

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

Meeting of the ADC Board of Directors

Held via Teleconference

August 17, 2022
9:00 a.m.

Pursuant to section 92-3.5, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than 72 hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street Rm 205, Honolulu HI 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two (2) minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://zoom.us/j/95400937014>

Telephone: (669) 444-9171, Web ID: 954 0093 7014

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For both ICT, phone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID which is also listed at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering "#" and then "9" on your phone's keypad. After entering "#" and then "9", a voice prompt will let you know that the host of the meeting has been

notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your phone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Room 204
Honolulu, Hawaii 96813

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty (30) minutes to restore connectivity with all board members and the public in-person access noted above. In the event that audio connectivity is re-established within 30 minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within 30 minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://hdoa.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will also be posted on the website no less than twenty-four (24) hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: hdoa.adc@hawaii.gov. Please allow sufficient time for the Agribusiness Development Corporation to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII, ON AND AFTER August 12, 2022

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Delanie Prescott-Tate
Acting Title VI Non-Discrimination Coordinator
c/o 235 S. Beretania Street, Room 205
Honolulu, HI 96813
(808) 586-0186
dbedt.titlevi@hawaii.gov

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, June 15, 2022

D. New Business

1. Request for Approval to Extend the Term of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir) Issued to Kauai Island Utility Cooperative in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:001 (por.)
2. Presentation by the Board's Investigative Committee on Land Management Policy and Procedures of the Land Management Policy & Procedure Manual
3. Request for Approval to Issue a Grant of Easement to Hawaiian Electric Company, Inc. for the Installation of Electrical Service at Galbraith Small Farm Lots at Wahiawa, Oahu, Tax Map Key (1) 7-1-012:001 (por.)
4. Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

"The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS."

5. Request for Approval to Amend License Agreement No. LI-KA1405 Issued to Elesther Calipjo, an Individual, for 305.43 Acres, More or Less, in Kalepa, Kauai, Tax Map Keys (4) 3-9-002:020 (por.) and (4) 3-9-002:009 (por.)
6. Request for Approval to Issue a Revocable Permit to Kekaha Agriculture Association for 1 Acre, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)

E. Old Business

1. Annual Performance Evaluation of the Executive Director

"The Board may go into executive session, pursuant to §92-5(a)(2) HRS, to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved, and §92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities."

F. Executive Director's Update

G. Adjourn

The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on June 15, 2022

Via Zoom Teleconference and/or In-Person at 1428 South King Street, Honolulu, 96814

Pursuant to section 92-3.5, Hawaii Revised Statutes, this meeting was held remotely with Board members, Staff, Applicants, and the Public, participating via Zoom meeting venue, and an In-Person location was available for public participation at the State of Hawaii, Department of Agriculture (HDOA), Hale Waiolama Board Room, 1428 S. King Street, Honolulu, HI 96814.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
 Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)
 James Gomes, Maui County Member (Mr. Gomes) – joined the meeting at 9:08 a.m.
 Lloyd Haraguchi, Member-At-Large (Mr. Haraguchi)
 Glenn Hong, Member-At-Large (Mr. Hong)
 Lyle Tabata, Kauai County Member (Mr. Tabata)
 Warren Watanabe, Member-At-Large (Mr. Watanabe)
 Karen Seddon, Member-At-Large (Ms. Seddon) (joined at 9:29 a.m.)

Members Excused:

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)
 Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
 Ken Nakamoto, Project Manager (Mr. Nakamoto)
 Lyle Roe, Property Manager (Mr. Roe)
 Lance Tashima, Administrative Services Officer
 Lynette Marushige, Executive Secretary
 Jason Azus-Richardson, IT Specialist
 Mr. Stephen Dalton, IT Specialist (Mr. Dalton)

Guests Present, virtually:

F. Fuchigami
 “Senate Ways and Means Committee”
 Mark Ladao
 “Public Testimony”
 Sidney Higa
 “ELC Tech”

Guests Present, physical location:

None

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A. Call to Order

Chair called the meeting to order at 9:07 a.m.

B. Roll Call

Chair conducted roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone is present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there are no objections the motion will be approved on the same basis as the initial roll call.

Roll call: Ms. Evans, Mr. Haraguchi, Mr. Hong, Mr. Gomes, Mr. Tabata, Mr. Watanabe. Acknowledged attendance with no guests present. Ms. Seddon joined the meeting at 9:29 a.m. Mr. Manuel and Ms. Shimabukuro-Geiser said they would be delayed

C. Approval of Minutes

1. Board of Directors Meeting, April 20, 2022

Motion to approve: Mr. Watanabe, Second: Mr. Glenn Hong

No staff comment.

No public comment.

No discussion.

Chair called for the vote. Minutes approved. 7/0

2. Board of Directors Meeting, May 18, 2022

Motion to approve: Mr. Tabata, Second: Mr. Gomes

No staff comment.

No public comment.

No discussion.

Chair called for the vote. Minutes approved. 7/0

D. New Business

1. Request for Approval to Renew Revocable permit No. RP19-01 Issued to Helemanofarms LLC for Building M located at Whitmore village, Oahu, Tax Map Key (1) 7-1-002:009 (por)

Motion to Approve: Mr. Gomes, Second: Mr. Tabata

Mr. Roe stood on his submittal but stated he was available for any questions.

Mr. Dalton said there was no one from the public.

Mr. Gomes asked staff how long the Whitmore food hub has been in discussion for developing a master plan.

Mr. Roe responded, years. 2013.

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1 Mr. Gomes asked how long till it is completed. The reason he's asking is because some of the
2 properties are RPs and one of them, D-3 is for 3-year approval. The other ones are small but they are
3 RPs. He's just curious if we're waiting for a master plan to develop because they might be moving
4 somewhere else or anything like that. He would just like some clarification.
5

6 Mr. Nakamoto said the anticipated timeline is about 3 to 5 years for construction to start and be
7 completed for the first phase. The first phase includes infrastructure, power, water, sewer to built
8 capacity for these redevelopment projects. The second phase is the RFP that ADC put out for the HPP
9 machine. They anticipate that to be in operation hopefully starting in November. A contract should be
10 signed coming in November. There's about a 3 to 5 year window for a lot of these individuals on RPs
11 and then he'll touch more on the D-3 item when we get to that.
12

13 Mr. Gomes asked if Mr. Nakamoto thinks eventually that some of the RPs could be turned over into
14 long-term rather than just an RP?
15

16 Mr. Nakamoto said it could be. In their preliminary discussions, in their outreach to the community and
17 the stakeholders in the area, they have voiced some concerns that they would want some space in the
18 redevelopment as they proceed with improving the buildings. He said he's getting ahead of himself but
19 if they saw some photos of the buildings they are in pretty bad shape. Basically, they're using the
20 buildings as parking garages and storage at this point. The buildings are in no real condition to do food
21 processing or packing which is why the redevelopment is important.
22

23 Mr. Gomes said in this RP they have buildings A and B but for this one they have building M.
24 Presently what is A and B used for.
25

26 Mr. Nakamoto responded that A and B used to be a dwelling, it used to be the old caretaker home. He
27 said they referred to it as the Magaoay home in their files but now it's part of Heleman's lease. They
28 have a 5-year lease on that area and they basically use it for storage for their Christmas tree operation,
29 for some of their equipment and as well as a dwelling. Building B is actually a dwelling, a small single
30 bedroom home.
31

32 Mr. Gomes asked if that dwelling has water and all the facilities whether it be a cesspool or a septic
33 tank.
34

35 Mr. Nakamoto responded that it's connected to County sewer lines and BWS water yes.
36

37 Chair Lau said just to point out, that is probably the very last phase to be developed he would think.
38

39 Mr. Nakamoto said as he mentioned it's a 4 to 5 phase project. Right now, they're in phases 1 and 2 as
40 he mentioned infrastructure and the HPP machine. Phase 3 and 4 which would be more of area A and
41 B, he's referencing exhibit. He said that would be potentially looking at workforce housing but that's
42 way down the road, maybe another 5 to 10 years.
43

44 Mr. Hong said Mr. Nakamoto mentioned that the structures are in pretty bad condition. He said most of
45 them have been there and have seen all the rust and everything. He asked if they have assessed the
46 structural integrity of the units so there's not a safety issue.
47

48 Mr. Nakamoto responded, for the buildings they are in now, no they have not assessed the issue. He
49 said they understand that there are some problems in some of the buildings which is why it is only used
50 for storage or parking spaces. As far as the actual integrity of the steel structures, it's poor but it's

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operational. The roof and everything are not the greatest but again, no, they have not done a structural integrity test on each building.

Mr. Roe added that one of the things they are considering bringing this year is to have a contractor evaluate some of the roof panels to make sure that they are secure enough and won't blow off in a wind storm, damage adjacent properties or even just fall through and damage the tenants own equipment.

Chair Lau said he thinks that would be important. He asked if there was any other discussion. If not he called for the vote. He asked if there were any objections. Hearing none, the motion was passed.

Approved: 7-0

2. Request for Approval to Renew Revocable Permit No. RP16-05 Issued to Manoa Honey Company LLC for Building BB Located at Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:009 (por)

Motion to Approve: Mr. Haraguchi, Second: Mr. Gomes

Mr. Roe said he had no presentation and stands on his written submittal.

Chair asked if there was anyone from the public. Mr. Dalton stated there was no one.

Chair asked for discussion. Hearing none he called for the vote. He asked if there were any objections. Hearing none the motion was approved: 7-0

3. Request for Approval to Issue a Lease Agreement to Ohana Hui Ventures, Inc. for Buildings K, H, and G Located at Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)

Motion to Approve: Mr. Tabata, Second: Mr. Gomes.

Mr. Nakamoto said he had no presentation and stands on his written submittal.

Mr. Dalton said there was no one from the public to testify.

Chair asked for Board discussion.

Mr. Hong said, in line with his earlier comment, he's wondering if we could ensure that there's a provision in the lease documents that the tenant has current responsibility for assessing and determining the structural integrity of the sheds and warehouses that we are leasing to them. He doesn't want something to happen and then the State is liable for something. It's more of a legal question.

Chair Lau said that would be a question for Ms. Prescott-Tate.

Mr. Nakamoto said before she responds he said the buildings will be lease "as is, where is". He said so they are fully aware of the condition of the property, that's why ADC is willing to offer a short-term lease because they are willing to make that investment to improve some of these buildings and utilize these basically vacant areas. He asked Ms. Prescott-Tate to correct him if he's wrong on the "as is, where is" clause.

Ms. Prescott-Tate said, presumably the tenants know what they're getting themselves into and they are required to obtain insurance. So, ADC is responsible for making sure that their tenants have habitable

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1 conditions. She said it is up to the board if it wants to make it a condition of the lease. She said the
2 board can if they want to.

3
4 Ms. Evans said she notes that Friends of Waimanalo is a partner in Ohana Ventures and they do
5 workforce development and training, working with local youth and families. She said, that's a little
6 different from storage and parking in terms of risk so she would feel more comfortable about approving
7 this lease with a condition that there is a safety assessment for the buildings, the three buildings.

8
9 Chair Lau asked if Ohana Hui is only using it for storage or are they actually having meetings.

10
11 Mr. Nakamoto responded that his understanding is that the meetings are being held in building E, where
12 the WEDG building is so that's where Mr. Roe's office is and there are other office spaces in there as
13 well. The parking garage is basically a parking garage and there may have some forklift operation in
14 the parking lot space on Saturdays. He said it's offered to all of their tenants as well as the farmers and
15 the general community but he doesn't see them having meetings in the parking garage. The other two
16 buildings, H and K are vacant. He said the homeless are using the buildings to pass through the
17 property because it's the only area they don't have a solid secure fence.

18
19 Chair Lau asked the board what they thought should be done; do they insert a clause?

20
21 Ms. Prescott-Tate said it would be up to the board or she said they could suggest that at the next meeting
22 that the premises be assessed for structural integrity. She said that can be revisited at the next meeting.
23 She said that Mr. Roe did say that a somebody will be brought in to do an assessment. But, if the board
24 wants to add it, it can be done or they can wait till Mr. Roe contacts a contractor.

25
26 Ms. Evans said she is reassured that the meetings will not take place in an unsafe location. She assumes
27 that the building Mr. Roe works out of is safe because otherwise that would be another problem. So,
28 she is reassured that it is ok to give a lease and approving a lease as early as possible to get occupancy to
29 make it less accessible to homeless in the area is actually a positive step toward controlling that issue.
30 So, she's ok for leaving it the way it is.

31
32 Mr. Nakatani said that part of what Mr. Nakamoto alluded to is the reason why we're issuing a lease, so
33 they can make improvements to the structure. He said as far as the integrity of the frame, it's solid. The
34 question is the integrity of the roof and that's what they are aware of and he thinks that's one of the
35 things that, speaking to them, that they want to repair. He said that's the reason why they are being
36 given a lease versus just an RP, they want to make improvements.

37
38 Mr. Gomes has a question about the homeless. He said not knowing where the property is or what it
39 looks like he is concerned about a fire hazard with the homeless; can anything be burnt besides the
40 building. He asks if there is a lot of forage out there that's very dry. He agrees that they want people on
41 there so they can curtail these homeless people by getting someone on the premise. He's just curious if
42 during the interim, can there be the possibility of a fire hazard due to dry grass around it. He doesn't
43 know.

