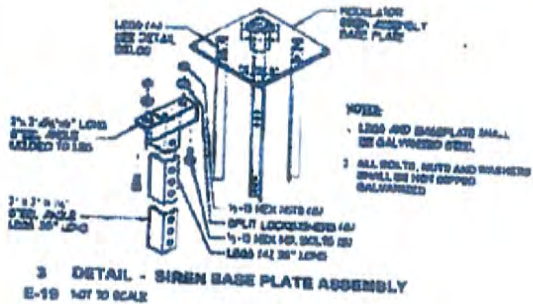
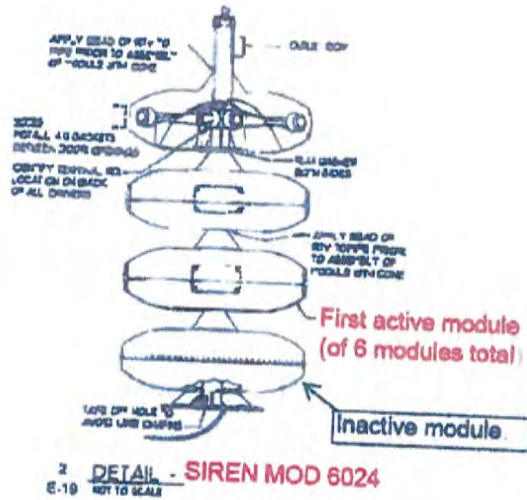
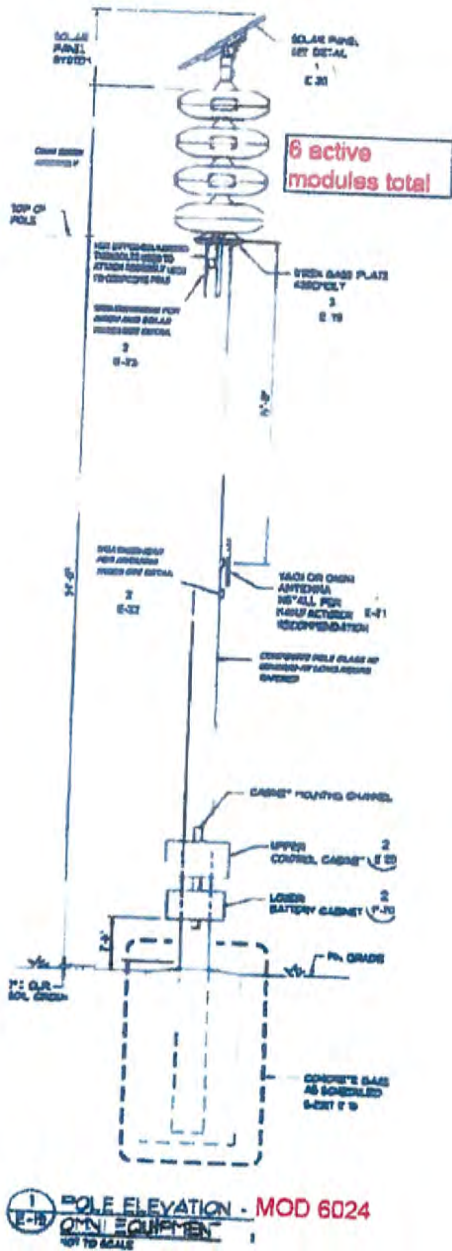


★ Approximate location of proposed siren site.

Siren Name Designation: Kaunakakai, Siren MA502

REVISED

EXHIBIT B



Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL

Siren Type MOD 6024

EXHIBIT - B -

COVENANTS, TERMS AND CONDITIONS

1. **Right to Construct the Equipment.** Lessee may construct and maintain the Equipment on the Siren Site, with access on, within, under, over and across the parcel provided that Lessee obtains the Lessor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the parcel at the Siren Site. Lessee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.
2. **Equipment.** The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole as shown on Exhibit "B. No electrical connection or underground utility trenching are required or shall be allowed. The Equipment will be tested once a month.
3. **Repair and Maintenance of the Equipment.** Lessee shall, at its sole cost and expense, repair and maintain said Equipment and appurtenances relating thereto in good and safe order and condition, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.
4. **Damage.** Lessee shall not damage, undermine or otherwise destroy any portion of the parcel or the Siren Site, including, without limitation, any Lessor facilities or improvements situated on or near the Siren Site, or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Lessee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said

EXHIBIT "C"

parcel if ever so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

5. Lessor Work Within or Affecting the Siren Site. If Lessor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Lessor will coordinate such work with Lessee in advance. Lessee shall not unreasonably prevent Lessor from performing such work, provided, however, that Lessor will take appropriate measures to assure that such work does not unreasonably interfere with Lessee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance or operation of the Equipment.

