

## REQUEST FOR LEGAL SERVICES

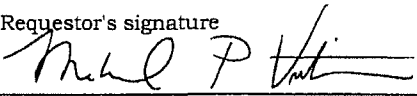
**Date:** July 27, 2016  
**From:** Michael P. Victorino, Chair  
 Policy and Intergovernmental Affairs Committee  
**TRANSMITTAL**  
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL

Rec'd on 7/29/2016

**Subject:** APPROVING INSTALLATION OF SIRENS FOR THE HAWAII STATE EMERGENCY OUTDOOR SIREN WARNING SYSTEM (PIA-70)

**Background Data:** Proposed resolution to authorize the Mayor to enter into lease agreements with the State of Hawaii for the installation of emergency outdoor warning sirens on County-owned property, with incomplete copies of Exhibit 3, page 81; Exhibit 4, pages 86, 87, and 92; Appendix 1, page 105; and Exhibit 5, page 111.

**Work Requested:** ☐ FOR APPROVAL AS TO FORM AND LEGALITY  
☒ OTHER: Provide revised resolution with complete exhibits.

Requestor's signature  Michael P. Victorino	Contact Person <u>Kimberley Willenbrink</u> (Telephone Extension: <u>7761</u> )
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☒ RUSH (WITHIN 5 WORKING DAYS)  
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): \_\_\_\_\_  
 REASON: \_\_\_\_\_

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)  
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): 8.29.16  
SPOKE TO K. WILLENBRINK.  
SHE WOULD LIKE ELECTRONIC RESPONSE ONLY.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 8.29.16By JERRIE L. SHEPPARD

(Rev. 7/03)

pia:ltr:070acc01:kcw

Attachment

# 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, five 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 Exhibit “1” through “5”, 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 five 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 five 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 16<sup>th</sup> day of April 2014, by and between the COUNTY OF MAUI, a municipal corporation of the State of Hawai'i, whose address is 200 South High Street, Wailuku, Hawaii 96793 ("COUNTY"), the STATE OF HAWAII by its DEPARTMENT OF DEFENSE, whose address is 3949 Diamond Head Road, Honolulu, Hawai'i 96816 ("DOD"), and the STATE OF HAWAII by its DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, whose address is Kalanimoku Building 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("DAGS") (COUNTY, DOD, and DAGS collectively referred to as "Parties").

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

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

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

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

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

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

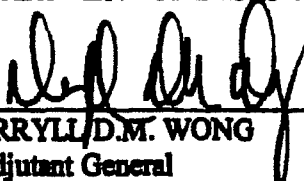
APPROVED AS TO FORM:

  
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 MA123 Eddie Tam Memorial 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 Eddie Tam Memorial Park, TMK: (2) 2-4-006:005 (por.) and (2) 2-4-032:098 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

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 Eddie Tam Memorial 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 MA123 at Eddie Tam Memorial 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.

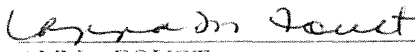
5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

**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



STATE OF HAWAII                    )  
  ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_

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

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: \_\_\_\_\_

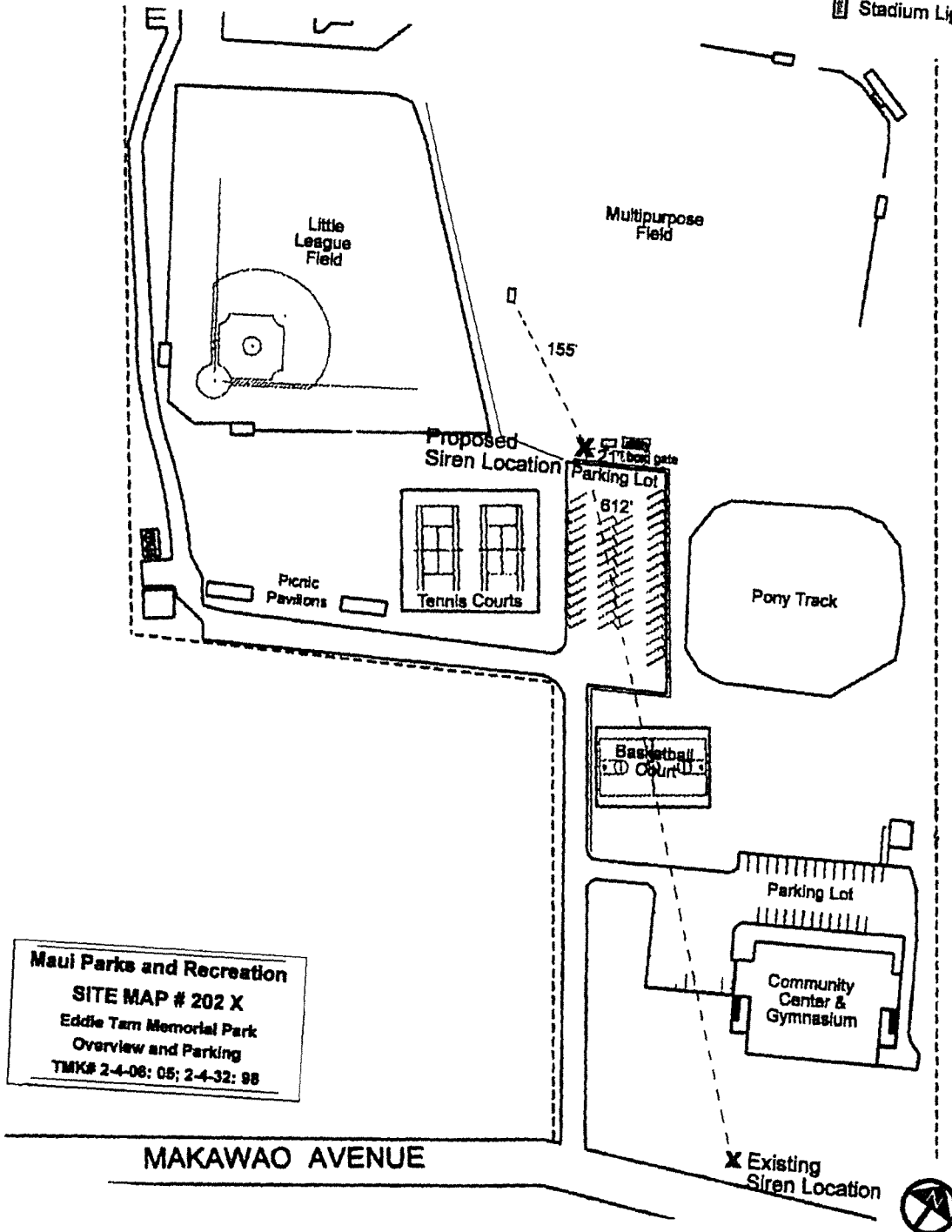
NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	
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Notary _____	
Signature: _____	
Date: _____	