44
45 Mr. Nakatani responded saying that one of the buildings is on the edge of the property that has grass
46 around it. It's not a fire hazard to the main structure. They want to clean that area, the grass around the
47 area to improve it. So, with them coming in, it's much of an improvement to mitigate fire and the
48 homeless. So, it's a real plus for them to come in and take care of it Just somebody being there to keep
49 out the mischievous people is a plus, there's no real fire hazard as far as the buildings burning down.
50 The structures and garage are made out of steel so he thinks they're good.

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1 Mr. Gomes said thank you and he agrees.

2
3 Chair Lau asked if there was any other discussion. Seeing none, he called for the vote. He asked if
4 there were any objections. Seeing none, the motion is carried..

5 Approved 7-0.

6
7 **4. Request for Approval to Issue a Non-exclusive License to Pohaku O’Kauai Materials, LLC for**
8 **Sand Removal Adjacent to Fields 221, 222, and 322 in Kekaha, Kauai, Tax Map Key (4) 1-2-**
9 **001:002 (por)**

10
11 Motion to Approved: Mr. Tabata, Second: Mr. Gomes.

12
13 Mr. Roe said as Chair alluded to, there is a difference in the TMK number between the agenda and the
14 subject header for this. The correct TMK is (4) 1-2-002:001. Otherwise he stands on his submittal.

15
16 Mr. Dalton said there was no one from the public.

17
18 Mr. Gomes asked staff if requester has cured their default on their lease payment.

19
20 Mr. Roe said he would have to check but he didn’t recall that they were in arrears.

21
22 Mr. Gomes asked if we are comfortable with the appraised value of what we are getting.

23
24 Mr. Roe said that the appraised value is based on a 2020 appraisal that came in at \$39.41/cubic yard as
25 an upper limit. That was for an exclusive license at the bird sanctuary for a lesser grade of sand. This is
26 a non-exclusive. It’s an increase from what they suggested they were willing to pay. So, we don’t
27 really have an appraisal for this site but if you read the terms in there, one of the things we will be doing
28 is conducting our own appraisal for the specific terms before year two.

29
30 Mr. Gomes said he understands it’s not as high quality sand, there is some definite processing they need
31 to do to use it.

32
33 Mr. Roe said it’s not so much additional processing as it is they can’t use it for certain things like
34 concrete, he doesn’t think. And if they do, they probably sell it at a reduced rate. Sorry, they can sell it
35 for concrete they can’t sell it for beach reclamation.

36
37 Mr. Gomes asked if they’re going to be required for a conservation plan?

38
39 Mr. Roe said yes and there is an NPDES application in the works as well.

40
41 Mr. Gomes said appreciate it, thank you.

42
43 Chair Lau if there was any other discussion. There were none.

44
45 Chair called for the vote. He asked if there were any objections. Seeing none, the motion carried.
46 Approved 7-0

47
48 (Ms. Seddon joined meeting at 9:29 a.m.)
49
50

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5. Election of Officers to the Board of Directors for Term July 1, 2022 – June 30, 2023

Chair stated that according to Article 3, Section 2 of the ADC By-laws the position of Chairperson and Vice-Chairperson shall be elected by the board of directors from among its members provided that neither of them shall be an ex-officio member. The election shall be held on the last regular meeting held prior to July 1st of each year. And the offices elected at each regular election shall take office on the 1st day of July following their election. The duties of the officers are set forth in Article 3 Section 5 of the ADC Bylaws which explains that the chairperson shall preside at all meetings of the Corporation. At the meetings the chairperson shall submit any information and recommendations the chairperson may deem proper concerning the policies and other affairs of the Corporation. In the absence or disability of the chairperson, the vice chairperson shall perform the duties of the chairperson and such other duties as may be assigned by the Board of Directors.

Chair Lau said he'd like to open the nominations for chairperson from the floor.

Mr. Hong nominates Fred Lau to serve another year as chairperson of ADC.

Mr. Watanabe seconded the motion.

Chair Lau said he didn't think a second is necessary.

Mr. Haraguchi moved that the nominations be closed.

Chair Lau said hearing no further nominations are there any objections to closing the nominations. Hearing none, the nominations for chairperson was closed. All those in favor say aye. 8-ayes.

Chair Lau opened the nomination for vice-chair.

Mr. Gomes asked who is the vice-chair now?

Chair Lau responded Warren Watanabe.

Mr. Haraguchi said he nominates Mr. Watanabe for vice-chair.

Chair Lau asked if there were any other nominations?

Mr. Hong moved that the nominations be closed for vice-chair of ADC.

Chair Lau said ok, the nominations are closed. He asked that all those in favor say aye. 8-ayes. Mr. Watanabe is elected as the Vice-Chairperson of ADC.

E. Old Business

1. Annual Performance Evaluation of the Executive Director

Mr. Watanabe reported that he and Mr. Haraguchi interviewed Mr. Nakatani. He said Mr. Hong who was appointed to sit on the committee decided to step down citing his short-term on the Board. He discussed the situation with Chair Lau.

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Chair Lau asked member Karen Seddon to sit on the committee and she agreed. So now there are 3-people on the committee and they hope to complete the evaluation soon.

Mr. Watanabe said the interview with Mr. Nakatani went well. They will conduct other interviews so he will schedule those with Mr. Haraguchi and Ms. Seddon and with the people they want to interview and they'll move forward from there. He said he hopes to have this completed as soon as possible. He apologizes for the delay. They will report back to the board on their findings.

F. Executive Director's Update

Mr. Nakatani said there hasn't been too many things happening. They are waiting for the budget for FY July 1st to come out and for bills to be passed. They are preparing for some of the legislation like Lake Wilson. For West Kauai, for the landfill, ADC received a letter from Kauai County saying they want to possibly look at citing the next landfill somewhere in Kekaha. He thinks that's something that KAA and Mr. Roe and the Board should be talking with the Mayor about. But he thinks that might be a great compromise. He thinks it's better for ADC that the site is in Kekaha than in Lihue. The other issue is the HPP machine. The RFP went out on June 2. So far, no one has gone to the site visit with Mr. Nakamoto but that doesn't mean that they don't have any perspective bidders. They are waiting for the deadline.

Chair Lau asked Mr. Tabata if he could speak on the landfill. He asked if that's a good thing for ADC.

Mr. Tabata stated that when he was in Public Works for the County of Kauai under the previous administration as Mr. Nakatani noted, they tried to site the landfill on ADC land at Kalepa. It was within the 3.5 mile radius that FAA restricts new landfills. Coincidentally, the landfills on Maui and the Big Island are within that radius. But, this is a new landfill so they have the new restriction. Originally when they did the original siting study location on ADC land in Kekaha was one of the criteria used to possibly site. It was responded to negatively received so they moved away from that. He has some questions on the location. PMRF has their airfield there and he's not sure that there are any FAA jurisdictional responsibilities but there are questions that he has. He saw what Mr. Nakatani sent out and waited for this meeting to find out who he works with to schedule meetings with the County.

Chair Lau asked if they will be impacting the roadways and the bridges or anything else that accesses Kekaha?

Mr. Tabata responded the preliminary map he saw shows access to the site is further down, adjacent to PMRF. He believes it's close to the location where the sand mining operation that was just issued a license. He said it's further down the road, so it's farther away from where the landfill is presently in operation. He doesn't know if they were planning to move facilities but they would need to fix roadways to access and he's not sure there are bridges to be crossed to get to this location.

Chair Lau said if it's the bridges he saw, they are old.

Mr. Nakatani said he sent the letter to KAA, Mr. Uyehara and their group and so he will have the parties with the Mayor to speak with all the interested parties in Kekaha and they'll take it from there. They will include Mr. Tabata in the meetings so he can be part of the discussion.

Chair Lau thanked Mr. Tabata.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on June 15, 2022

Via Zoom Teleconference and/or In-Person at 1428 South King Street, Honolulu, 96814

Mr. Gomes asked if the bridges they spoke of were part of the plantation era and if the landfill is a public landfill?

Mr. Nakatani responded yes.

Mr. Gomes said will they fix the bridges, are they safe to cross.

Mr. Tabata said he doesn't think those bridges were built to State and County standards. Although they did carry substantial loads, the cane haulers but that is almost 25-years ago.

Mr. Nakatani said that those are the kinds of questions they need to work out with the County. They had similar issues with Grove Farm. This is preliminary and it can change. He said he thought that they were 90% sure on the Kalepa site. He said the present landfill has community benefits so for KAA and the people there, make sure they get some community benefits if the landfill goes there. And the process will probably be from, the landfill will go from DLNR to the County, ADC won't be responsible for the landfill.

Mr. Gomes said he had one more question not pertaining to the landfill. He said a few days ago in the news there was a sovereignty group in Kunia Ag land. He asked if the land was related to ADC?

Mr. Nakatani said he didn't believe so.

G. Adjourn

Chair asked if there was any other discussion. Seeing none he asked for a motion to adjourn.

Motion: Mr. Gomes, Second: Mr. Watanabe

Mr. Nakatani said before they adjourn, on behalf of the staff, he thanked Mr. Gomes for participating on the Board. He said Mr. Gomes asked a lot of interesting questions and he hopes that he will continue to ask those questions when he goes to the Board of Agriculture.

Mr. Gomes thanked the group and said it was educational for him and he's humbled by it.

Chair Lau did not realize it was Mr. Gomes last meeting and said they had a lot of interesting discussion on cattle and feed and he looks forward to futures discussions.

He then asked for discussion on adjourning. Hearing none he called for the vote.

Approved: Vote 8/0

Meeting adjourned at 9:47 a.m.

Respectfully Submitted,

Lynette Marushige
Secretary



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

August 17, 2022

Subject: Request for Approval to Extend the Term of License Agreement
Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir)
Issued to Kauai Island Utility Cooperative in Kekaha, Kauai, Tax
Map Keys (4) 1-2-002:001 (por.)

Licensee: Kauai Island Utility Cooperative

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: Kokee Ditch, LI-K1702: undetermined
Mana Reservoir, LI-K1703: 20 acres, more or less

Field No(s): Kokee Ditch (undesignated)
Mana Reservoir (undesignated)

Tax Map Key: (4) 1-2-002:001

Land Status: Set aside by the Governor's Executive Order No. 4007, as
modified by Governor's Executive Order Nos. 4034 and 4165, to
the Agribusiness Development Corporation for Agricultural and
Related Purposes

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes ☒ No ☐
DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes ☒ No ☐

Character of Use: Project Planning and Due Dilligence

Land Doc. Type: License

Term: 5 years (currently in year 5, expires August 27, 2022)

Rental Rate: None

BACKGROUND:

The West Kauai Energy Project (WKEP) (see Exhibit "A", "B") is a project currently being planned by Kauai Island Utility Cooperative (KIUC) that would utilize the Kokee Ditch

(Ditch) and Mana Reservoir (Reservoir) as part of a hydroelectric energy generation facility that integrates pumped storage, store, and release hydroelectric generation, and which delivers water for agricultural irrigation.

On November 16, 2016, the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) approved the issuance of License Agreement Nos. LI-K1702 and LI-K1703 (Licenses) (see Exhibit "A", "B"), for the Kokee Ditch and the Mana Reservoir, respectively, each for a term of 5 years, to KIUC. The terms of the license agreements allowed KIUC and their agents access to the Ditch and the Reservoir to conduct their project planning and review for the anticipated environmental review process, and includes the option to convert to a 65-year lease once KIUC had completed their environmental review, pursuant to Chapter 343, Hawaii Revised Statutes. In the interim, ADC has, through the Kekaha Agriculture Association, continued to maintain the Ditch, provide basic maintenance and monitoring of the Reservoir, and continues to pay annual dam safety-related fees for the Reservoir.

In anticipation of the Licenses expiring, KIUC approached ADC in late 2021 to discuss an extension of the Licenses. ADC countered that it was more appropriate for KIUC to assume responsibility for the Ditch and the Reservoir, which ADC has been holding in abeyance for KIUC. ADC provided a draft license to KIUC proposing updated license terms on July 26, 2022. However, as of this writing, ADC and KIUC have not yet reached agreement on the updated license terms.

LAND REQUEST:

KIUC requests that the Licenses be extended for a period of six months, pursuant to paragraph 1(B) of the Licenses, to allow additional time to review and discuss the updated terms of the license agreements.

WATER NEEDS AND SOURCE OF WATER:

WKEP is currently in the project planning phase of development. As such, there is no current water need.

OPERATIONAL PLAN:

The Licenses provide KIUC with access to the Ditch and the Reservoir for project and environmental planning purposes. This extension request will not affect the scope of responsibilities, or in any way change the current operational use, under the Licenses.

CHAPTER 343:

Planning for Chapter 343, HRS environmental review is ongoing.