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

7. Removal of Equipment. If Lessor shall at any time in the future deem it necessary to use the parcel including the Siren Site for any public purpose and/or physical expansion of its current operations, Lessee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Lessor's part; provided, however, that the Lessor shall give Lessee reasonable written notice of any requirement for such

removal. Reasonable written notice will be established as one (1) year unless circumstances exist justifying a shorter period.

8. Assignment. Lessee shall not transfer or assign this Lease, or sublet any part of the parcel or Siren Site, or grant any interest, privilege or Lease whatsoever in connection with this Lease or the Siren Site.

9. Responsibility for Damages or Injury. Lessor and Lessee understand and recognize that by entering into this Lease, that both are engaged in a civil defense and/or emergency operations warning function as contemplated in the MOA and in Hawaii Revised Statutes, Act 111, which took effect on July 1, 2014. In consideration of this mutual understanding:

a. Lessor shall be responsible for damages or injury caused by Lessor's agents, officers, and its employees in the course of their employment, to the extent that Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessor, and Lessor shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval.

b. Lessee shall be responsible for damages or injury caused by Lessee's agents, officers, contractors, and its employees in the course of their employment, to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law.

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

11. Insurance. Lessee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions:

(1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Lessor and Lessee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Lessor and Lessee.

12. Sanitation. Lessee, its consultants and contractors shall keep the parcel, Siren Site, and Equipment in a strictly clean, sanitary and orderly condition.

13. Waste and Unlawful, Improper or Offensive Use of Parcel. Lessor shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the parcel or Siren Site, or any part thereof. Lessor shall not allow the Siren Site to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental

regulation (hereinafter collectively referred to as "hazardous substances".) Prior to commencing use of the Siren Site for any activity involving the storage, use or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of the Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Siren Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the parcel and/or Siren Site which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (d) surrender possession of the Siren Site to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Siren Site during the term of this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

16. Removal upon Termination. Upon termination or cancellation of this Lease, Lessee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to a condition that is substantially similar to that which existed prior to the commencement of Lessor's activity on the parcel and/or Siren Site, satisfactory to Lessor. If Lessee fails to restore the parcel and/or Siren Site to a condition satisfactory to the Lessor, Lessor shall have the right to charge Lessee, and Lessee shall be solely responsible for, any and all costs and expenses incurred by Lessor in completing and accomplishing such restoration, including, but not limited to any costs the Lessor incurs in removing and disposing of Lessee's Equipment.

17. Default.

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

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

iii) County remedies for failure to cure. If Lessee fails to cure said defaults or failures to perform within the required time, the Lessor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in

performing said cure and remedy to Lessee, who shall immediately pay said costs and expenses to the Lessor upon receiving notice from the Lessor.

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

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

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

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

22. Reservation of Rights. Lessor reserves unto itself the full use and enjoyment of the parcel, including the Siren Site, and the right to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Lessee, provided that such use by Lessor and/or third parties does not unreasonably interfere with Lessee's rights to use the Siren Site under this Lease. Lessee shall take steps necessary to ensure

that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Lessor's operations in or near the Siren Site. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter the parcel and the Siren Site as needed to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

MEMORANDUM OF AGREEMENT

BETWEEN THE

COUNTY OF MAUI

AND

STATE OF HAWAII

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

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

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

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

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

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

APPENDIX (1)

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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


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

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

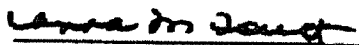
5. **Termination.** Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

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

COUNTY OF MAUI


ALAN M. ARAKAWA
Mayor

RECOMMEND APPROVAL:


ANNA FOUST
Emergency Management Officer
Maui Civil Defense Agency

APPROVED AS TO FORM
AND LEGALITY:


CALEB ROWE
Deputy Corporation Counsel

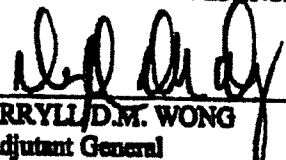
APPROVED AS TO FORM:


Deputy Attorney General


APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 
DARRYL D.M. WONG
Adjutant General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
DEAN SEKI
State Comptroller