# SITE SKETCH

DATE: 11/14/2008  
ISLAND: MAUI  
SITE NUMBER: 123  
SITE NAME: Eddie Tam

## LEGEND

 Stadium Lights

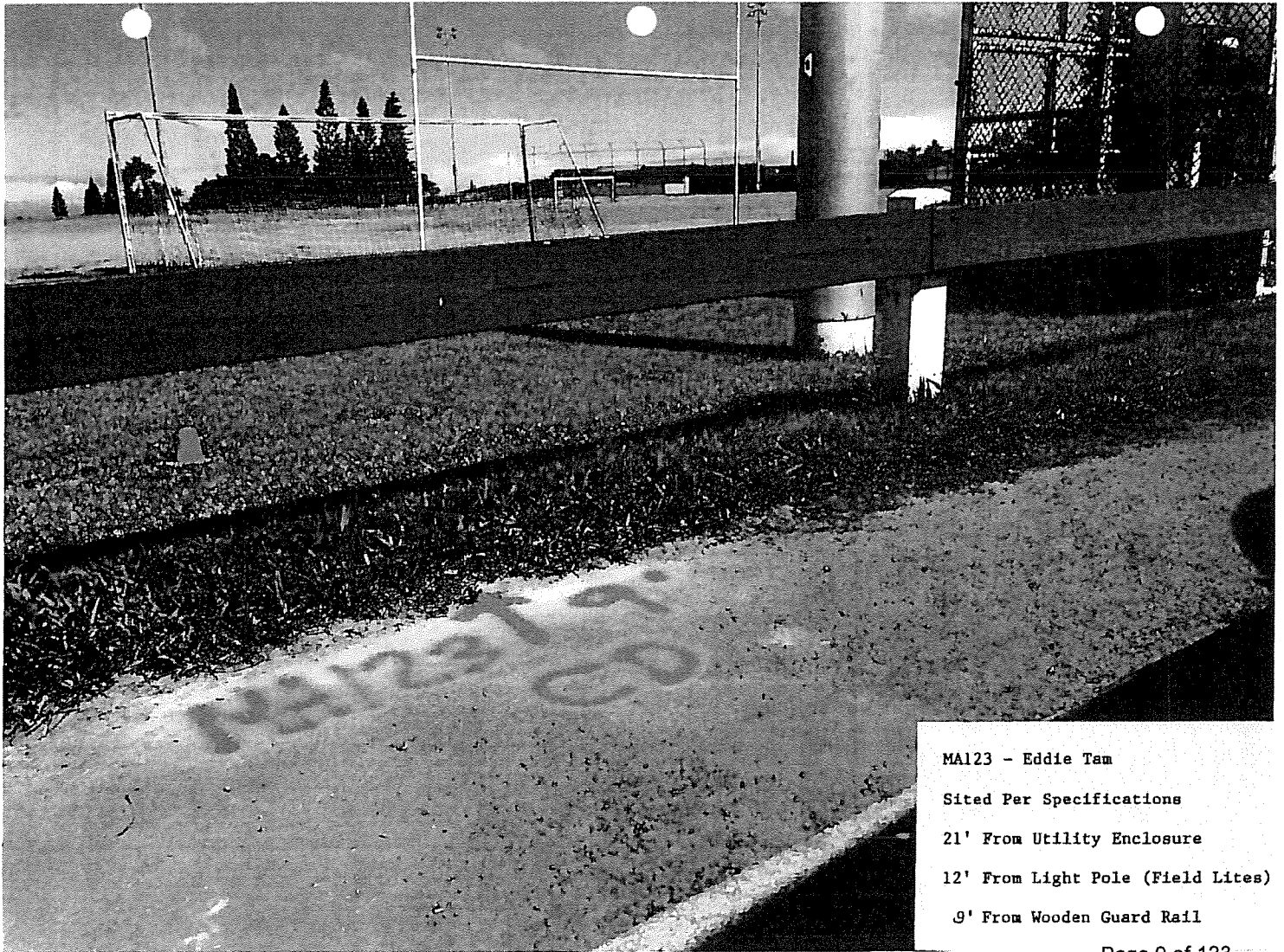


**Maui Parks and Recreation**  
**SITE MAP # 202 X**  
Eddie Tam Memorial Park  
Overview and Parking  
TMK# 2-4-08: 05; 2-4-32: 98

EXHIBIT "A"



MA123 – Eddie Tam Memorial Center



MA123 - Eddie Tam

Sited Per Specifications

21' From Utility Enclosure

12' From Light Pole (Field Lites)

9' From Wooden Guard Rail







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

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

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

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

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

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

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

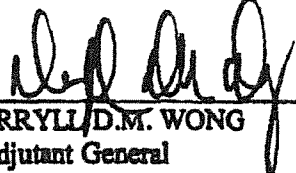
APPROVED AS TO FORM:

  
Deputy Attorney General

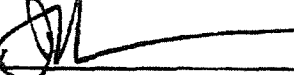
APPROVED AS TO FORM:

  
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 MA404 Honokowai Beach 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 Honokowai Beach Park, TMK: (2) 4-4-001:046 and (2) 4-4-001:047, more particularly described in Exhibit "A", attached hereto and made a part hereof; and

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 Honokowai Beach 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 MA404 at Honokowai Beach 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

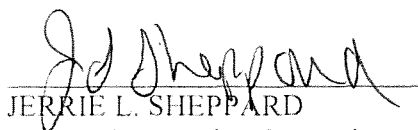


ANNA FOUST  
Emergency Management Officer  
Maui Civil Defense Agency

By \_\_\_\_\_

ALAN M. ARAKAWA  
Its Mayor


APPROVED AS TO FORM  
AND LEGALITY:




JERRIE L. SHEPPARD  
Deputy Corporation Counsel  
2016-0309

**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



STATE OF HAWAII                    )  
  ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_

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

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: \_\_\_\_\_

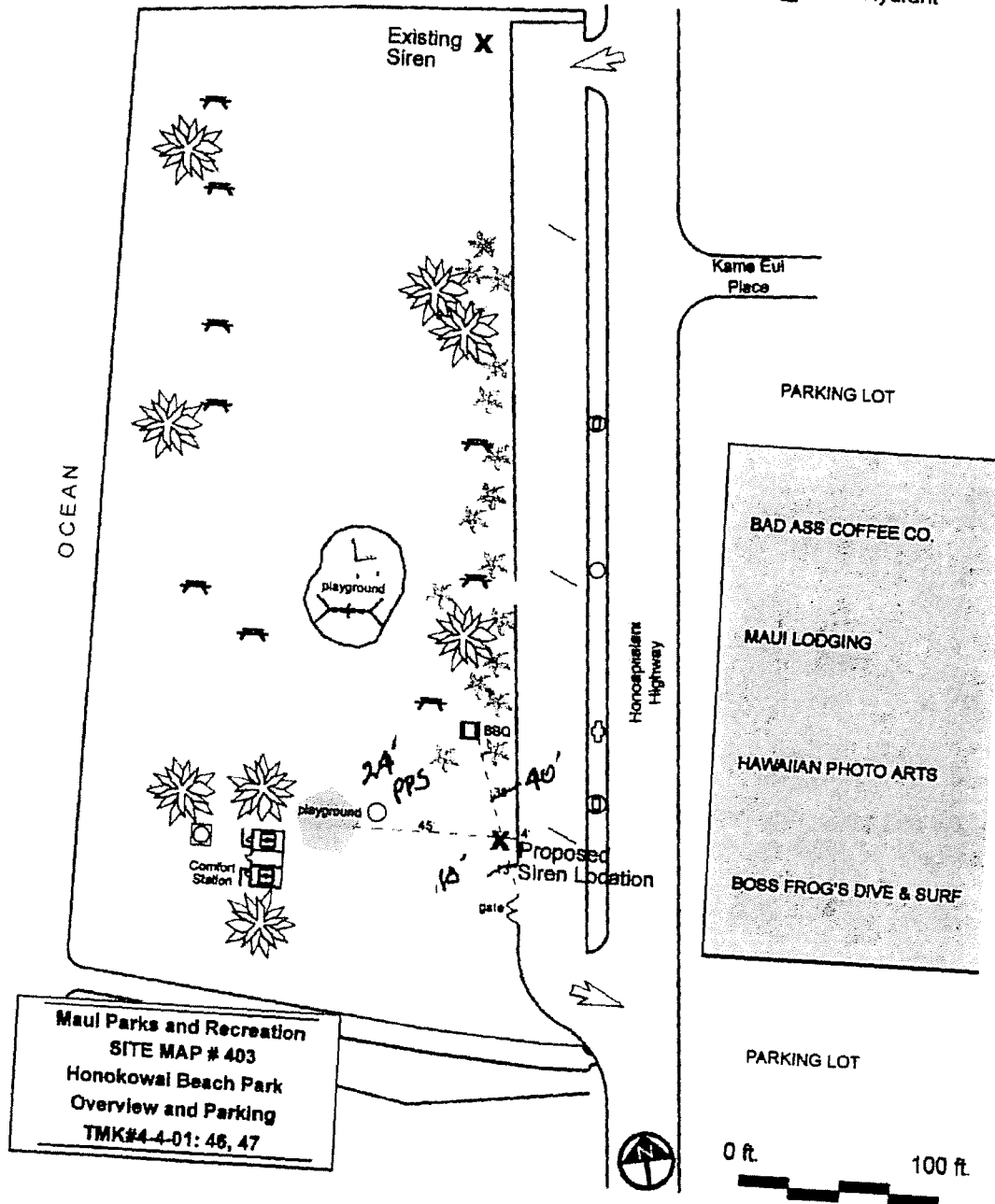
NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial _____
Doc. _____	Circuit: _____
Description: _____	
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_____	
Notary _____	
Signature: _____	
Date: _____	

# SITE SKETCH

DATE: 10/12/2006  
 ISLAND: MAUI  
 SITE NUMBER: 404  
 SITE NAME: Honokowai Beach Park

## LEGEND

-  Utility Pole with Light
-  Utility Pole
-  Fire Hydrant



Maul Parks and Recreation  
 SITE MAP # 403  
 Honokowai Beach Park  
 Overview and Parking  
 TMK#4-4-01: 46, 47

EXHIBIT "A"



MA404-Honokowai Beach Park



4A404 - Honokowai Beach Park  
Offset due to overhead electrical  
drop wire to comfort station.