DISCUSSION:

Staff agrees that it is appropriate to extend the Licenses to allow discussion and negotiation of updated license terms and conditions, and to allow KIUC continuing

access to the Ditch and the Reservoir for both project planning and environmental review planning. However, in light of ADC's continuing liability for both assets, a shorter extension of four months is more appropriate.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve a four-month extension of the Licenses, subject to the following conditions:

1. The Executive Director is authorized to amend the Licenses such that they shall expire on December 27, 2022.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A

License Agreement No. LI-K1702 (Kokee Ditch, includes map)

[see following pages]

LICENSE AGREEMENT NO. LI-K1702

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LICENSOR

and

KAUAI ISLAND UTILITY COOPERATIVE
a Hawaii not-for-profit electric cooperative
as LICENSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-K1702

THIS LICENSE made and issued this 28th day of August, 2017, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii not-for-profit electric cooperative, the place of business and mailing address of which is 4463 Pahee Street, Suite 1, Lihue, Kauai, Hawaii 96766-2000, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Kekaha, Waimea, Kauai, identified as "Portion of the Government Crown Land of Waimea," and further identified by Tax Map Key (4)1-2-02:por.1, under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165; and

WHEREAS, LICENSOR is also obligated to manage and operate the Kokee Ditch and the following four diversions that feed into the Kokee Ditch - Waiakoali, Kawaikoi, Kauaikinana, and Kokee under Governor's Executive Order No. 4287 (collectively, the "Kokee Diversions", and further collectively with the land set aside to LICENSOR under Executive Order No. 4007, the "Property"); and

WHEREAS, LICENSOR is authorized to grant licenses for the use of this land and the facilities thereon for public purposes; and

WHEREAS, LICENSEE has proposed a project to make the most efficient use of the Kokee Ditch water resource on the Property by allowing LICENSEE to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side of Kauai, more specifically, by constructing hydroelectric energy generation utilizing the Kokee Ditch from the Kokee Diversions to and ending at the Mana Reservoir (shown on Exhibit "A"), and integrating pumped storage, store and release hydroelectric generation, and the delivery of water for agricultural irrigation (the "Puu Opae Project"); and

WHEREAS, preliminary to the construction and operation of the Puu Opae Project, LICENSEE needs to conduct certain studies, including, but not limited to, studies necessary to meet the environmental assessment requirements of Hawai'i Revised Statutes Chapter 343 ("343 Requirements"), and has requested a license to use the Kokee Diversions and the portion of the Kokee Ditch from the Kokee Diversions through and including the Puu Moe Divide (hereinafter collectively referred to as the "Facilities"), all as shown on Exhibit "A"), in order to conduct these studies; and

WHEREAS, provided that LICENSEE successfully meets the 343 Requirements, LICENSEE will require a long-term lease from LICENSOR that grants to LICENSEE the exclusive use, management, and operation of the Facilities for purposes of the Puu Opae Project; and

WHEREAS, LICENSOR's Board of Directors, at its regular meeting held on November 16, 2016, approved the issuance of five-year license with the option to convert to a 65-year lease for purposes of the development and operation of the Puu Opae Project, subject to certain conditions;

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License Agreement, hereby grants to LICENSEE and LICENSEE's agents and contractors the right to enter upon, and conduct certain activities within, the Facilities in furtherance of the Puu Opae Project.

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term of License.

- A. The term of this License Agreement shall be five (5) years, commencing on the date above written.
- B. LICENSOR and LICENSEE may agree to extend the term of this License Agreement any number of times for such period or periods of time as LICENSOR and LICENSEE shall determine is reasonable under the circumstances.
- C. In the event this License is converted to a lease, as provided in paragraph 2, below, this License shall

automatically terminate upon the effective date of the Lease.

- D. In the event LICENSEE decides not to pursue the Puu Opae Project, LICENSEE shall provide written notice thereof to LICENSOR and this LICENSE shall immediately terminate upon LICENSOR's receipt of such notice.

2. Conversion to Lease.

- A. Provided that LICENSEE meets the 343 Requirements, LICENSEE has the option, at its sole discretion, to convert the license of the Facilities granted by this License Agreement to a sixty-five (65) year lease of the Facilities on substantially the terms, covenants, and conditions set forth in the Lease Agreement attached hereto as Exhibit "B."
- B. LICENSEE's option to convert this License to the Lease shall expire upon expiration (including any extensions thereof) or earlier termination of this License.
- C. The Lease shall not be effective until after the Facilities are removed from the Restated and Amended Memorandum of Agreement between LICENSOR and the Kekaha Agricultural Association.

3. Character of Use.

- A. LICENSEE shall have the non-exclusive right to enter upon and use the Facilities in order to conduct studies in furtherance of the Puu Opae Project, together with the right to use, in common with other licensees of lands and/or facilities included within the Property, the roadways providing ingress and egress to and from the Facilities and the right to use utility easements serving the Facilities.
- B. This License Agreement grants LICENSEE and LICENSEE's agents and contractors any and all permissions that may be required by LICENSOR for LICENSEE to conduct all engineering, biological, and archaeological studies necessary for the development of the Puu Opae Project and the rehabilitation of the Mana Reservoir.
- C. LICENSEE shall have the exclusive right to make modifications to the Kokee Diversions and to install

gauging equipment in the streams and/or the Kokee Ditch, provided that requisite permits are obtained from the State Commission on Water Resource Management and any other governmental agency having jurisdiction over such activities. During the term of this license, LICENSEE shall, at its own expense, keep, repair, and maintain the modified Kokee Diversions and the installed gauging equipment (hereinafter collectively referred to as the "Improvements") in good order, condition, and repair, reasonable wear and tear excepted.

- D. Except as otherwise specifically provided herein, during the term of this license, LICENSEE shall not construct, place, maintain, or install on the Facilities any building, structure, signs or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose.
- E. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Facilities, any nuisance in and upon the Facilities, or any unlawful or improper use of the Facilities.
- F. LICENSEE shall keep the Facilities and Improvements in a strictly clean, sanitary, and orderly condition.

4. License Fee. There shall be no license fee charged to LICENSEE during the term of this License Agreement. However, in consideration for these presents, the parties agree as follows:

- A. LICENSEE shall construct the Improvements, as set forth in Section 3.C, above, at no cost or expense to LICENSOR or the State of Hawai'i.
- B. At the termination of this License Agreement, the Improvements shall be owned by LICENSOR and/or the State of Hawai'i; provided, however, that in the event a lease is executed between LICENSOR and LICENSEE for the Puu Opae Project, ownership of the Improvements shall remain with LICENSEE throughout the term of the lease.

5. Sublicense or Assignment. LICENSEE shall not sublicense the whole or any portion of the Facilities, or assign this

License Agreement, without prior consent of LICENSOR, which consent may be withheld in LICENSOR's sole discretion. Any sublicense or assignment request shall be submitted in writing to LICENSOR, together with the material terms of the sublicense agreement for LICENSOR's consideration. Profit on any sublicense or assignment charges are not allowed, and therefore, shall not be sought by LICENSEE.

6. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Facilities or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Facilities and caused by LICENSEE.

7. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License after a reasonable time or pursuant to any right of action which LICENSOR may have.

8. Liability Insurance.

A. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways and sidewalks on or adjacent to the Premises in use by LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each

occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawai'i or such other insurance company or companies as may be approved by LICENSOR. LICENSEE shall have no obligation under this License Agreement to procure or maintain any commercial general liability insurance with regard to any activities of any other entity (including, but not limited to, LICENSOR) which may have use or control, from time to time, of the Premises or the Property, or any portion thereof.

- B. LICENSEE, prior to entry and use of the Facilities or within fifteen (15) days from the date of issuance of this License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy(ies) shall name LICENSOR as an additional insured. LICENSOR concurs that LICENSEE furnishing a certificate of insurance in substantially the same form and with substantially the same terms as shown in Exhibit C, attached hereto, shall be sufficient to meet the terms of this subparagraph.
- C. LICENSEE shall be responsible for ensuring that LICENSEE and any and all of its agents, representatives, contractors, independent contractors, and any other person or entity on the premises for the benefit of LICENSEE shall also be in compliance with all insurance requirements hereinunder.
- D. LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions of this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to

obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

- E. The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

9. LICENSEE's Risk. Any and all goods, wares, supplies, equipment and personal property of any kind or description are owned by or in the control of LICENSEE that may be on the Facilities at any time during the term of this License Agreement shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.

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

11. Costs of Litigation.

- A. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), with or without any fault on LICENSOR's part, each party shall bear its own fees and costs.
- B. If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than

condemnation proceedings), with or without any fault on LICENSEE's part, each party shall bear its own fees and costs.

12. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawai'i, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of or resulting from: (1) any act or omission on the part of LICENSEE relating to LICENSEE's use, occupancy, maintenance, or enjoyment of the Facilities; (2) any failure on the part of LICENSEE to maintain the portion(s) of the Facilities that are under LICENSEE's use and control in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

13. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Facilities which are now in force or later may be in force.

14. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including, but not limited to, Chapter 343, Hawai'i Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, and county clearances.

15. Hazardous Materials.

- A. LICENSOR remains responsible under a prior agreement with the State Department of Land and Natural Resources for addressing any issue identified as having occurred prior to or during Kekaha Sugar's occupancy of the Facilities as reported in the Phase I Environmental Assessment prepared by Clayton Group Services dated August 7, 2013 ("Clayton Report"). Any environmental issue occurring on the Facilities after the date of this License Agreement shall be governed by the following provisions.

- B. During the term of this License Agreement, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Facilities any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Facilities to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Facilities by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing. In the event that the results of such testing do not establish that there has been any release of hazardous materials on the Facilities by LICENSEE, LICENSOR shall be responsible for the costs of such testing.
- C. LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Facilities placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Facilities (other than those already disclosed in the Clayton Report) which could subject LICENSOR, LICENSEE, or the Facilities to any liability or restrictions on ownership, occupancy, transferability, or use of the Facilities under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in,

any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

- D. LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to LICENSEE's generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Facilities during the term of this License Agreement, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Facilities and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4), including, without limitation, reasonable attorneys' fees.
- E. The provisions of this paragraph shall survive the expiration or earlier termination of this License Agreement.

16. Commercial Operations. LICENSEE shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Facilities without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever are permitted without the prior written approval of LICENSOR.

17. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Facilities, LICENSEE and LICENSEE's agents, employees,

and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawai'i Revised Statutes, and shall notify LICENSOR of these events.

18. Land Clearing. The area of the Facilities has not had a completed archaeological inventory survey. Prior to commencement of the term of this License Agreement, LICENSOR shall notify LICENSEE in writing of any historic sites in the area of the Facilities known to LICENSOR. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division ("HPD") shall be contacted prior to any work. A field check will be required and shall be performed by the HPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeological inventory performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to HPD for review and approval. The report shall include:

- (i) detailed drawings of burials and deposits to scale;
- (ii) sketches and photographs of all artifacts;
- (iii) analyses of all perishable and datable remains;
- (iv) stratigraphic profiles that are drawn and made to scale;
- (v) an overall map of the project area, which includes the location of all historic sites;
- (vi) initial significance evaluations for each historic site found; and
- (vii) documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries during work, all in accordance with Hawai'i Revised Statutes Section 6E-43.

19. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees to the Property, including the Facilities, except as reasonably necessary to construct the Improvements.

20. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.

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

22. Exhibits. Incorporation in License. All Exhibits referred to in this License Agreement are attached to this License Agreement and are hereby deemed incorporated by reference.

23. Counterparts. This Agreement may be executed in counterparts and shall be effective upon the date above written.

24. Recordation. LICENSEE and LICENSOR agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawai'i or with the Assistant Registrar of the Land Court of the State of Hawai'i, as applicable, to give notice of this License Agreement to third parties and of the license of the Facilities granted hereunder by LICENSOR to LICENSEE for the term specified herein.

28. Definitions. As used in this License Agreement, unless the context otherwise requires:

"Property" means the approximately 12,500 acres of land set aside to LICENSOR under Governor's Executive Order No. 4007, as modified by Governor's Executive Order nos. 4034 and 4165, including buildings and improvements, and the Kokee Ditch and four diversions set aside to LICENSOR under Governor's Executive Order No. 4287.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state or local environmental law, regulation, ordinance, rule or

by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Facilities.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Facilities pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Facilities seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Facilities.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its successors and permitted assigns.

"Waste" includes (1) conducting any act or omission that causes the facilities or any portion thereof to become unduly damaged or failure to take proper precautions or make reasonable effort to prevent or correct same; and (2) conducting any act or omission that causes any material increase in noxious weeds or

alien plant species in or on the Facilities or any portions thereof.

"Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this _____ day of _____, 20____.

LICENSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By _____
Executive Director

LICENSEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii not-for-profit electric cooperative

By David J. Bissell
David J. Bissell
Its President & Chief Executive Officer

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____


alien plant species in or on the Facilities or any portions thereof.

"Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 28th day of August, 20 17.

LICENSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By  _____
Executive Director

LICENSEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii not-for-profit electric cooperative

By _____

Its President & Chief Executive Officer

APPROVED AS TO FORM:

 _____
Deputy Attorney General

Dated: _____

STATE OF HAWAII

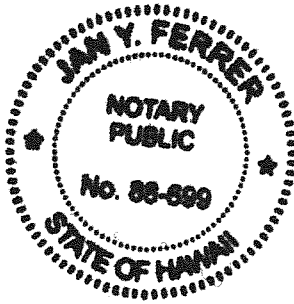
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) SS.

CITY AND COUNTY OF HONOLULU

)

On this 28th day of August, 2017, before me personally appeared James J. Nakatani, to me personally known or adequately proven to be the person in and who executed the foregoing License Agreement, dated undated, 20-, in the First Judicial Circuit of the State of Hawaii, consisting of 76 pages, 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.



Jan Y. Ferrer
Notary Public, State of Hawaii
Print Name: Jan Y. Ferrer
My commission expires: 11/29/20

STATE OF HAWAII

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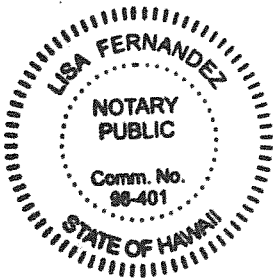
) SS.

COUNTY OF KAUAI

)

On this 11th day of August, 2017, before me personally appeared David J. Bissell, to me personally known or adequately proven to be the person in and who executed the foregoing License Agreement, dated undated, 2017, in the Fifth Judicial Circuit of the State of Hawaii, consisting of - 16 - pages, 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.

glat



Lisa Fernandez

Notary Public, State of Hawaii

Print Name:

Lisa Fernandez

My commission expires: 8/11/18

EXHIBIT "A"

[Map showing location of Facilities]

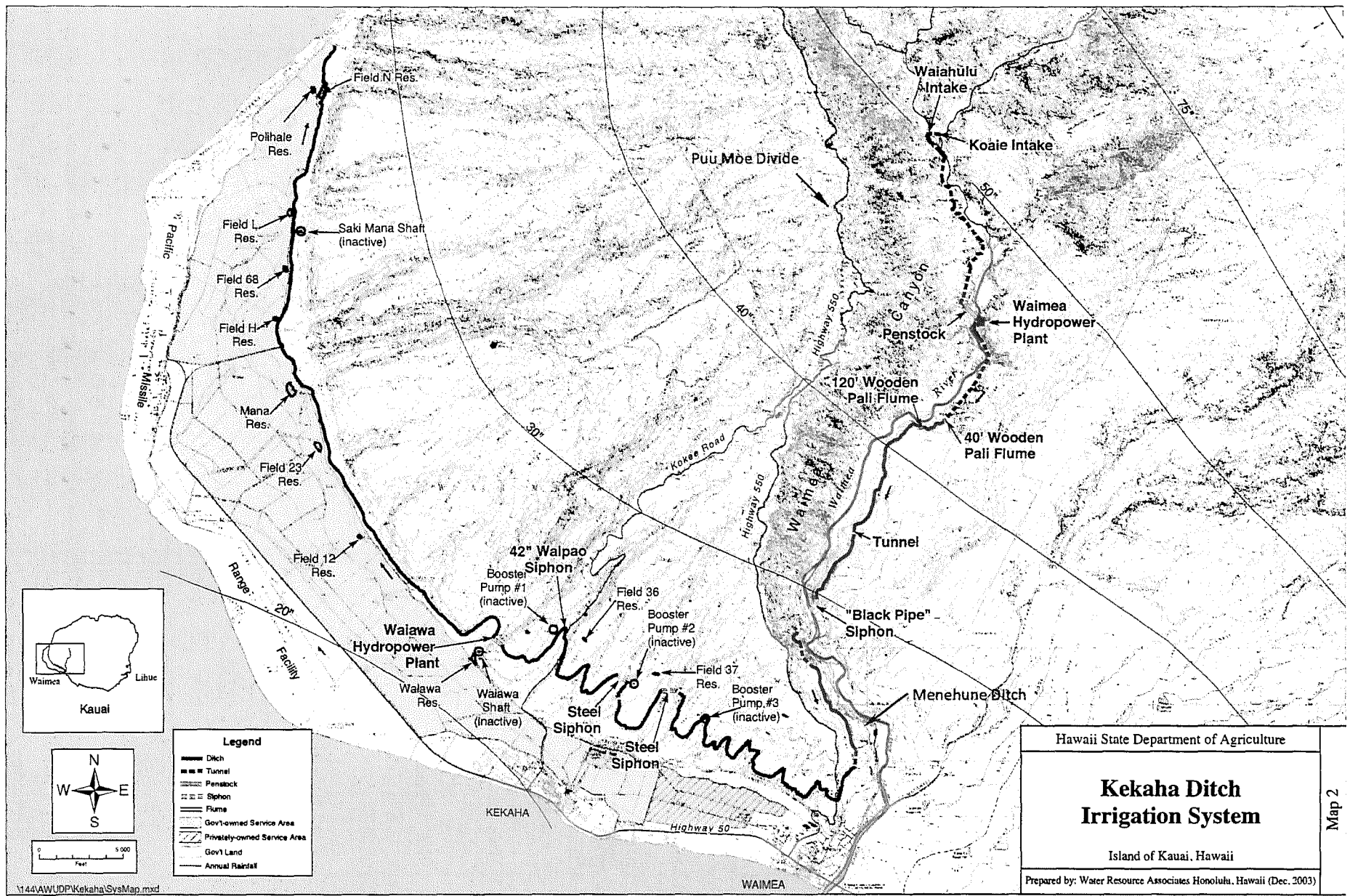


EXHIBIT "B"

[Lease]

LEASE AGREEMENT NO. _____

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LESSOR

and

KAUAI ISLAND UTILITY COOPERATIVE
a Hawaii not-for-profit electric cooperative
as LESSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LEASE AGREEMENT NO. _____

THIS LEASE made and issued this _____ day of _____, 20__, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LESSOR," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii not-for-profit electric cooperative, the place of business and mailing address of which is 4463 Pahee Street, Suite 1, Lihue, Kauai, Hawaii 96766-2000, hereinafter called "LESSEE."

W I T N E S S E T H:

WHEREAS, LESSOR is obligated to manage and operate that certain parcel of land situated at Kekaha, Waimea, Kauai, identified as "Portion of the Government Crown Land of Waimea," and further identified by Tax Map Key (4)1-2-02:por.1, under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165; and

WHEREAS, LESSOR is also obligated to manage and operate the Kokee Ditch and the following four main diversions that feed into the Kokee Ditch - Waiakoali, Kawaikoi, Kauaikinana, and Kokee under Governor's Executive Order No. 4287 (collectively, the "Kokee Diversions", and further collectively with the land set aside to LESSOR under Executive Order No. 4007, the "Property"); and

WHEREAS, LESSOR is authorized to grant leases for the use of this land and the facilities thereon for public purposes; and

WHEREAS, LESSEE has proposed a project to make the most efficient use of the Kokee Ditch water resource on the Property by allowing LESSEE to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side of Kauai, more specifically, by developing hydroelectric energy generation utilizing the Kokee Ditch from the Kokee Diversions to and ending at the Mana Reservoir (shown on Exhibit "1"), and integrating pumped storage, store and release hydroelectric generation, and the delivery of water for agricultural irrigation (the "Puu Opae Project"); and

WHEREAS, pursuant to License Agreement No. _____, issued on _____, 2017 ("License"), LESSEE (as the Licensee under said License Agreement) has conducted studies necessary for the development of the Puu Opa Project, made certain modifications to the Kokee Diversions and installed gauging equipment all in accordance with the terms and conditions of the License; and

WHEREAS, LESSEE has met the environmental assessment requirements of Hawai'i Revised Statutes Chapter 343 ("343 Requirements"), by publication and acceptance of the Final Environmental Impact Statement as noticed in the _____, 20__ Bulletin of the Office of Environmental Quality Control; and

WHEREAS, LESSEE has exercised its option to convert the License to this Lease, in accordance with the action taken by LESSOR's Board of Directors, at its regular meeting held on November 16, 2016;

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LESSEE, LESSOR, pursuant to and as set forth in this Lease, hereby grants to LESSEE the exclusive right to use, manage, operate and maintain the four main Kokee Diversions, any and all active ephemeral stream diversions that divert water into the Kokee (Main) Ditch (Kumuela 1-5, Nawaiamaka, and Halemanu), and the Kokee (Main) Ditch from the Kokee Diversions through and including the Puu Moe Divide, including the Kauhao sluice gate and the weir gate at the Puu Moe Divide, containing an area of 14.6 miles, more or less, as identified on the map attached hereto and incorporated herein as Exhibit "1", hereinafter referred to as the "Facilities."

The lease of the Facilities hereby granted by LESSOR to LESSEE shall be together with the right to use, in common with other licensees and lessees, lands and/or other facilities included within the Property, the roadways providing ingress and egress to and from the Facilities and the right to use utility easements serving the Facilities.

THE TERMS AND CONDITIONS upon which LESSOR grants the aforesaid Lease are as follows:

1. Term of Lease.

- A. The term of this Lease shall commence on the date above written and expire on the earlier of (a) midnight

of the last day of the month which is sixty-five (65) years following the date that LESSEE places the Puu Opae Project in service; or (b) such time as LESSEE ceases to operate the Puu Opae Project; unless sooner terminated or extended as herein provided. For purposes of this Lease, the date that the Puu Opae Project is placed in service shall be the date that the Mana Powerhouse first generates and delivers electrical energy to LESSEE's grid. LESSEE shall provide LESSOR written notice of the placed in service date and documentation substantiating said date in the form of Mana Powerhouse revenue meter readings.

2. Lease Fee. There shall be no lease fee charged to the LESSEE during the term of this Lease. However, as consideration for these presents, LESSEE shall perform and deliver the following:

- A. Component 1 - Infrastructure Repairs and Improvements: During the term of this Lease Agreement, LESSEE, itself, or through its agents, shall:
 - i. Make repairs and rehabilitations, as needed, to the Facilities.
 - ii. To the extent not completed pursuant to the License, install gauging equipment on the sections of the Kokee Ditch that are immediately downstream from each of the Kokee Diversions.
 - iii. To the extent not completed pursuant to the License, make further modifications to the diversions and install mechanized gate structures at each of the diversion sites.
 - iv. Replace the gate structure with a new gate and intake structure at the Puu Moe Divide.
- B. Component 2 - Operation & Maintenance of Facilities: During the term of this Lease, LESSEE shall assume the expense and responsibility for the ongoing operation, maintenance, and repair of the Facilities.
- C. Component 3 - Delivery of Irrigation Water: During the term of this Lease, LESSEE shall deliver irrigation water to LESSOR's mauka lands in accordance with Paragraph 6 of the Addendum to this Agreement. Additionally, commencing on the date that the Puu Opae

Project is placed in service and thereafter throughout the term of this Lease, LESSEE shall deliver irrigation water to lands owned or controlled by LESSOR on the Mana plains through Mana Reservoir as set forth in Paragraph 6 of the Addendum to this Agreement.

3. Taxes, Assessments, and Utilities. LESSEE shall pay, if and when due, LESSEE's proportionate share of all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of the Lease be lawfully charged, assessed, imposed, or become due and payable upon or in respect of the Facilities and the improvements now on or hereafter erected by LESSEE thereon. In the event that any taxes or similar rates, assessments, charges, or outgoings are levied against any tract of land or property, including the Property, which includes the Facilities, LESSEE's proportionate share shall be based on the ratio that the total acreage comprising the Facilities bears to the total acreage of such larger property subject to any such taxes, rates, assessments, charges, and outgoings.

4. Character of Use. LESSEE shall not commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Facilities, any nuisance in and upon the Facilities, or any unlawful or improper use of the Facilities.

- A. LESSEE shall use the Facilities solely for purposes related to making the most efficient use of the water resource on the Property, to allow LESSEE to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side of Kauai. LESSEE's use of the Facilities shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Facilities existing as of the date of this Lease.
- B. No livestock production operations shall be conducted on the Facilities without the prior approval of the State Department of Health.
- C. All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.
- D. No cesspools shall be constructed on the Facilities. However, upon approval from the State Department of

Health, LESSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

- E. No solid or liquid animal waste shall be disposed of at the Facilities.
- F. LESSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LESSEE's use of the Facilities and to address any material increase in weeds or litter on the Facilities.

5. Utilization and Development of the Land. LESSEE shall utilize and develop the Facilities in accordance with the submittal from the Executive Director of the Agribusiness Development Corporation ("ADC") to the ADC Board of Directors dated November 16, 2016, attached as Exhibit "2" hereto. Any material modification or deviation from LESSEE's utilization and development plan without the prior written approval of LESSOR may constitute a breach of this Lease and a cause for termination thereof.

6. Sublease or Assignment. LESSEE shall not sublease or rent the whole or any portion of the Facilities, or assign this Lease, without the prior consent of LESSOR, which consent may be withheld in LESSOR's sole discretion. Any sublease or assignment request shall be submitted in writing to LESSOR, together with the material terms of the sublease agreement for LESSOR's consideration. Profit on any sublease or assignment charges are not allowed, and therefore, shall not be sought by LESSEE. Notwithstanding the above, LESSOR hereby consents to and approves of LESSEE subleasing the Facilities (or any portion thereof) or assigning this Lease Agreement to subsidiary of LESSEE or to a joint venture in which LESSEE is a joint venturer.

At no time during the term of the Lease shall LESSEE assign, mortgage, pledge, or otherwise encumber its interest in this Lease or its interest in the Facilities without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

7. Sanitation. LESSEE shall keep the Facilities and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this Lease.

8. Improvements. During the term of this Lease, LESSEE shall not construct, place, maintain, or install on the Facilities any building, structure, signs, or improvement, except with the prior written approval of LESSOR and upon such conditions as LESSOR may impose. The preceding sentence shall not apply to (i) any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Facilities with the consent and approval of LESSOR under any prior permit or agreement pursuant to which LESSEE or any of LESSEE's permitted assigns, sub-lessees, or permittees occupied the Facilities before the effective date of this Lease, and (ii) the infrastructure, repairs and improvements set forth as Component 1 of the Lease Fee in Paragraph 2, above. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph ("Improvements") shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LESSEE until the expiration or sooner termination of this Lease, at which time LESSOR, at LESSOR's option, may acquire ownership of any or all of said Improvements by purchasing same from LESSEE at fair market value, or shall be removed by LESSEE at LESSEE's sole cost and expense; provided, however, that at the termination of this Lease, ownership of the improvements set forth in the License and in Component 1 of Paragraph 2, above (Lease Fee) shall be in LESSOR.