4' From Wooden Guard Rail

10' From Gate Post

24' From Paystation

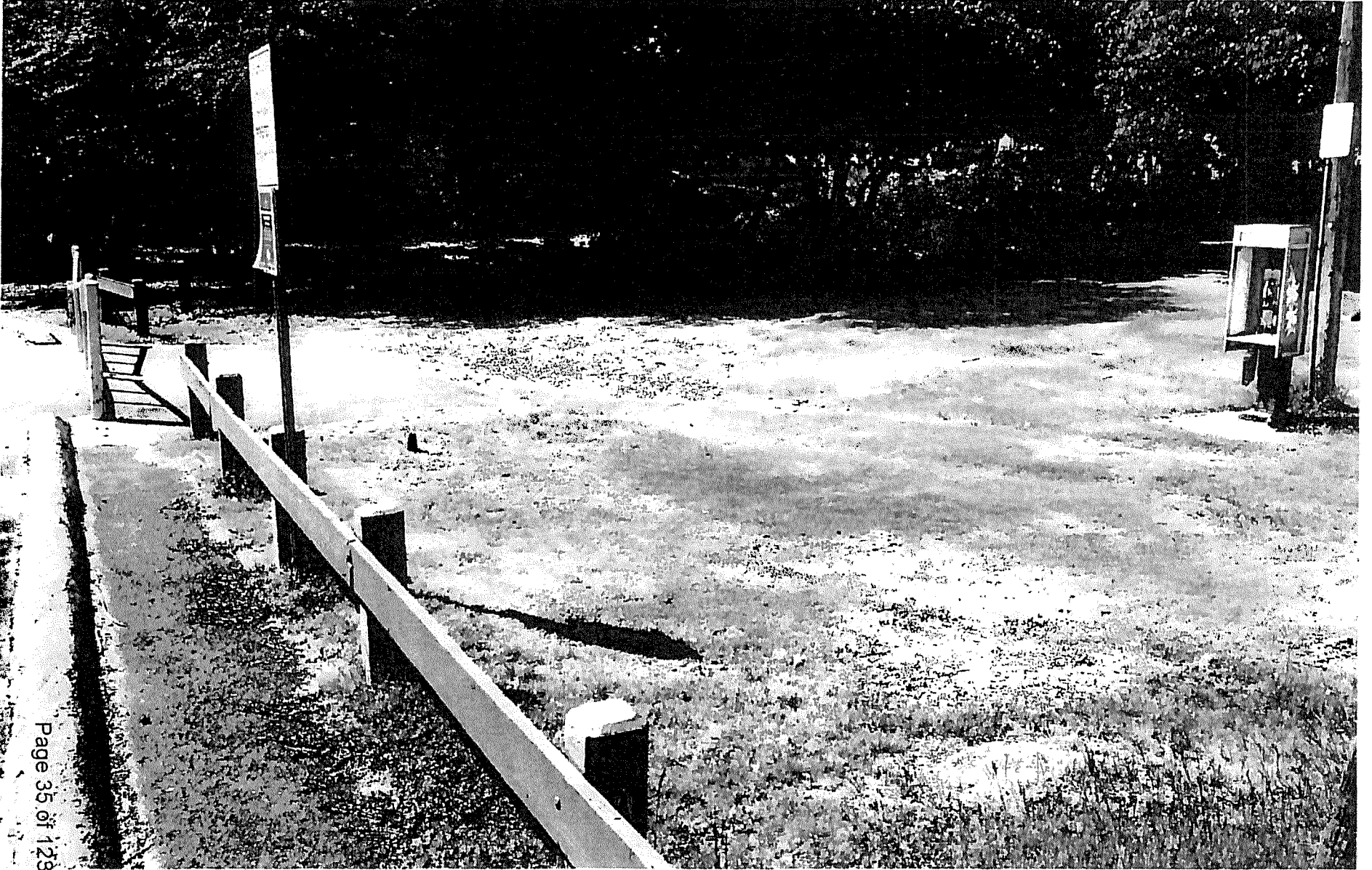
40' From BBQ

LAT = 20.954096°

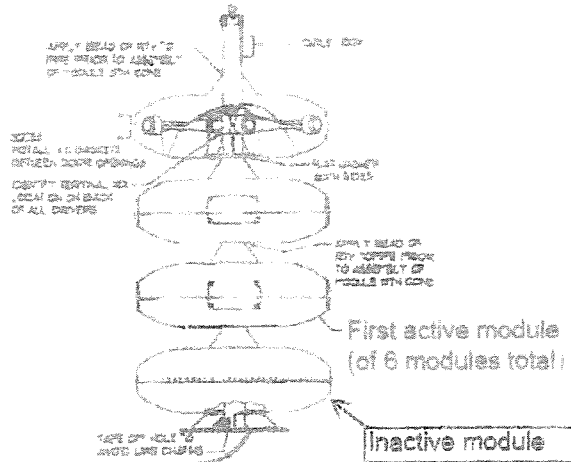
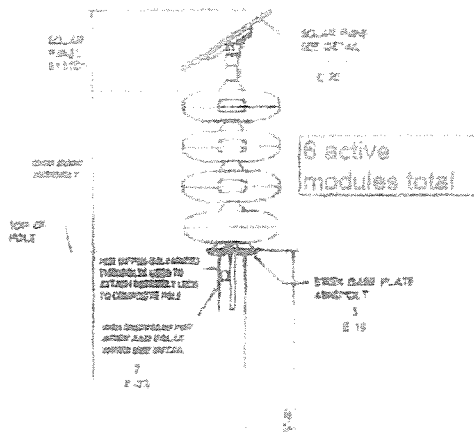
LONG = -156.686520°



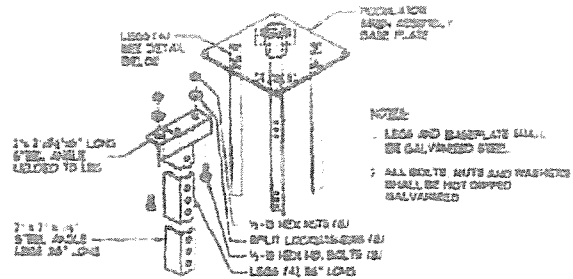
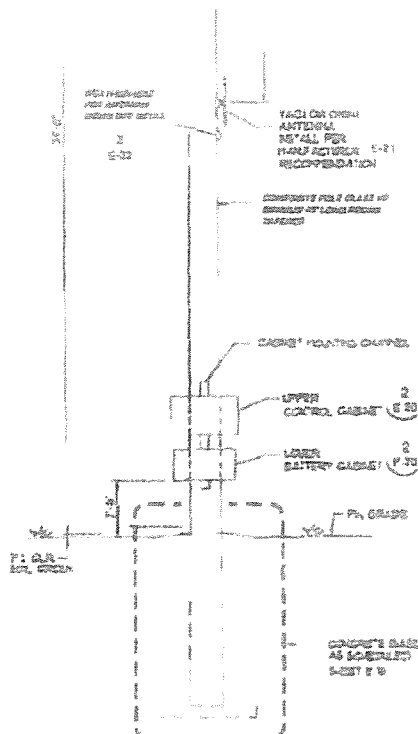




# EXHIBIT B



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 ON EQUIPMENT  
NOT TO SCALE

Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL  
Siren Type MOD 6024

NOT TO SCALE



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

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

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

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

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

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

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

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


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

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


COUNTY OF MAUI

  
ALAN M. ARAKAWA  
Mayor

RECOMMEND APPROVAL:

  
ANNA FOUST  
Emergency Management Officer  
Maui Civil Defense Agency


APPROVED AS TO FORM  
AND LEGALITY:

  
CALEB ROWE  
Deputy Corporation Counsel

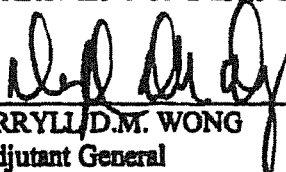
APPROVED AS TO FORM:

  
Deputy Attorney General

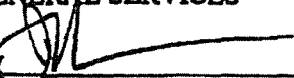
APPROVED AS TO FORM:

  
Deputy Attorney General

STATE OF HAWAII  
DEPARTMENT OF DEFENSE

By   
DARRYLL D.M. WONG  
Adjutant General

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND  
GENERAL SERVICES

By   
DEAN SEKI  
State Comptroller

## LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA406 Napili Neighborhood 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 Napili Neighborhood Park, TMK: (2) 4-3-018:041 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

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 Napili Neighborhood 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 MA406 at Napili Neighborhood 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:**

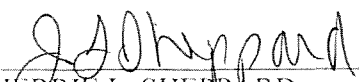
APPROVAL RECOMMENDED:

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




**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

STATE OF HAWAII                    )  
  ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_

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

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: 10/13/2006  
ISLAND: MAUI  
SITE NUMBER: 406  
SITE NAME: Napili #1 Alternative 1

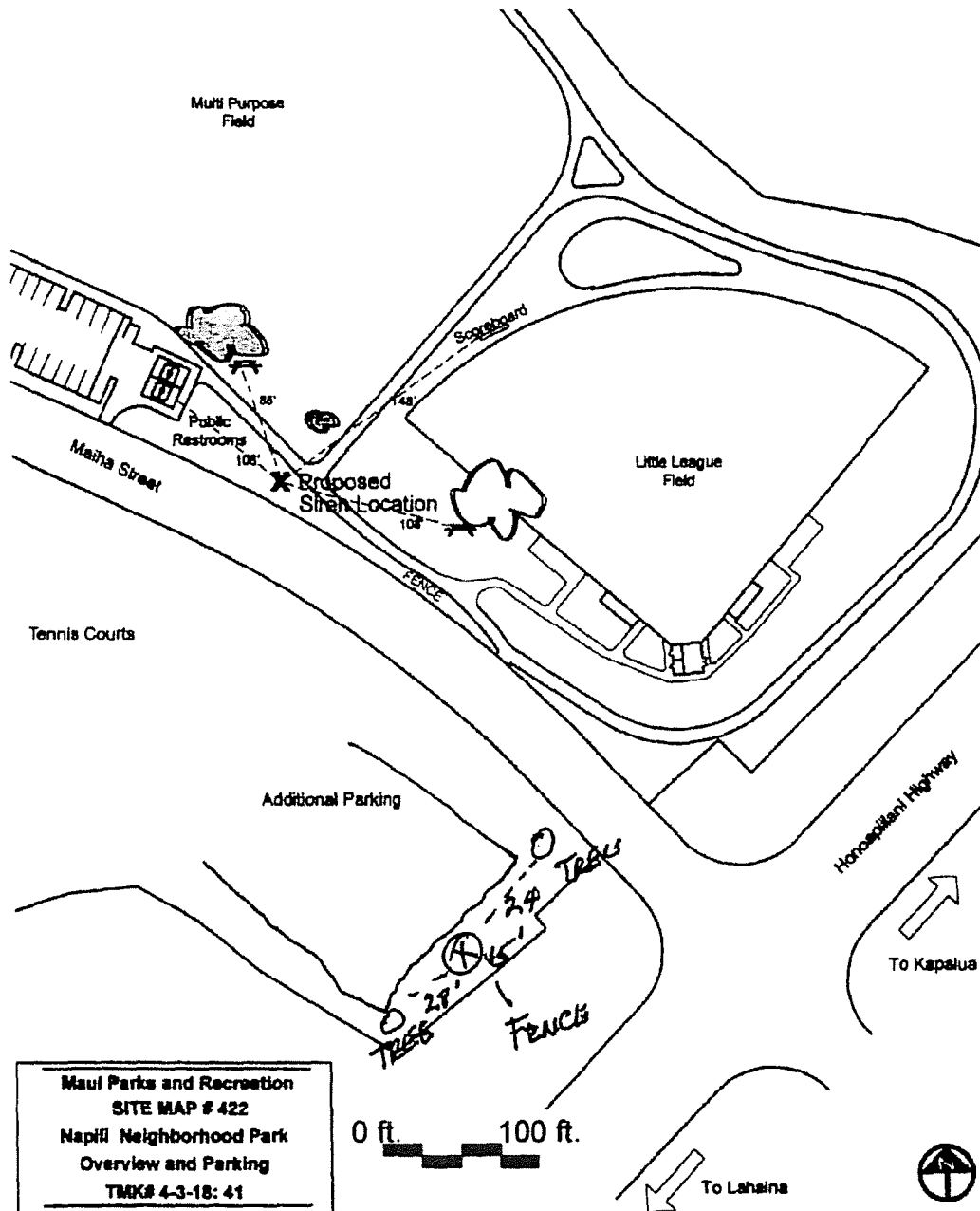
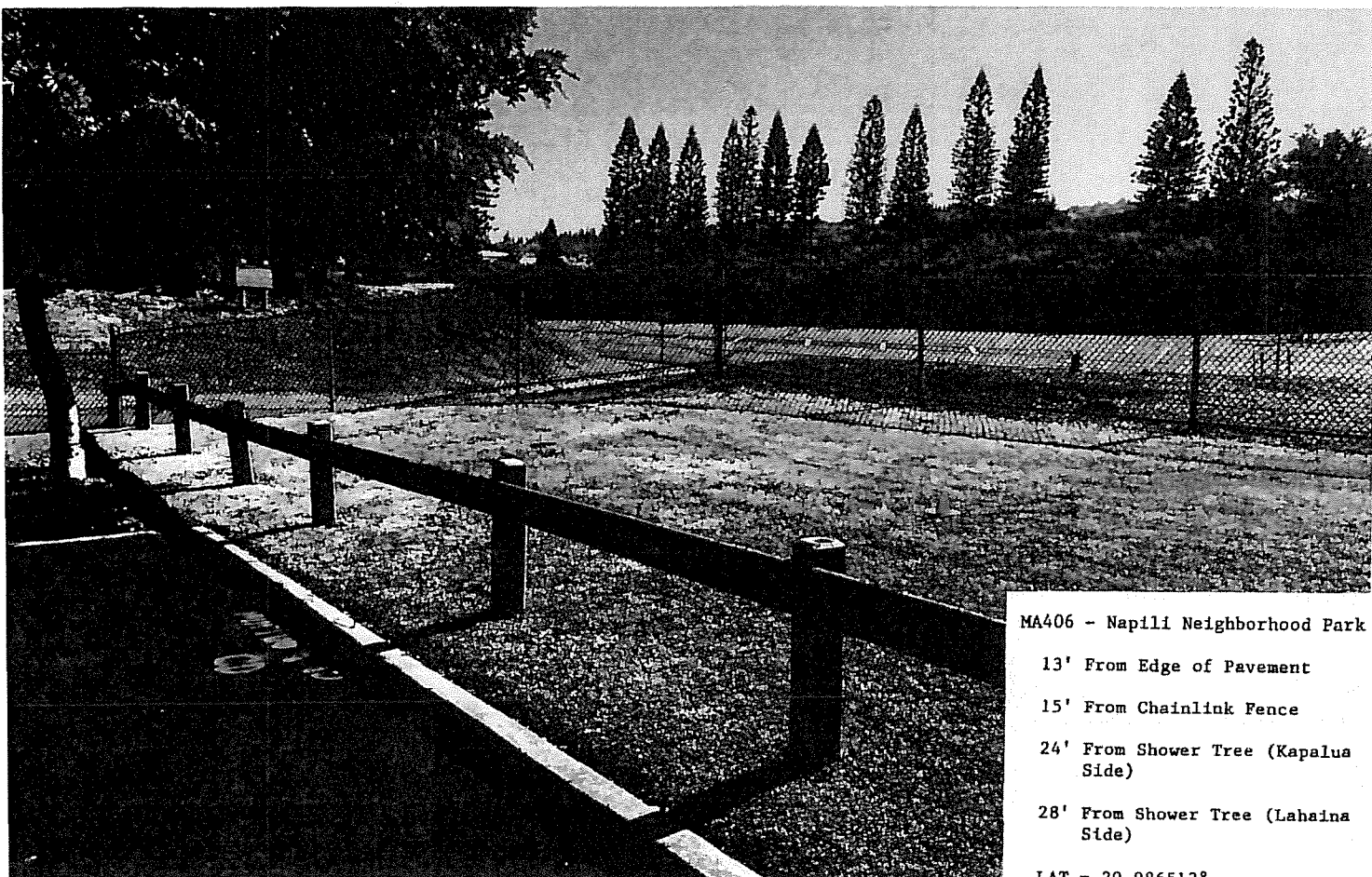