9. Repairs to Improvements. LESSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Facilities in good order, condition, and repair, reasonable wear and tear excepted. Except as explicitly provided herein, LESSEE shall have no obligation under this Lease to keep, repair, or maintain, or to pay any assessment or charges for, any other infrastructure improvements on, in, or around the Facilities.

10. Involuntary Liens. LESSEE shall not commit or suffer any act or neglect which results in the Facilities or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LESSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Facilities and caused by LESSEE.

11. Dwelling Restrictions. The construction or placement of any structure on the Facilities for residential purposes is strictly prohibited. LESSEE, its agents, employees, and invitees shall not use the Facilities as a temporary or permanent residence.

12. Non-Discrimination. LESSEE shall not use the Facilities, nor permit the Facilities to be used, in support of any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LESSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

13. Breach or Default. It is expressly agreed that this Lease is contingent upon the continuing condition that, if LESSEE fails to observe or perform substantially the provisions contained herein, and if LESSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, after delivery by LESSOR of a written notice of such failure by personal service or by registered or certified mail to LESSEE; or, if LESSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LESSEE's debts, liabilities or obligations; then, in any such event, LESSOR may, at its option, to the extent permitted by law, cancel this Lease and thereupon take immediate possession of the Facilities, after a reasonable time or pursuant to any right of action which LESSOR may have.

14. Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this Lease, of LESSOR's right to re-entry for breach of covenant, or of LESSOR's right to declare and enforce a forfeiture for any breach; and the failure of LESSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

15. Liability Insurance. LESSEE shall procure and maintain during the entire period of this Lease a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall

cover the entire Facilities, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Facilities in the control or use of LESSEE. The minimum limit of said policy or policies shall not be less than \$1,000,000.00 for each occurrence and aggregate, with an insurance company or companies licensed to do business in the State of Hawai'i or such other insurance company or companies as may be approved by LESSOR. LESSEE shall have no obligation under this Lease to procure or maintain any commercial general liability insurance with regard to any activities of any other entity (including LESSOR) which has control from time to time over any of the other infrastructure improvements on the Property.

LESSEE, prior to entry and use of the Facilities or within fifteen (15) days from the effective date of its Lease, whichever is sooner, shall furnish LESSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the Lease, and furnish like certificate(s) upon each renewal of the policy(s). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LESSEE, except that, in the event this Lease is terminated, said insurance may be terminated on the same date as the Lease. The policy shall name LESSOR as an additional insured. LESSOR concurs that LESSEE furnishing a certificate of insurance in substantially the same form and with substantially the same terms as shown in Exhibit 3, attached hereto, shall be sufficient to meet the terms of this paragraph.

LESSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Lease. If, in the opinion of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR, LESSOR may require LESSEE and any permitted sub-lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LESSOR incorporating the required changes within thirty (30) days of LESSEE's receipt of the notice from LESSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LESSEE's liability under this Lease. Notwithstanding the policy(ies) of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LESSEE's negligence or neglect connected with this Lease.

16. Property Insurance. At all times during the term of this Lease, LESSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Facilities and which are identified by LESSOR prior to the commencement date of this Lease, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LESSOR as an additional insured.

LESSEE shall furnish to LESSOR on or before the commencement date of this Lease a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LESSEE, except that, in the event this Lease is terminated, said insurance may be terminated on the same date as the Lease. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

17. Right to Enter. LESSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Facilities at any time for the purpose of performing any public or official duties.

18. Inspection of Facilities. LESSEE shall permit LESSOR and its agents or representatives, at all reasonable times during the term, to enter the Facilities and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LESSEE in connection with the administration of this Lease.

19. Surrender. At the end of the term or other sooner termination of this Lease, LESSEE shall peaceably deliver unto LESSOR possession of the Facilities, together with all improvements existing or constructed thereon, unless provided otherwise in this Lease. Furthermore, upon the expiration,

termination, or revocation of this Lease, should LESSEE fail to remove any and all of LESSEE's personal property from the Facilities, LESSOR may remove or dispose of any and all personal property from the Facilities and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LESSEE. LESSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LESSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

20. Withdrawal for Public Purpose; Condemnation.

- A. LESSOR shall have the right to withdraw the Facilities, or any portion thereof, at any time during the term of this Lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes; provided that, upon any withdrawal or taking which causes any portion of the Facilities to become unusable for the specific use or uses for which it was leased, the Lease Fee, as set forth in Paragraph 2, shall be reduced in proportion to the value of the Facilities withdrawn or made unusable to the Puu Opae Project. If any permanent improvement constructed upon the land by LESSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LESSOR to LESSEE based upon the unexpired term of this Lease; provided that upon any withdrawal or taking, LESSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Facilities by LESSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. If any withdrawal or taking in LESSEE's reasonable determination makes the Facilities unusable by LESSEE for the purposes and uses for which LESSEE is then using the Facilities or makes the Puu Opae Project unfeasible or uneconomical, LESSEE shall have the right to terminate this Lease, without waiving any other rights of LESSEE by reason of such withdrawal or taking.
- B. Condemnation. If at any time, during the term of this Lease, any portion of the Facilities shall be condemned or required for public purposes by the

Federal government or any county or city and county, or any governmental agency of either, the Lease Fee, as set forth in Paragraph 2, and any other charges under this Lease, shall be reduced in proportion to the value of the portion of the Facilities condemned to the Puu Opae Project. LESSEE shall be entitled to receive from the condemning authority the proportionate value of LESSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Facilities occupied by LESSEE. LESSEE shall not by reason of the condemnation be entitled to any claim against the LESSOR for compensation or indemnity for the lease interest and all compensation payable or to be paid for or on account of the land comprising the Facilities by reason of the condemnation shall be payable to and be the sole property of the LESSOR. The foregoing rights of LESSEE shall not be exclusive of any other rights to which LESSEE may be entitled by law, and LESSEE shall have the right to claim and recover from the condemning authority, but not from LESSOR, such compensation as may be separately awarded or recoverable in LESSEE's own right on account of such condemnation of LESSEE's interest under this Lease and any improvements constructed by LESSEE on the Facilities. Where the portion of the Facilities taken renders the remainder of the Facilities unsuitable for the use or uses for which the Facilities were leased, or makes the Puu Opae Project unfeasible or uneconomical, LESSEE shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that LESSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LESSOR.

21. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Facilities preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this Lease, LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Facilities at all reasonable times following an announcement at any of LESSOR's public meetings of any proposed disposition of the Facilities; provided, however, that any entry and inspection shall be

conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE.

22. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LESSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LESSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this Lease.

23. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that, upon compliance with Paragraph 2, above (Lease Fee), at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LESSEE to be observed and performed, LESSEE shall have, hold, possess, and enjoy the Facilities for the term that the Facilities is leased to LESSEE, without hindrance or interruption by LESSOR or any other person or persons lawfully claiming by, through, or under LESSOR.

24. Abandonment and Termination. If, after putting the Facilities into service, LESSEE abandons or ceases to use the Facilities for a period of four (4) or more consecutive months, LESSOR shall have the right to terminate this Lease. Any abandonment, termination, or cessation shall not affect or release any liability of LESSEE at such time existing by reason of a breach of any of the terms hereof.

25. Non-warranty. LESSOR does not warrant the condition of the Facilities, as the same is being leased "as is." LESSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this Lease, LESSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Facilities or hazardous discharge occurring prior to the date of this Lease, and LESSOR (and/or LESSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.

26. LESSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Facilities at any time during the term of this Lease, regardless of ownership of such property, shall be at the sole risk and hazard of LESSEE, and LESSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.

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

28. Costs of Litigation. If LESSOR shall be made a party to any litigation commenced by or against LESSEE (other than condemnation proceedings), with or without any fault on LESSOR's part, each party shall bear its own fees and costs.

If LESSEE shall be made a party to any litigation commenced by or against LESSOR (other than condemnation proceedings), with or without any fault on LESSEE's part, each party shall bear its own costs.

29. Indemnity. LESSEE shall indemnify, defend, and hold harmless the State of Hawaii, LESSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the Facilities and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Facilities, or by any accident or fire thereon, growing out of or caused by any failure on the part of LESSEE to maintain the Facilities in a safe condition, or by any act or omission of LESSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

30. Hunting. No hunting shall be allowed on the Facilities during the term of this Lease except as authorized by any cooperative management agreement with the State of Hawaii, Department of Land and Natural Resources covering public hunting areas.

31. Boundary Stakeout. LESSOR shall not be responsible or liable for the surveying or boundary stakeout of the Facilities. LESSEE shall be solely responsible for any survey and boundary stakeout of the Facilities as may be necessary.

32. (Reserved) (Fences).

33. Drainage Easements. The Facilities shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Facilities as of the commencement date of this Lease. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LESSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LESSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LESSOR. LESSOR shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

34. (Reserved) (Roadway and Utility Easements).

35. Compliance with Laws. LESSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Facilities which are now in force or later may be in force.

36. Environmental Regulations. LESSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LESSEE shall be responsible for obtaining all necessary federal, state, or county clearances.

37. Hazardous Materials. LESSOR remains responsible under a prior agreement with the State Department of Land and Natural Resources for addressing any issue identified as having occurred prior to or during Kekaha Sugar's occupancy of the Facilities as reported in the Phase 1 Environmental Assessment prepared by Clayton Group Services dated August 7, 2003 ("Clayton Report"). Any environmental issue occurring on the Facilities after the date of this Lease shall be governed by the following provisions.

A. During the term of this Lease, LESSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LESSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such

materials, nor allow to be brought onto the Facilities any such materials except to use in the ordinary course of LESSEE's business, and then only after written notice is given to LESSOR of the identity of such materials and upon LESSOR's consent, which consent may be withheld at LESSOR's sole and absolute discretion. LESSOR may, upon reasonable request and for reasonable cause, require testing of the Facilities to ascertain whether or not there has been any release of hazardous materials by LESSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Facilities by LESSEE, LESSEE shall, in addition to LESSEE's other obligations hereunder, be responsible for the cost of such testing. In the event that the results of such testing do not establish that there has been any release of hazardous materials on the Facilities by LESSEE, LESSOR shall be responsible for the costs of such testing.

B. LESSEE shall execute affidavits, representations, and the like from time to time at LESSOR's request concerning LESSEE's best knowledge and belief regarding the presence of hazardous materials on the Facilities placed or released by LESSEE. If LESSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Facilities (other than those already disclosed in the Clayton Report) which could subject LESSOR, LESSEE, or the Facilities to any liability or restrictions on ownership, occupancy, transferability, or use of the Facilities under any hazardous materials laws, LESSEE shall immediately advise LESSOR thereof in writing and provide to LESSOR such detailed reports thereof as may be reasonably requested by LESSOR. LESSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

C. LESSEE shall be responsible for and shall indemnify, defend, and hold harmless LESSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Facilities during the term of this Lease Agreement, including, without limitation: (1) all

foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Facilities and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LESSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LESSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LESSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorneys' fees.

D. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

38. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this Lease, LESSOR, for good cause, may require LESSEE to conduct at LESSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on or within the Facilities during the term of this Lease. The termination of this Lease will not be approved by LESSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this Lease.

39. Soil Erosion. Under this Lease, LESSEE shall be operating stream diversions, ditches, and other appurtenant water control infrastructure. LESSEE shall make efforts to use reasonable and prudent operation procedures and techniques to minimize and prevent soil erosion in and around the Facilities.

40. Encumbrances. This Lease is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this Lease, LESSOR may create easements and encumbrances upon the Facilities in addition to any easements and encumbrances which currently affect the Facilities, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LESSEE's use of the Facilities.

41. Interpretation. The use of any gender shall include all genders. If there is more than one LESSEE, all words used in the singular shall extend to all LESSEES.

42. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Lease.

43. Exhibits - Incorporation in Lease. All Exhibits referred to in this Lease are attached to this Lease and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

44. Holding Over. Any holding over by LESSEE after the expiration of the term of this Lease with the consent of LESSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this Lease and shall otherwise be on the terms and conditions herein specified, so far as applicable.

45. Recordation. LESSOR and LESSEE agree that this Lease or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this Lease to third parties and of the lease of the Facilities granted hereunder by LESSOR to LESSEE for the term specified herein.

46. Force Majeure. LESSEE shall not be in default under this lease if LESSEE's performance is delayed or prevented, or if interruptions, shortages or deficiencies in the delivery of irrigation water, is due to acts of God, the elements, earthquakes, power failure, actions of the federal, state and county governments or agencies thereof, including without limitation, enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national or state emergencies, or any other cause beyond LESSEE's reasonable control; provided, however, that in the event of a repairable failure, LESSEE shall make reasonable efforts at restoration and performance within a reasonable period of time.

DEFINITIONS

As used in this Lease, unless the context otherwise requires:

"Property" means the approximately 12,500 acres of land set aside to LESSOR under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, including buildings and improvements, and the Kokee Ditch and four diversions set aside to LESSOR under Governor's Executive Order No. 4287.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule,

or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Facilities.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LESSEE's knowledge, contemplated or threatened, with respect to the Facilities pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LESSEE's knowledge, contemplated or threatened by any third party against LESSEE or the Facilities seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Facilities.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the

Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LESSEE" includes LESSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Facilities or any portion thereof to become unduly damaged or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the Facilities or any portions thereof; (3) failure to employ all of the usable portions of the Facilities; and (4) abandonment of the Facilities.

"Days" shall mean calendar days, unless otherwise specified.

THIS LEASE IS SUBJECT TO THE PROVISIONS OF THE ADDENDUM ATTACHED HERETO, WHICH MODIFIES CERTAIN OF THE FOREGOING PROVISIONS OF THIS LEASE. IN CASE OF ANY CONFLICT BETWEEN THE FOREGOING PROVISIONS AND THE PROVISIONS OF THE ADDENDUM, THE PROVISIONS OF THE ADDENDUM SHALL BE CONTROLLING.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this _____ day of _____, 20____.

LESSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By _____
Executive Director

LESSEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii not-for-profit electric cooperative

By _____
Its President & Chief Executive Officer

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

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

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known or adequately proven to be the person in and who executed the foregoing _____, dated _____, 20____, in the First Judicial Circuit of the State of Hawaií, consisting of _____ pages, 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.

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

STATE OF HAWAII

)

) SS.

COUNTY OF KAUAI

)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known or adequately proven to be the person in and who executed the foregoing _____, dated _____, 20____, in the Fifth Judicial Circuit of the State of Hawaii, consisting of _____ pages, 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.

Notary Public, State of Hawaii

Print Name:

My commission expires:

ADDENDUM

The foregoing Lease and the provisions thereof shall be subject to the following provisions of this Addendum, and, in the event of any conflict between the foregoing terms of the Lease and this Addendum, the provisions of this Addendum shall be controlling. Unless otherwise specified, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

1. Hawaii Revised Statutes, Chapter 343. LESSEE shall comply with the environmental assessment requirements of Hawaii Revised Statutes, Chapter 343, prior to commencing construction of any energy facilities on the Facilities.
2. Governmental Permits. LESSEE shall obtain any governmental (e.g., federal, state, or county) permits that are required for the Puu Opae Project. LESSOR agrees to cooperate with and assist LESSEE in obtaining such approvals.
3. Termination Without Penalty. This Lease shall be terminated without penalty: (i) if LESSEE does not obtain all governmental permits, approvals, and agreements required for the Puu Opae Project by December 31, 2022 (or any later date mutually agreed to by LESSOR and LESSEE), or (ii) if LESSEE does not obtain financing for the Puu Opae Project within two (2) years of obtaining all of the governmental permits, approvals, and agreements required for the Puu Opae Project.
4. Control of Kokee Diversions and Water Diverted. This Lease Agreement grants to LESSEE control of the Kokee Diversions and control of the water diverted from the Kokee Diversions, the terms of which are controlled by that certain Mediation Agreement for the Waimea Watershed Area, approved by the State of Hawaii, Commission on Water Resource Management on April 18, 2017.
5. Discharge Permit. If the State of Hawaii Department of Health Clean Water Branch requires a discharge permit for the discharge of the water not utilized by LESSOR's tenants on

the Mana Plains (shown on Exhibit "1"), LESSEE shall obtain such permit.

6. Obligation to Deliver Irrigation Water. LESSEE shall deliver irrigation water to LESSOR's mauka lands at the Puu Moe Divide and to the Mana Plains, through the Mana Reservoir. A long-term average (more than 12 months) of up to 11 MGD as available after irrigation deliveries to DHHL and ADC mauka lands of irrigation water shall be delivered to the Mana plains through Mana Reservoir. Water will be delivered through Puu Moe Divide to the ADC mauka lands in quantities sufficient for then current irrigation uses but not to exceed 500,000 GPD.

In the event the Kekaha Ditch (shown on Exhibit "1") is not operating due to maintenance, LESSEE shall deliver irrigation water to the Menehune Ditch (shown on Exhibit "1"), as needed; provided that LESSOR or its agent shall notify LESSEE in writing, as much in advance as reasonably possible under the circumstances, of the reason for the need to provide water to the Menehune Ditch, estimated amount of water required to be delivered and the estimated time required to complete the maintenance generating the need to provide water to the Menehune Ditch.

The foregoing obligations to deliver irrigation water are subject to, and limited by, (i) the interim or permanent instream flow standards established by the Hawai'i Commission on Water Resource Management; (ii) actual stream flow availability at any given time; (iii) available reservoir capacity; (iv) force majeure events as set forth in paragraph 46, above; (v) Facilities shut downs for reasonable periods for purposes of scheduled or emergency repairs and maintenance as set forth below; and (vi) agreement(s) between LESSOR and the Department of Hawaiian Home Lands relating to proration of water during periods of low ditch flows.

LESSEE may temporarily cease delivery of irrigation water for the purpose of maintenance of or repairs to the Facilities. Except in emergencies, LESSEE shall provide LESSOR with no less than ten (10) days notice of LESSEE's intent to shut off water for maintenance or repairs and the period during which water may be shut off for repairs or maintenance; provided that the period during which water may be shut off for scheduled repairs and maintenance shall not exceed seven (7) consecutive days or exceed a total of twenty-one (21) days within a twelve-month period.

7. Paragraphs 17, 18, and 21 - Right of Entry and Inspections. In light of the nature of LESSEE's regulated electric public utility activities, LESSOR's right to have reasonable access to the Facilities for purposes of inspecting the same shall be subject to the requirement that LESSOR shall give LESSEE prior written notice of at least seventy-two (72) hours of any such inspection, and LESSOR shall conduct such inspections in accordance with such reasonable guidelines as LESSEE shall provide to protect the security and integrity of such regulated electric public utility activities.
8. Hawaii Public Utilities Commission. LESSOR acknowledges that LESSEE is regulated by the Hawaii Public Utilities Commission ("HPUC") and that therefore, this Lease, or portions thereof, may be subject to approval or investigation by the HPUC. LESSOR agrees to cooperate and assist LESSEE in any such approval or investigation process.

EXHIBIT "1"

[Map showing location of Facilities]

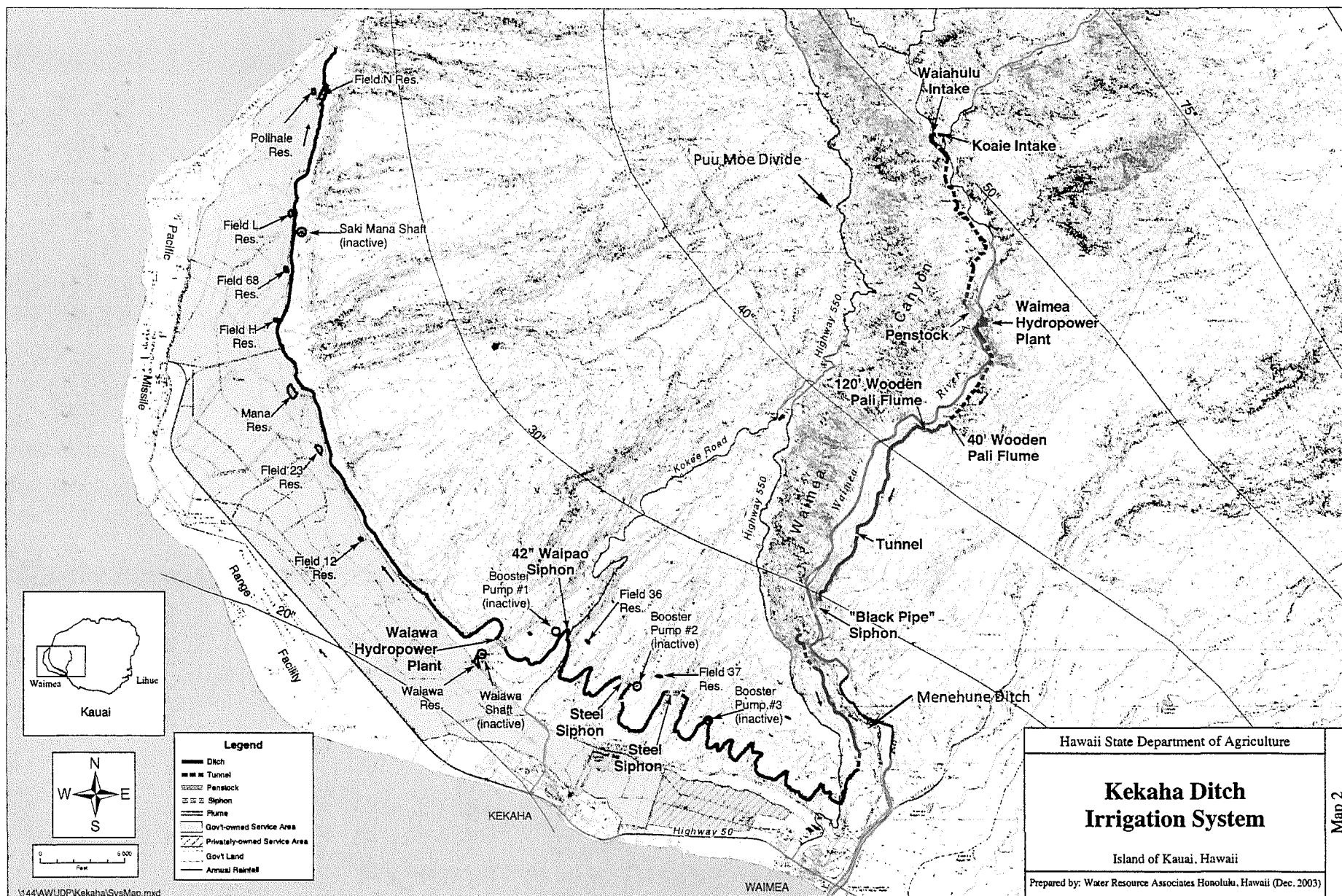


EXHIBIT "2"

[Board Submittal]

DAVID Y. IGE
Governor
SHAN S. TSUTSUI
Lt. Governor



Item J

JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

November 16, 2016

Subject: Request for Approval of: (1) the Withdrawal of Portions of the Kokee Ditch and Mana Reservoir from License currently granted to the Kekaha Agriculture Association, and (2) the Issuance of a Five-Year Land License, with an Option to Convert the License into a 65-Year Lease for the same

Applicant: Kauai Island Utility Cooperative, a not-for profit public utility corporation ("KIUC")

Authority: Section 163D-4(a)(5) and (8), Hawaii Revised Statutes

Location: Kekaha, Island of Kauai, Hawaii

Tax Map Key: (4)1-2-002-001 (por)
(4)1-2-001:various
(4)1-4-001:various

Land Status: Portion of various parcels of Tax Map Key (4)1-2-002-001 (por), under Governor's Executive Order ("EO") No. 4007, modified by Governor's EO Nos. 4034 and 4165, and

Portions of various parcels of Tax Map Key (4)1-2-001 and (4)1-4-001, under EO No. 4287

Zoning: State Land Use District: Agricultural
County LUO: F-1 (military and federal preservation district), and AG-1

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
Yes

Annual Rent: To be determined, subject to appraisal

Character of Use: Hydroelectric energy generation utilizing the Kokee Ditch from the initial diversions, through reservoirs under the control of the Department of Hawaiian Home Lands and Land and Natural Resources, and ending at

the Mana Reservoir, integrating pumped storage, store and release hydro generation, and the delivery of water for agricultural irrigation

Chapter 343: While the granting of the land license to the Applicant may be exempt from environmental assessment requirements pursuant to exemption class 1, use involving negligible or no expansion or change of use beyond that previously existing, the Applicant will be required to comply with Chapter 343 before commencing any construction of any energy facility on the ADC lands

Business Verification: Business Registration Division,
Department of Commerce and Consumer Affairs: Good standing

BACKGROUND:

Puu Opae Project. KIUC has been incorporated in the State of Hawaii since November, 1999. Its stated purpose is the generation, transmission, and distribution of electricity to its member-owners. This energy project involving ADC lands and infrastructure began in or around 2011. KIUC has made several presentations of various possible Kekaha renewable energy projects to the ADC board, including this Puu Opae Project, all of which included components which would be beneficial to agricultural and other activities in the area.

The Puu Opae Project would utilize the upper portion of the Kokee Ditch and all pertinent diversions, and the Puu Lua (DLNR), Puu Opae (DHHL) and Mana (ADC) Reservoirs in order to integrate pumped storage, store and release hydro generation, and the delivery of water for irrigation ("Project"). See, Exhibit "A". The purpose of the project is to make the most efficient use of the water resource, to allow KIUC to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side.

Powerhouses and pumps - Two new powerhouses would be involved, one at the Puu Opae Reservoir and one at the Mana Reservoir. The powerhouse at the Mana Reservoir will have the generating and pumping equipment, while the powerhouse at the Puu Opae Reservoir will be generation only. The pumped storage segment is between the Puu Opae Reservoir and the Mana Reservoir.

Water flow – Water being diverted into the Kokee Ditch is currently subject to a petition and complaint before the Commission on Water Resource Management ("CWRM"). That proceeding is currently in mediation to resolve issues of interim instream flow standards for the Waimea River and all of its tributaries, reasonable and beneficial uses of the water, and the determination of alleged waste by ADC. The Project is a critical component of the mediation. KIUC will be requesting an average of 11 mgd for the Project.

Accordingly, the Project will be able to deliver up to 11 mgd on an annual average basis to the Mana plains. The actual amount to be delivered will be subject to the water needs of DHHL tenants, above, once DHHL issues leases to DHHL beneficiaries. More than sufficient water for the ADC Mana plain tenants will be stored in the Mana Reservoir for irrigation purposes at all times. A separate irrigation pumping station will be installed that will allow the ADC and the Kekaha Agriculture Association ("KAA") to control irrigation releases independent of the Project operations and based on irrigation needs.