EXHIBIT "A"



MA406-Napili Neighborhood Park



MA406 - Napili Neighborhood Park

13' From Edge of Pavement

15' From Chainlink Fence

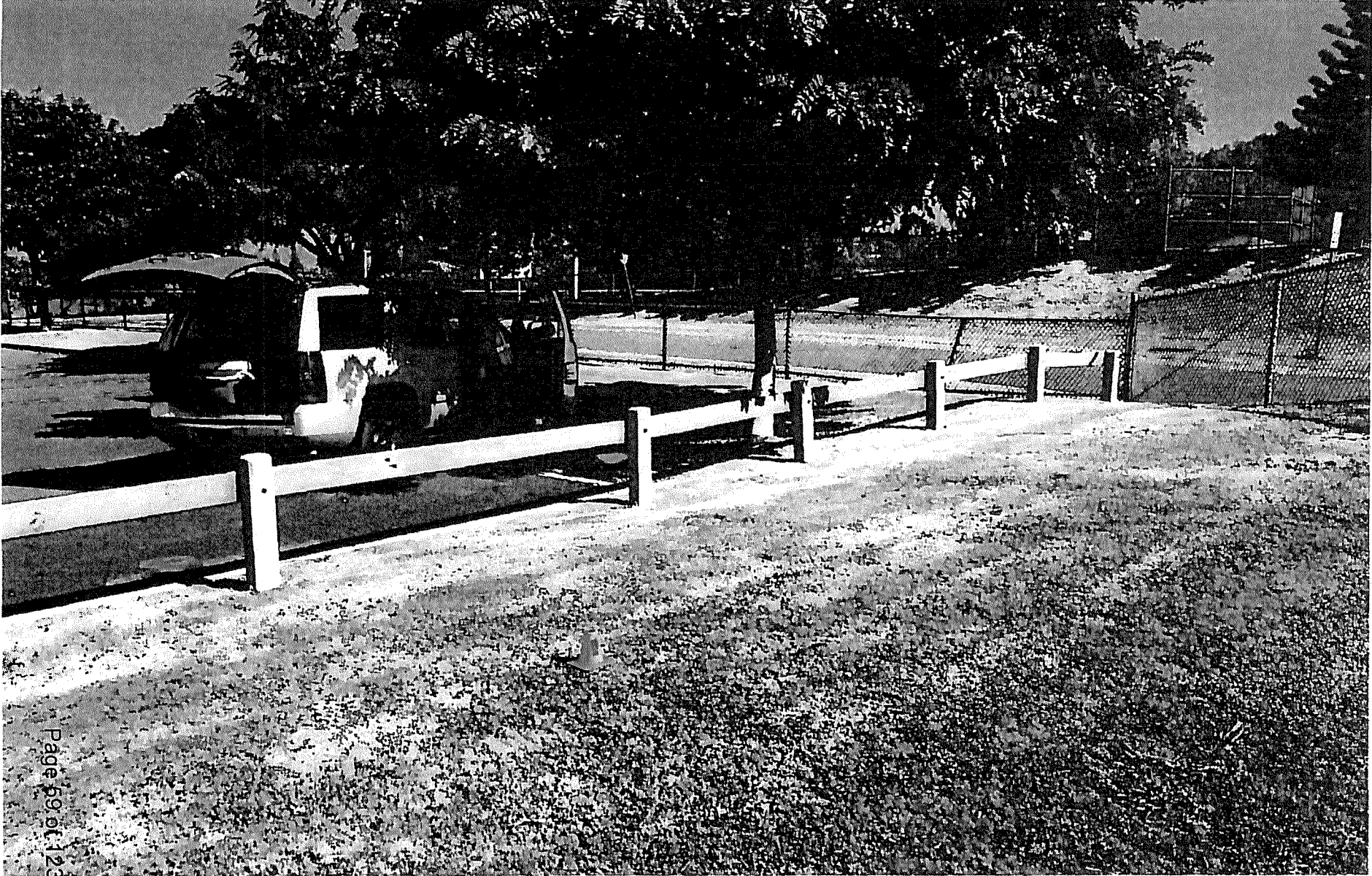
24' From Shower Tree (Kapalua  
Side)

28' From Shower Tree (Lahaina  
Side)

LAT = 20.986513°

LONG = -156.660218°

Page 58 of 123

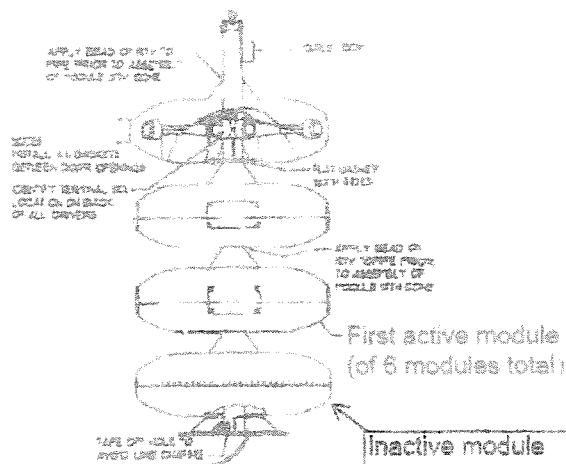
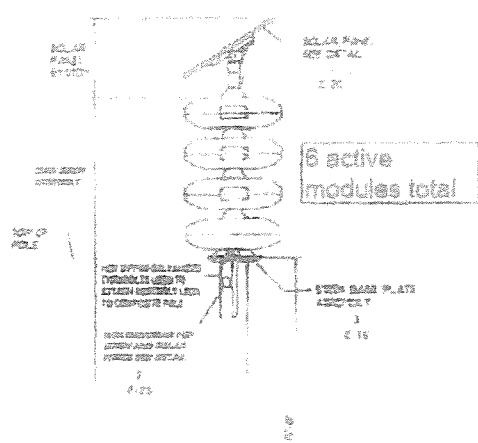




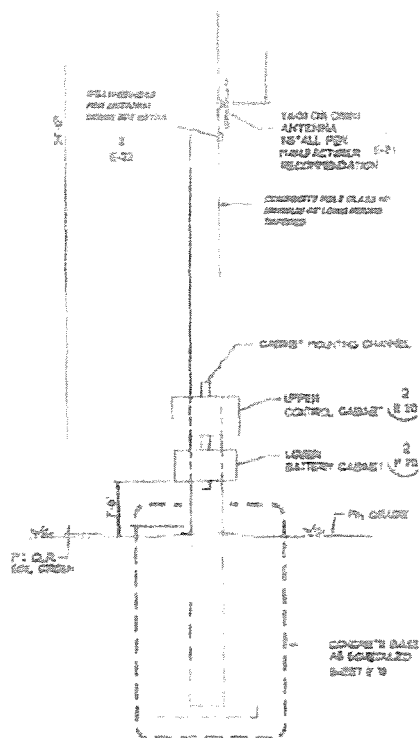




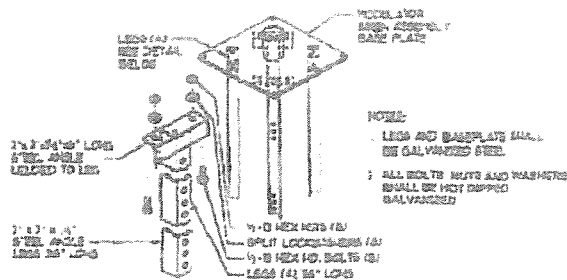
FXHBIGB



2 DETAIL SIREN MOD 6024  
E-10 NOT TO SCALE



SOLE ELEVATION - MOD 6024  
OWN EQUIPMENT



3 DETAIL - BUREAU BASE PLATE ASSEMBLY  
E-10 1/2" X 1/2"

## Hawaii State Civil Defense

Siren Type MOD 6024

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

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

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

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

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

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

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

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


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

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


COUNTY OF MAUI

  
ALAN M. ARAKAWA  
Mayor


RECOMMEND APPROVAL:

  
ANNA FOUST  
Emergency Management Officer  
Maui Civil Defense Agency

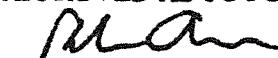
APPROVED AS TO FORM  
AND LEGALITY:

  
CALEB ROWE  
Deputy Corporation Counsel

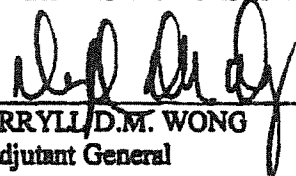
APPROVED AS TO FORM:

  
Deputy Attorney General


APPROVED AS TO FORM:

  
Deputy Attorney General

STATE OF HAWAII  
DEPARTMENT OF DEFENSE

By   
DARRYLL D.M. WONG  
Adjutant General

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND  
GENERAL SERVICES

By   
DEAN SEKI  
State Comptroller

## LEASE OF COUNTY REAL PROPERTY

### Lease Agreement for Siren MA511 Kualapuu 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 Kualapuu Park, TMK: (2) 5-2-028:098 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

**EXHIBIT " 4 "**

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 Kualapuu 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 MA51 at Kualapuu 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.

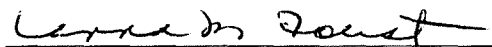
5. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C", attached hereto and made a part hereof.

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

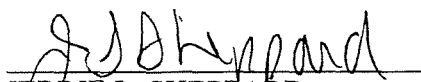


ANNA FOUST  
Emergency Management Officer  
Maui Civil Defense Agency

By \_\_\_\_\_

ALAN M. ARAKAWA  
Its Mayor


APPROVED AS TO FORM  
AND LEGALITY:




JERRIE L. SHEPPARD  
Deputy Corporation Counsel  
2016-0309

**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

STATE OF HAWAII                    )  
  ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	[Stamp or Seal]
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

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: _____	
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Notary Signature: _____	[Stamp or Seal]
Date: _____	

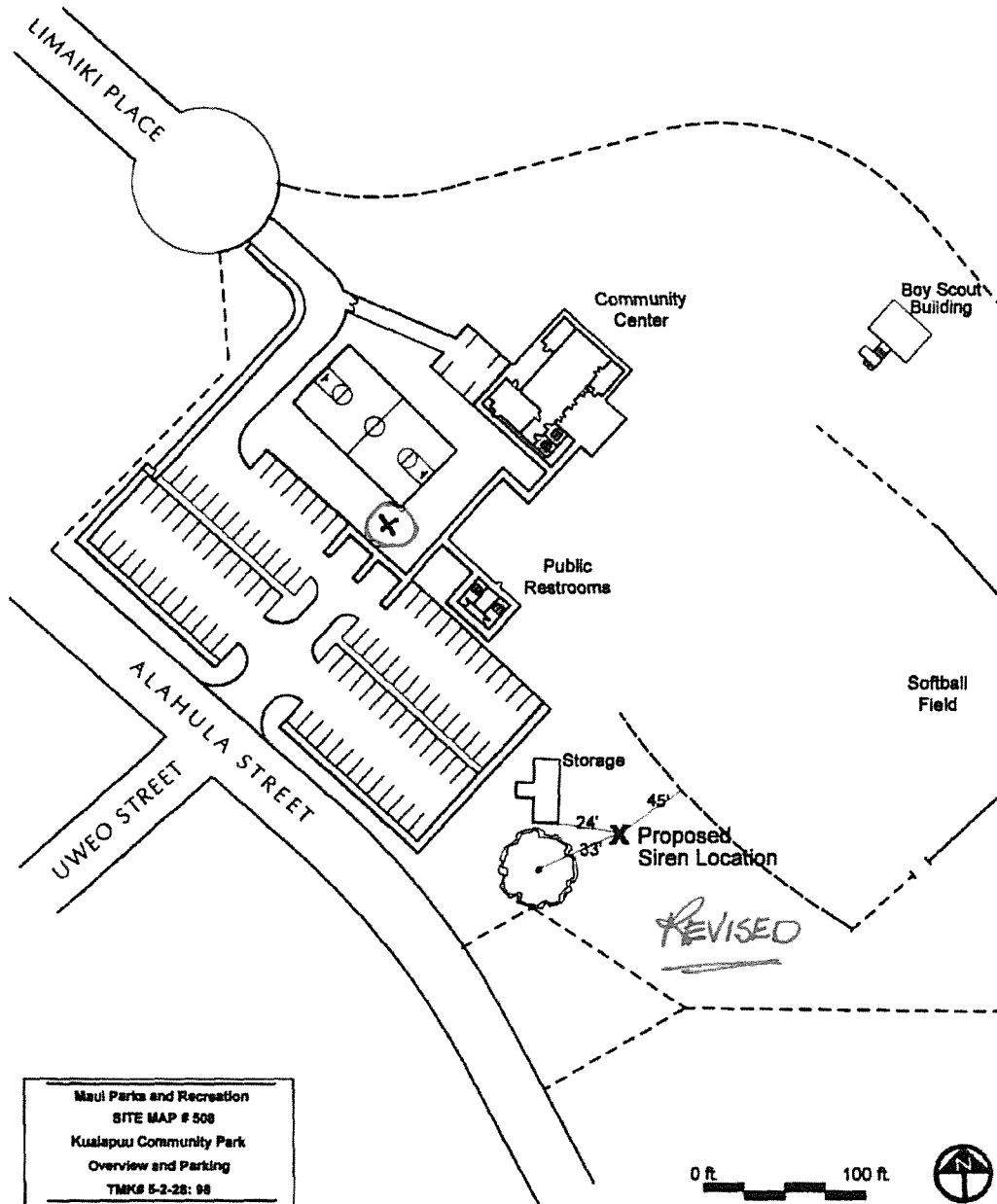
## SITE SKETCH

DATE: 11/16/2006

ISLAND: Molokai

SITE NUMBER:

SITE NAME: Kualapu'u Park

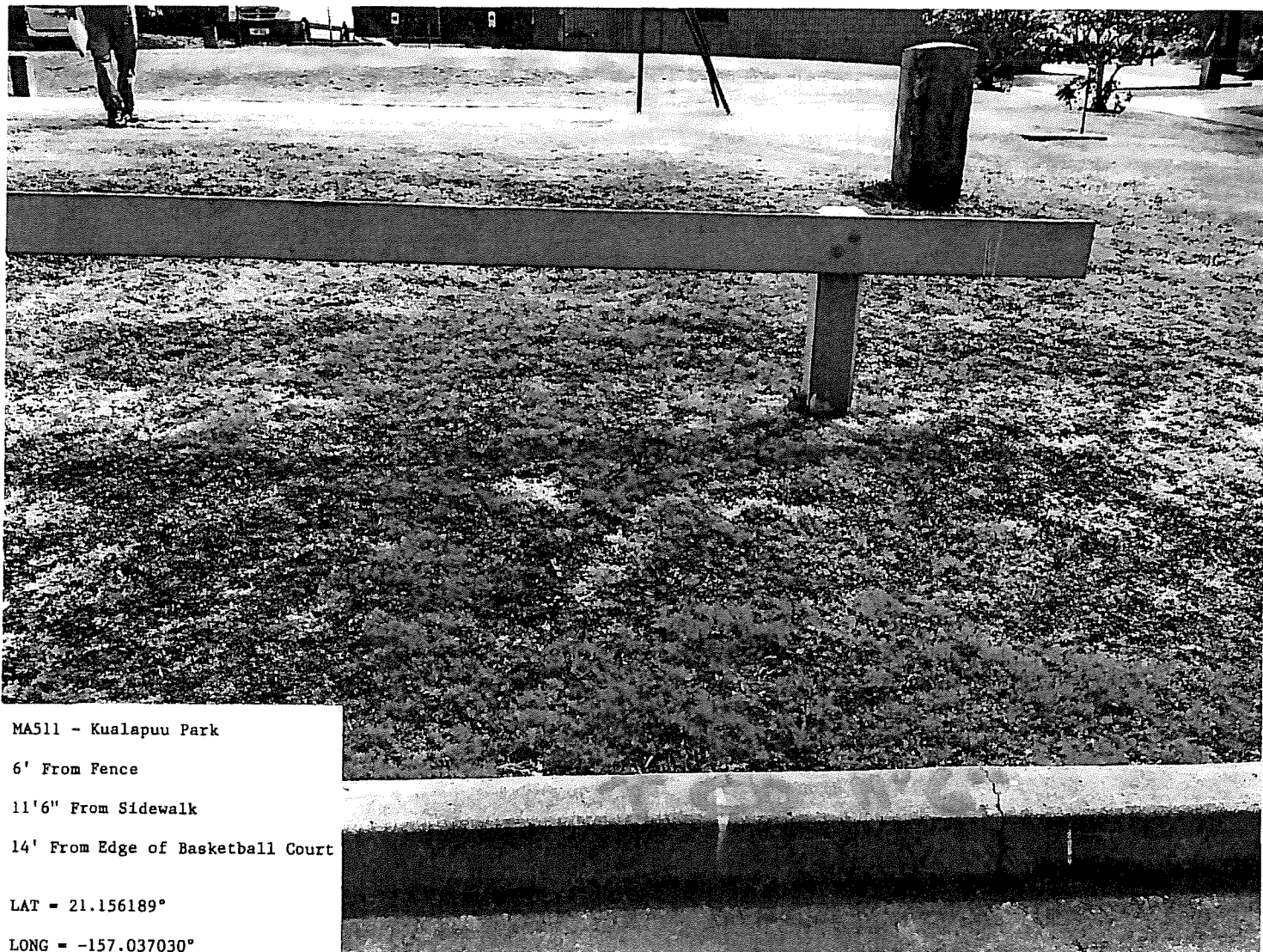


<http://www.mauicounty.gov/parks/molokai/KualapuuPark.htm>

EXHIBIT "A"



MA511 Kualapu Park



MAS11 - Kualapuu Park

6' From Fence

11'6" From Sidewalk

14' From Edge of Basketball Court

LAT = 21.156189°

LONG = -157.037030°







EXHIBIT " B "



POLE ELEVATION, SIREN AND BASE PLATE DETAIL

Siren Type MOD 6024

## **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 16<sup>th</sup> 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.



## LEASE OF COUNTY REAL PROPERTY

Lease Agreement for Siren MA515 Puu Hauoli 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 Puu Hauoli Park, TMK: (2) 5-3-004:037 (por.), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

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 Puu Hauole 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 MA515 at Puu Hauoli 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

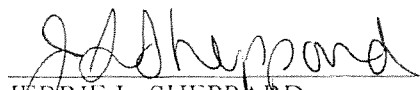


ANNA FOUST  
Emergency Management Officer  
Maui Civil Defense Agency

By \_\_\_\_\_

ALAN M. ARAKAWA  
Its Mayor


APPROVED AS TO FORM  
AND LEGALITY:




JERRIE L. SHEPPARD  
Deputy Corporation Counsel  
2016-0309

**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

STATE OF HAWAII                    )  
  ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_

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

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: _____	

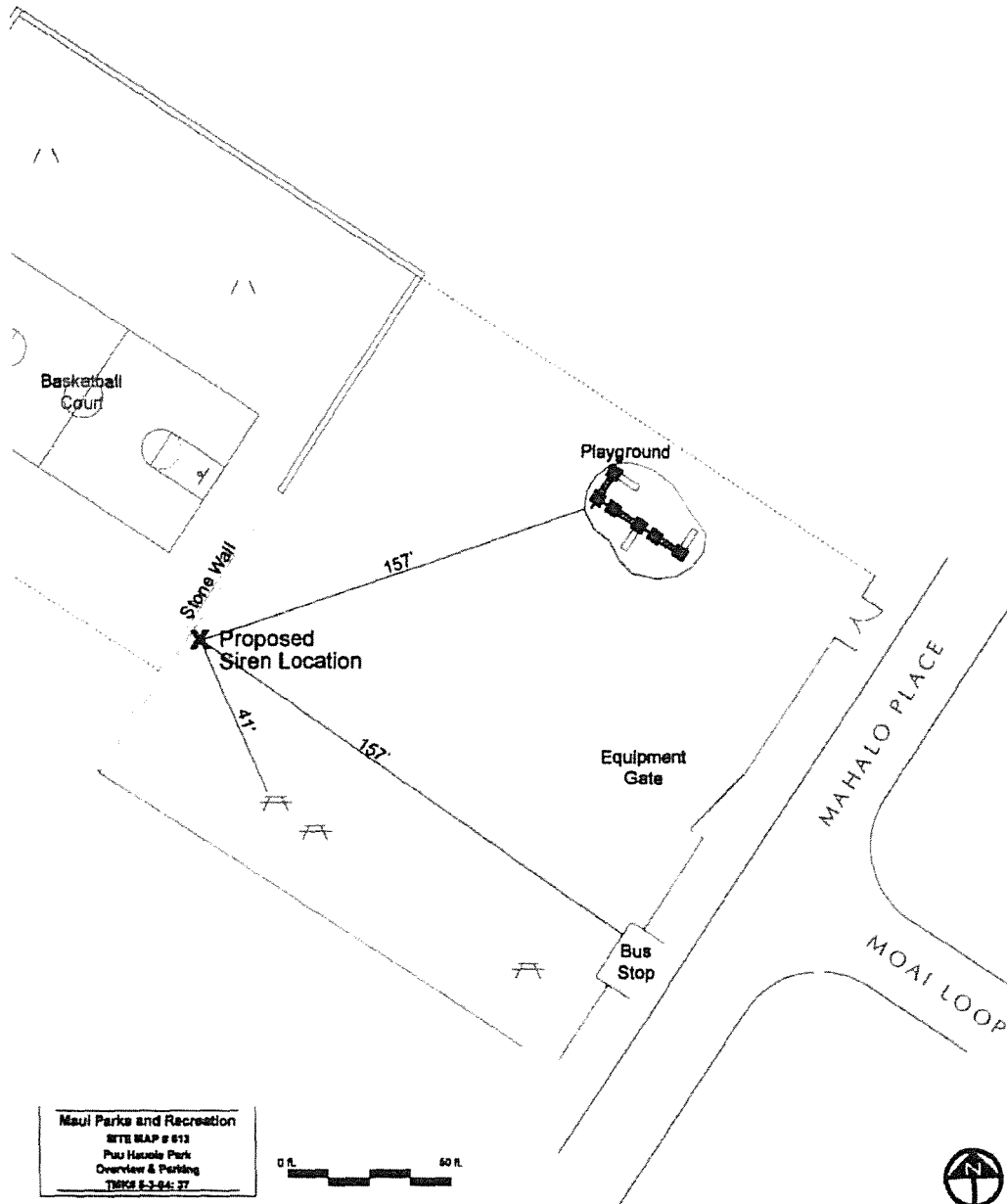
## SITE SKETCH

DATE: 11/17/2006

ISLAND: Molokai

SITE NUMBER:

SITE NAME: Pu'u Hauole Park

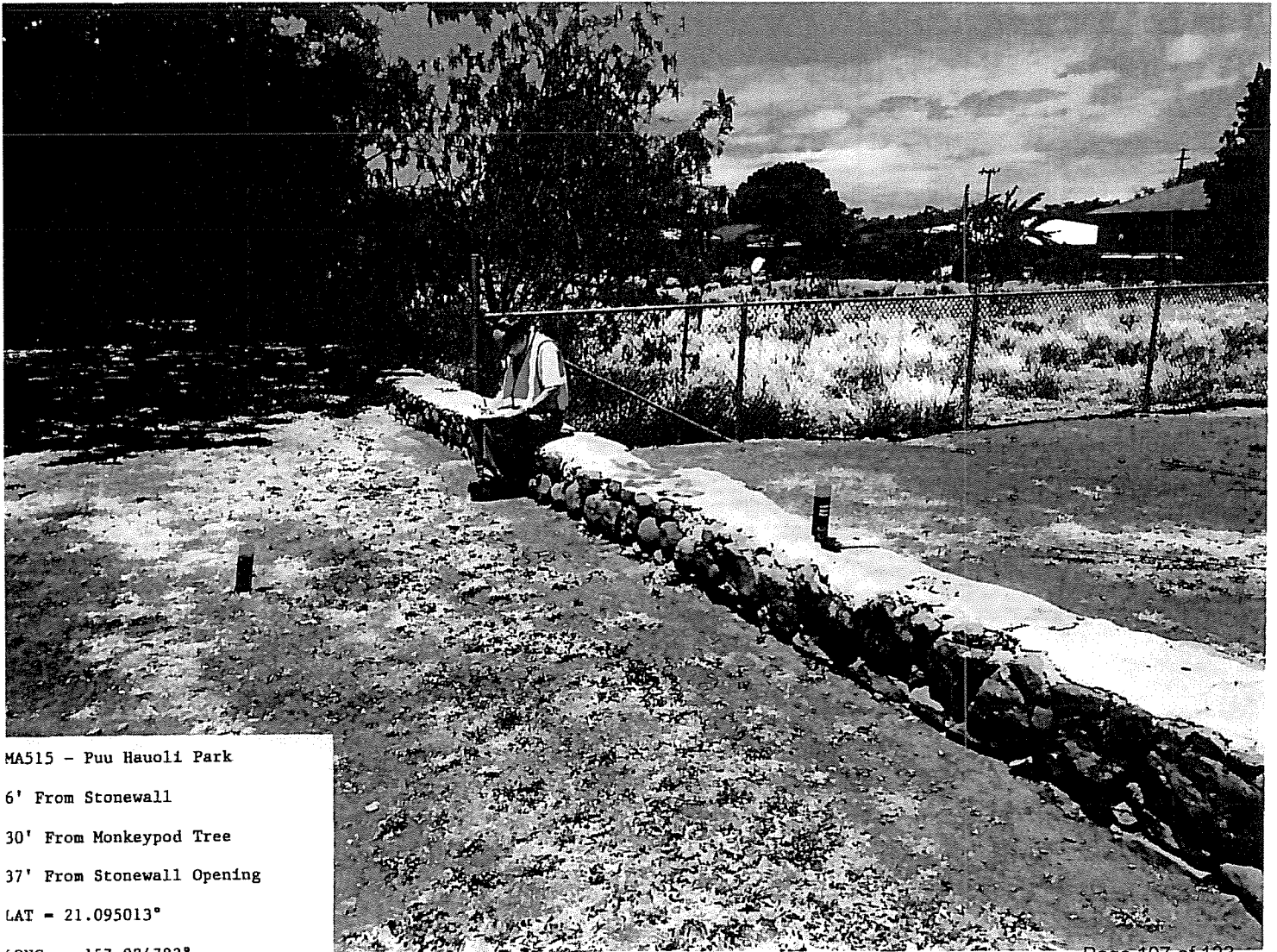


<http://www.mauicounty.gov/parks/molokai/PuuHauolePark.htm>

EXHIBIT " A "



MA515 Puu Haaon Park

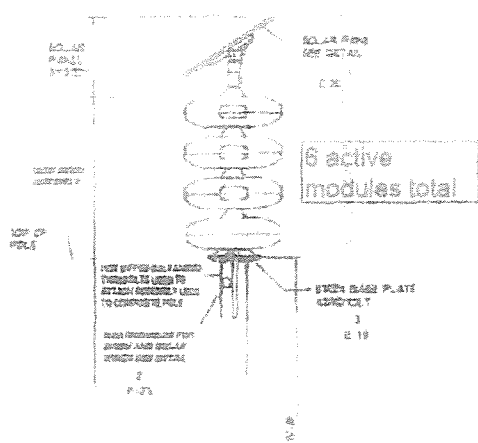




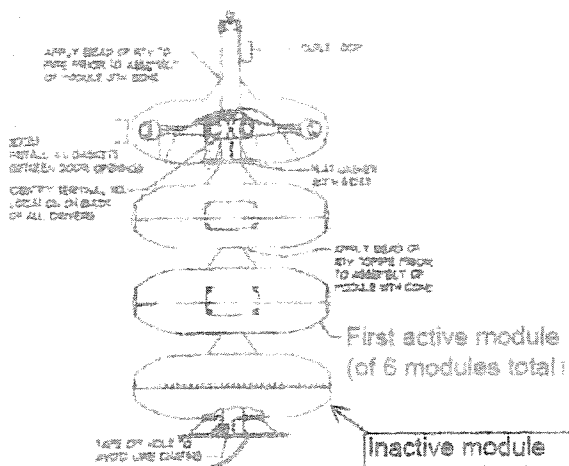




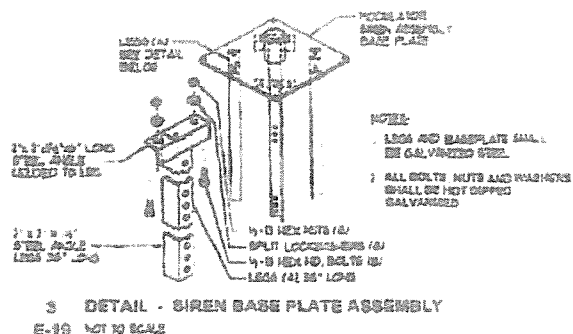
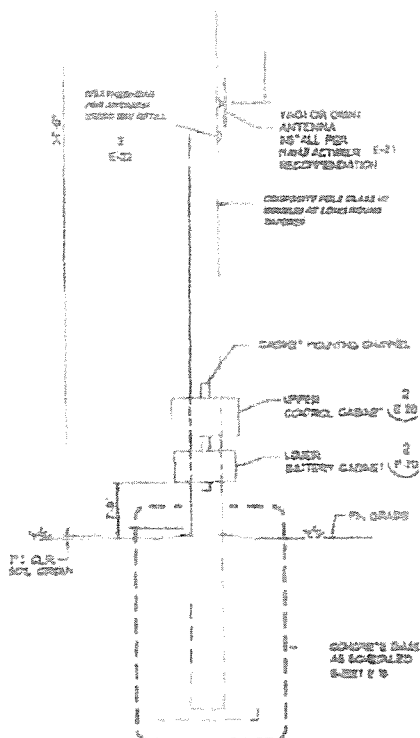
# EXHIBIT B



1 POLE ELEVATION - MOD 6024  
E-10  
CONCRETE EQUIPMENT  
NOT TO SCALE



2 DETAIL - SIREN MOD 6024  
E-10 NOT TO SCALE



3 DETAIL - SIREN BASE PLATE ASSEMBLY  
E-10 NOT TO SCALE

Hawaii State Civil Defense

POLE ELEVATION, SIREN AND BASEPLATE DETAIL  
Siren Type MOD 6024

NOT TO SCALE

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

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

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

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

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

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

1. DOD's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

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

2. COUNTY's responsibilities:

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

FOR COUNTY CONTROLLED SITES:

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

3. DAGS' responsibilities are as follows:

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

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

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

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

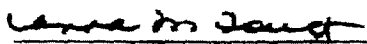
5. Termination. Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

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

COUNTY OF MAUI

  
ALAN M. ARAKAWA  
Mayor

RECOMMEND APPROVAL:

  
ANNA FOUST  
Emergency Management Officer  
Maui Civil Defense Agency


APPROVED AS TO FORM  
AND LEGALITY:

  
CALEB ROWE  
Deputy Corporation Counsel

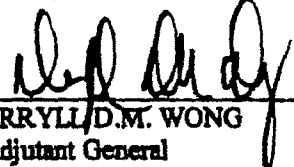
APPROVED AS TO FORM:

  
Deputy Attorney General


APPROVED AS TO FORM:

  
Deputy Attorney General

STATE OF HAWAII  
DEPARTMENT OF DEFENSE

By   
DARRYLL D.M. WONG  
Adjutant General

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND  
GENERAL SERVICES

By   
DEAN SEKI  
State Comptroller