Kekaha Agriculture Association RMOA. The KAA currently holds a 20-year license for most of the infrastructure improvements available for the use and benefit of all ADC Kekaha land tenants as evidenced by the Restated and Amended Memorandum of Agreement, which revised and corrected the original agreement dated April 1, 2007 ("RMOA"). There are approximately 11 years remaining under the RMOA. Included in the KAA-licensed infrastructure are the Kokee Ditch, including the four diversions, and the intakes, screens, tunnels, siphons, culverts, overpasses, flumes, recorders, control gates, ladders, gratings, access roadways, measuring weirs, motors, controls, and all other aperture required to safely and effectively convey waters through the entirety of the Kokee Ditch, and the Mana Reservoir ("subject infrastructure"). Before ADC can allow KIUC to take over the subject infrastructure, it must first withdraw them from the RMOA.

Syngenta. Syngenta Hawaii, LLC ("Syngenta") currently holds a 20-year land license which has approximately 11 years remaining. Field 120 on which the Mana Reservoir is located is currently licensed to Syngenta. Syngenta does not currently have any crops on Field 120.

In consideration for the use of the subject infrastructure, KIUC is offering to repair the upper portion of the Kokee Ditch, including modifying the four intakes at the beginning of the Ditch down to the Puu Moe divide that splits the delivery of water to DHHL and ADC's mauka lands, to maintain and operate the upper portion of the Kokee Ditch, to install gaging equipment immediately upstream of the four diversions and in the ditch immediately downstream of the diversions, and to rehabilitate, maintain and operate the Mana Reservoir. The parties are also actively engaged in negotiating terms of a new Power Purchase Agreement ("PPA") for the KAA's operation of the existing ADC hydroelectric power plants, and royalties from the KIUC Project.

Executive Order 4287. The right to take water into and from the Kokee Ditch is granted to ADC pursuant to EO 4287. ADC has proposed that KIUC petition the Board of Land and Natural Resources ("BLNR"), directly, for a water lease. The Department of Land and Natural Resources has been made aware of the current status of water rights under EO 4287, and is in accord with this plan. Irrigation users, such as ADC and KAA would then receive Kokee Ditch water through KIUC's water lease, subject to approval by the BLNR.

DISCUSSION:

The proposed Puu Opaie Project has become a focal point of the CWRM mediation, and represents a potentially advantageous situation for everyone involved. It will provide additional renewable energy production for the island of Kauai, bringing it closer to its goal of achieving at least 50 percent of its electricity from renewable resources by 2023. It will result in the repair and rehabilitation of the Puu Lua Reservoir from its current 60 mg capacity up to as much as its original 260 mg capacity, as well as the repair and rehabilitation of the Puu Opaie and Mana Reservoirs, all at no cost to the State. The anticipated repairs to the upper portion of the Kokee Ditch and its diversions would similarly provide much-needed improvements and efficiency to a system that is nearly 100 years old. The modifications of the diversions would ensure that sufficient water is diverted for reasonable and beneficial uses, such as irrigation and energy production, but would provide for more water to remain in the streams and river. Cost of maintenance and repairs of the upper Kokee Ditch and the Mana Reservoir would also shift away from the State to the KIUC. Royalties received by ADC for this project could be earmarked for the upkeep and repair of other infrastructure in Kekaha, or could be applied to offset

any additional energy that may have to be purchased when the ADC power plants are unable to generate sufficient energy to meet the needs of ADC's tenants.

As currently contemplated, ADC and KAA would retain control and management over the Kekaha Ditch and its diversions, and the Waimea Mauka and Waiawa hydroelectric power plants, the excess power from which KAA sells back to KIUC under a held-over PPA. Negotiations are ongoing over the specifics of a new PPA to ensure that ADC and its tenants can continue to afford to run all pumps and continue all other electricity-driven activities on the ADC and neighboring lands.

All of the affected parties, including KIUC, ADC, KAA, DHHL, DLNR, and community groups, have been diligently negotiating terms that will benefit all. CWRM, its staff and mediator, have been instrumental in bringing the parties together and clarifying each party's needs and positions. A crucial element of the successful mediation of the CWRM issues, and the continuing progress in the development and transition of Kekaha lands away from the large sugar plantation, is the granting of certain interests in those areas under the management of ADC to KIUC for development.

RECOMMENDATION:

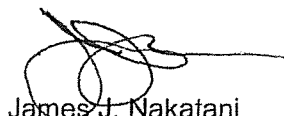
Based on the foregoing, staff recommends that the board (i) authorize the Executive Director and ADC staff to negotiate all agreements, and terms and conditions thereto, all of which are necessary to effectuate the Puu Opae Project, and to ensure that the Puu Opae Project provides sufficient irrigation water and other consideration to ADC and its tenants, and (ii) specifically make the following approvals. These approvals shall be subject to the outcome of the ongoing CWRM mediation and the successful amendment of the RMOA, and shall be void or voidable at the discretion of ADC unless incorporated or otherwise addressed in the resolution of the mediation.

1. The issuance to KIUC of a five (5)-year license no later than December 30th, 2016 with the option to convert the license to a 65-year lease, subject to cancelation or termination if Chapter 343, HRS, environmental assessment requirements cannot be met, of (1) the four diversions on the Kokee Ditch, namely, Waiakoali, Kawaikoi, Kauaikinana, & Kokee, and (2) the Kokee Ditch from the four diversions through the Puu Moe Divide, which license shall include the following preliminary terms and conditions:
 - a. The license shall give KIUC control of Kokee diversions and water diverted; and shall address water allocation and distribution for the Puu Opae Project and for irrigation on both the ADC mauka lands and Mana plains, and shall require water for the Menehune ditch, as needed, should the Kekaha Ditch not be operating due to maintenance.
 - b. The license shall require KIUC to obtain a discharge permit for the discharge of water not utilized by ADC tenants on Mana Plains, if required.
 - c. The license should provide permission to conduct all engineering, biological, and archaeological studies necessary for the construction of the Puu Opae Project and the rehabilitation of the Mana Reservoir.
 - d. The license should provide for irrigation water delivery to the ADC mauka lands at the Puu Moe Divide, and to the Mana plain lands through Mana Reservoir.
2. The issuance to KIUC of a five (5)-year license no later than December 30th, 2016 with the option to convert to a 65-year lease, subject to cancelation or termination if Chapter 343,

HRS, environmental assessment requirements cannot be met, of (1) the Mana Reservoir, and (2) adequate land at, near, and around the Mana Reservoir for construction of the Mana Powerhouse to be located adjacent to the Mana Reservoir, and which license shall include the following preliminary terms and conditions:

- a. The license shall include negotiated terms and conditions for 65-year lease that allows conversion without further ADC approvals other than obtaining all necessary state and federal permits and providing the environmental disclosure document, unless the Puu Opae Project materially changes in design or concept.
 - b. The license shall specify royalties that KIUC shall pay to ADC and/or KAA, at ADC's discretion, on terms and conditions acceptable to ADC.
3. The issuance of easements for the following:
- a. Access roads to the Kokee Ditch for the purpose of ditch access and maintenance.
 - b. Access roads to the Mana Reservoir for the purpose of access to Mana Reservoir, powerhouse, and substation.
 - c. A construction easement for the construction of the pressurized pipeline segment of the Mana Plains, and a long term easement for its maintenance.
 - d. Access roads for maintenance of the new pressurized pipeline for the purpose of maintenance.
 - e. A construction easement for the construction of the Puu Opae Project powerhouse and substation adjacent to Mana Reservoir, and for the construction of the Mana Reservoir.
 - f. The Puu Opae Project electrical transmission lines and pressurized pipeline.
4. The issuance of a request to the BLNR to withdraw the right to take water, currently granted to ADC, from Executive Order 4287.
5. The support of ADC in KIUC's anticipated request to the BLNR for a water lease, in an amount that will ensure that the ADC mauka and Mana plain lands have sufficient irrigation water for agricultural purposes.
6. The renegotiation of the RMOA with the KAA on all impacted terms of the RMOA.
7. The renegotiation of Syngenta's license to modify the license to accommodate the CWRM mediation and the Puu Opae Project.

Respectfully submitted,



James J. Nakatani
Executive Director

EXHIBIT "3"

[Certificate of Insurance Form]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328--GAWXP-16-17	CONTACT NAME: PHONE (A/C No. Ext): FAX (A/C No.): E-MAIL: ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Ins Co INSURER B: N/A INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F: NAIC # 23035 N/A 26883
--	--

COVERAGES **CERTIFICATE NUMBER:** SEA-003150920-00 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		AS2-641-005078-076	11/01/2016	11/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE				EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N/A	WC2-641-005078-066	11/01/2016	11/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	POLLUTION LEGAL LIABILITY		PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: LICENSE FOR KOKEE DITCH AND DIVERSIONS - WAIAKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER

AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. BERETANIA STREET, ROOM 205
HONOLULU, HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Rocco Sansone

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AGENCY CUSTOMER ID: 226328

LOC #: Honolulu

**ADDITIONAL REMARKS SCHEDULE**

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LICENSE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE

LICENSE AGREEMENT NO. _____

TERM: 5 YEARS

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCES. THIS LICENSE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' ANY AND ALL PERMISSIONS THAT MAY BE REQUIRED TO CONDUCT ALL ENGINEERING, BIOLOGICAL, AND ARCHAEOLOGICAL STUDIES NECESSARY TO MEET THE ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR THE DEVELOPMENT OF THE PUU OPAE PROJECT. NON-EXCLUSIVE RIGHTS ALLOWED TO USE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS, ALONG WITH EXCLUSIVE RIGHTS TO MAKE MODIFICATIONS TO THE FOUR KOKEE DIVERSIONS- WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE AND TO MONITOR, MAINTAIN AND CONTINUE OPERATION OF THE DELIVERY OF WATER FOR AGRICULTURAL IRRIGATION.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328--GAWXP-16-17	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Ins Co INSURER B: N/A INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F:	NAIC # 23035 N/A 26883
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COVERAGES **CERTIFICATE NUMBER:** SEA-003150927-00 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: LEASE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER **CANCELLATION**

AGRIBUSINESS DEVELOPMENT CORPORATION 235 S. BERETANIA STREET, ROOM 205 HONOLULU, HI 96813	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Rocco Sansone
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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LEASE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE

LEASE AGREEMENT NO. _____

TERM: 65 YRS.

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCE THIS LEASE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' EXCLUSIVE RIGHTS ALLOWED TO USE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS FOR CONSTRUCTION, REPAIRS, MODIFICATIONS, AND IMPROVEMENTS TO THE INFRASTRUCTURE, AND MAINTAIN AND OPERATE THE DELIVERY OF WATER FOR AGRICULTURAL IRRIGATION UTILIZING THE KOKEE DITCH AND THE FOLLOWING FOUR DIVERSIONS THAT FEED INTO THE KOKEE DITCH - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328-GAWXP-16-17	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Ins Co INSURER B: N/A INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F:	FAX (A/C, No): NAIC # 23035 N/A 26883
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COVERAGES **CERTIFICATE NUMBER:** SEA-003150931-00 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: LICENSE FOR MANA RESERVOIR AND LAND (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER **CANCELLATION**

AGRIBUSINESS DEVELOPMENT CORPORATION 235 S. BERETANIA STREET, ROOM 205 HONOLULU, HI 96813	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Rocco Sansone
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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LICENSE FOR MANA RESERVOIR AND LAND

LICENSE AGREEMENT NO. _____

TERM: 5 YRS.

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCE. THIS LICENSE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' ANY AND ALL PERMISSIONS THAT MAY BE REQUIRED TO CONDUCT ALL ENGINEERING, BIOLOGICAL, AND ARCHAEOLOGICAL STUDIES NECESSARY TO MEET THE ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR THE DEVELOPMENT OF THE PUU OPAE PROJECT. NON-EXCLUSIVE RIGHTS ALLOWED TO USE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS TO ASSIST IN THE REHABILITATION OF THE MANA RESERVOIR.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328--GAWXP-16-17	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Ins Co INSURER B: N/A INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F:	FAX (A/C, No): NAIC # 23035 N/A 26883
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COVERAGES **CERTIFICATE NUMBER:** SEA-003150934-00 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: LEASE FOR MANA RESERVOIR AND LAND (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER

AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. BERETANIA STREET, ROOM 205
HONOLULU, HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.
Rocco Sansone

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LEASE FOR MANA RESERVOIR AND LAND

LEASE AGREEMENT NO. _____

TERM: 65 YRS

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCE. THIS LEASE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' EXCLUSIVE RIGHTS TO USE THE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS FOR CONSTRUCTION, REPAIRS, MODIFICATIONS, AND IMPROVEMENTS TO THE INFRASTRUCTURE TO REHABILITATE AND REPAIR THE MANA RESERVOIR. CONSTRUCT A POWERHOUSE WITH GENERATING AND PUMPING EQUIPMENT. CONSTRUCT A SUBSTATION ADJACENT TO THE POWERHOUSE WITH OVERHEAD ELECTRIC TRANSMISSION FACILITIES TO CONNECT THE PROJECT TO THE EXISTING KIUC GRID. MAINTAIN AND OPERATE THE FACILITIES AT THE MANA RESERVOIR AND SURROUNDING LAND AREA FOR THE DURATION OF THE LEASE, AND TO CONTINUE WATER DELIVERY FOR AGRICULTURAL PURPOSES TO ADC.

EXHIBIT "C"

[Form of Certificate of Insurance]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
226328--GAWXP-16-17	INSURER(S) AFFORDING COVERAGE	
INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	INSURER A: Liberty Mutual Fire Ins Co	NAIC # 23035
	INSURER B: N/A	N/A
	INSURER C: AIG Specialty Insurance Company	26883
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

SEA-003150920-00

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			AS2-641-005078-076	11/01/2016	11/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC2-641-005078-086	11/01/2016	11/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: LICENSE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER

AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. BERETANIA STREET, ROOM 205
HONOLULU, HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Rocco Sansone

Rocco Sansone

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AGENCY CUSTOMER ID: 226328

LOC #: Honolulu

**ADDITIONAL REMARKS SCHEDULE**Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LICENSE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE

LICENSE AGREEMENT NO. _____

TERM: 5 YEARS

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCES. THIS LICENSE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' ANY AND ALL PERMISSIONS THAT MAY BE REQUIRED TO CONDUCT ALL ENGINEERING, BIOLOGICAL, AND ARCHAEOLOGICAL STUDIES NECESSARY TO MEET THE ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR THE DEVELOPMENT OF THE PUU OPAE PROJECT. NON-EXCLUSIVE RIGHTS ALLOWED TO USE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS, ALONG WITH EXCLUSIVE RIGHTS TO MAKE MODIFICATIONS TO THE FOUR KOKEE DIVERSIONS- WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE AND TO MONITOR, MAINTAIN AND CONTINUE OPERATION OF THE DELIVERY OF WATER FOR AGRICULTURAL IRRIGATION.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328-GAWXP-16-17	CONTACT NAME:	FAX (A/C, No):	
	PHONE (A/C, No, Ext):	E-MAIL ADDRESS:	
INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Liberty Mutual Fire Ins Co		23035
	INSURER B: N/A		N/A
	INSURER C: AIG Specialty Insurance Company		26883
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** SEA-003150927-00 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: LEASE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER AGRIBUSINESS DEVELOPMENT CORPORATION 235 S. BERETANIA STREET, ROOM 205 HONOLULU, HI 96813	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Rocco Sansone
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AGENCY CUSTOMER ID: 226328

LOC #: Honolulu

**ADDITIONAL REMARKS SCHEDULE**Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LEASE FOR KOKEE DITCH AND DIVERSIONS - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE

LEASE AGREEMENT NO. _____

TERM: 65 YRS.

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCE THIS LEASE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' EXCLUSIVE RIGHTS ALLOWED TO USE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS FOR CONSTRUCTION, REPAIRS, MODIFICATIONS, AND IMPROVEMENTS TO THE INFRASTRUCTURE, AND MAINTAIN AND OPERATE THE DELIVERY OF WATER FOR AGRICULTURAL IRRIGATION UTILIZING THE KOKEE DITCH AND THE FOLLOWING FOUR DIVERSIONS THAT FEED INTO THE KOKEE DITCH - WAIKOALI, KAWAIKOI, KAUAIKINANA, AND KOKEE.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328-GAWXP-16-17	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Ins Co INSURER B: N/A INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F:	NAIC # 23035 N/A 26883
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COVERAGES

CERTIFICATE NUMBER:

SEA-003150931-00

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: LICENSE FOR MANA RESERVOIR AND LAND (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER

AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. BERETANIA STREET, ROOM 205
HONOLULU, HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Rocco Sansone

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LICENSE FOR MANA RESERVOIR AND LAND

LICENSE AGREEMENT NO. _____

TERM: 5 YRS.

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCE. THIS LICENSE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' ANY AND ALL PERMISSIONS THAT MAY BE REQUIRED TO CONDUCT ALL ENGINEERING, BIOLOGICAL, AND ARCHAEOLOGICAL STUDIES NECESSARY TO MEET THE ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR THE DEVELOPMENT OF THE PUU OPAE PROJECT. NON-EXCLUSIVE RIGHTS ALLOWED TO USE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS TO ASSIST IN THE REHABILITATION OF THE MANA RESERVOIR.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 745 FORT STREET, SUITE #1100 HONOLULU, HI 96813 (808) 585-3500 226328--GAWXP-16-17	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Ins Co INSURER B: N/A INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F:	NAIC # 23035 N/A 26883
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COVERAGES **CERTIFICATE NUMBER:** SEA-003150934-00 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			TB2-641-005078-086	11/01/2016	11/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ OTHER: \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	POLLUTION LEGAL LIABILITY			PLS1957792	11/01/2015	11/01/2018	EACH INCIDENT / AGGREGATE \$25,000,000 DEDUCTIBLE - EACH INCIDENT \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: LEASE FOR MANA RESERVOIR AND LAND (SEE PAGE 2)

AGRIBUSINESS DEVELOPMENT CORPORATION IS INCLUDED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CERTIFICATE HOLDER

AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. BERETANIA STREET, ROOM 205
HONOLULU, HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Rocco Sansone



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED KAUAI ISLAND UTILITY COOPERATIVE 4463 PAHE'E STREET, SUITE 1 LIHUE, HI 96766-2000	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

AIG SPECIALTY INSURANCE COMPANY:

THIS INSURANCE CONTRACT IS ISSUED BY AN INSURER WHICH IS NOT LICENSED BY THE STATE OF HAWAII AND IS NOT SUBJECT TO ITS REGULATION OR EXAMINATION. IF THE INSURER IS FOUND INSOLVENT, CLAIMS UNDER THIS CONTRACT ARE NOT COVERED BY ANY GUARANTY FUND OF THE STATE OF HAWAII.

ADC LEASE FOR MANA RESERVOIR AND LAND

LEASE AGREEMENT NO. _____

TERM: 65 YRS

PROPERTY: TAX MAP KEY (4)1-2-02:POR.1, KEKAHA, WAIMEA, KAUAI

DESCRIPTION:

THE PUU OPAE PROJECT WILL MAXIMIZE RENEWABLE ENERGY POTENTIAL BY CONSTRUCTING A HYDROELECTRIC ENERGY GENERATION FACILITY THAT WILL INTEGRATE PUMPED STORAGE, STORE AND RELEASE HYDROELECTRIC GENERATION FOR THE EFFICIENT USE OF WATER RESOURCE. THIS LEASE AGREEMENT GRANTS LICENSEE AND LICENSEE'S AGENTS AND CONTRACTORS' EXCLUSIVE RIGHTS TO USE THE LANDS AND FACILITIES, ROADWAYS & UTILITY EASEMENTS FOR CONSTRUCTION, REPAIRS, MODIFICATIONS, AND IMPROVEMENTS TO THE INFRASTRUCTURE TO REHABILITATE AND REPAIR THE MANA RESERVOIR. CONSTRUCT A POWERHOUSE WITH GENERATING AND PUMPING EQUIPMENT. CONSTRUCT A SUBSTATION ADJACENT TO THE POWERHOUSE WITH OVERHEAD ELECTRIC TRANSMISSION FACILITIES TO CONNECT THE PROJECT TO THE EXISTING KIUC GRID. MAINTAIN AND OPERATE THE FACILITIES AT THE MANA RESERVOIR AND SURROUNDING LAND AREA FOR THE DURATION OF THE LEASE, AND TO CONTINUE WATER DELIVERY FOR AGRICULTURAL PURPOSES TO ADC.

EXHIBIT B

License Agreement No. LI-K1703 (Mana Reservoir, includes map)

[see following pages]

LICENSE AGREEMENT NO. LI-K1703

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LICENSOR

and

KAUAI ISLAND UTILITY COOPERATIVE
a Hawaii not-for-profit electric cooperative
as LICENSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-K1703

THIS LICENSE made and issued this 28th day of August, 2017, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii not-for-profit electric cooperative, the place of business and mailing address of which is 4463 Pahee Street, Suite 1, Lihue, Kauai, Hawaii 96766-2000, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Kekaha, Waimea, Kauai, identified as "Portion of the Government Crown Land of Waimea," and further identified by Tax Map Key (4)1-2-02:por.1, under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, hereinafter referred to as the "Property"; and

WHEREAS, included within the Property are the existing Mana Reservoir and lands surrounding the Mana Reservoir which may be suitable for the construction of a hydroelectric facility, hereinafter referred to as the Mana Powerhouse, all as shown on Exhibit "A"; and

WHEREAS, LICENSOR is authorized to grant licenses for the use of this land and the facilities thereon for public purposes; and

WHEREAS, LICENSEE has proposed a project to make the most efficient use of the Kokee Ditch water resource on the Property by allowing LICENSEE to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side of Kauai, more specifically, by constructing hydroelectric energy generation utilizing the Kokee Ditch from the Kokee Diversions to and ending at the Mana Reservoir (shown on Exhibit "A"), and integrating pumped storage, store and release hydroelectric generation, and the delivery of water for agricultural irrigation (the "Puu Opa Project"); and

WHEREAS, preliminary to the construction and operation of the Puu Opae Project, LICENSEE needs to conduct certain studies, including, but not limited to, studies necessary to meet the environmental assessment requirements of Hawai'i Revised Statutes Chapter 343 ("343 Requirements"), and has requested a license to use the Mana Reservoir and the surrounding land area in order to conduct these studies; and

WHEREAS, provided that LICENSEE successfully meets the 343 Requirements, LICENSEE will require a long-term lease from LICENSOR that grants to LICENSEE the exclusive use, management, and operation of the Premises, including Mana Reservoir, for purposes of the Puu Opae Project; and

WHEREAS, LICENSOR's Board of Directors, at its regular meeting held on November 16, 2016, approved the issuance of five-year license with the option to convert to a 65-year lease for purposes of the development and operation of the Puu Opae Project, subject to certain conditions;

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License Agreement, hereby grants to LICENSEE and LICENSEE's agents and contractors the right to enter upon, and conduct certain activities within, that portion of land and the facilities thereon, as outlined on the map attached hereto and incorporated herein as Exhibit "A", containing a land area of thirty (30) acres, more or less, hereinafter referred to as the "Premises," in furtherance of the Puu Opae Project.

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term of License.

- A. The term of this License Agreement shall be five (5) years, commencing on the date above written.
- B. LICENSOR and LICENSEE may agree to extend the term of this License Agreement any number of times for such period or periods of time as LICENSOR and LICENSEE shall determine is reasonable under the circumstances.
- C. In the event this License is converted to a lease, as provided in paragraph 2, below, this License shall

automatically terminate upon the effective date of the Lease.

- D. In the event LICENSEE decides not to pursue the Puu Opae Project, LICENSEE shall provide written notice thereof to LICENSOR and this LICENSE shall immediately terminate upon LICENSOR's receipt of such notice.

2. Conversion to Lease.

- A. Provided that LICENSEE meets the 343 Requirements, LICENSEE has the option, at its sole discretion, to convert the license of the Premises granted by this License Agreement to a sixty-five (65) year lease of the Premises on substantially the terms, covenants, and conditions set forth in the Lease Agreement attached hereto as Exhibit "B."
- B. LICENSEE's option to convert this License to the Lease shall expire upon expiration (including any extensions thereof) or earlier termination of this License.
- C. The Lease shall not be effective until after the Facilities are removed from the Restated and Amended Memorandum of Agreement between LICENSOR and the Kekaha Agricultural Association.

3. Character of Use.

- A. LICENSEE shall have the non-exclusive right to enter upon and use the Premises in order to conduct studies in furtherance of the Puu Opae Project, together with the right to use, in common with other licensees of lands and/or facilities included within the Property, the roadways providing ingress and egress to and from the Premises and the right to use utility easements serving the Premises.
- B. This License Agreement grants LICENSEE, its agents and contractors any and all permissions that may be required by LICENSOR for LICENSEE to conduct all engineering, biological, and archaeological studies necessary for the development of the Puu Opae Project and the rehabilitation of the Mana Reservoir.
- C. Except as otherwise specifically provided herein, during the term of this license, LICENSEE shall not

construct, place, maintain, or install on the Premises any building, structure, signs or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose.

D. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.

E. LICENSEE shall keep the Premises in a strictly clean, sanitary, and orderly condition.

4. License Fee. The license fee for this License Agreement is waived.

5. Sublicense or Assignment. LICENSEE shall not sublicense the whole or any portion of the Premises, or assign this License Agreement, without prior consent of LICENSOR, which consent may be withheld in LICENSOR's sole discretion. Any sublicense or assignment request shall be submitted in writing to LICENSOR, together with the material terms of the sublicense agreement for LICENSOR's consideration. Profit on any sublicense or assignment charges are not allowed, and therefore, shall not be sought by LICENSEE.

6. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.

7. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts,

liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License after a reasonable time or pursuant to any right of action which LICENSOR may have.

8. Liability Insurance.

- A. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways and sidewalks on or adjacent to the Premises in use by LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawai'i or such other insurance company or companies as may be approved by LICENSOR. LICENSEE shall have no obligation under this License Agreement to procure or maintain any commercial general liability insurance with regard to any activities of any other entity (including, but not limited to, LICENSOR) which may have use or control, from time to time, of the Premises or the Property, or any portion thereof.
- B. LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the date of issuance of this License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy(ies) shall name LICENSOR as an additional

insured. LICENSOR concurs that LICENSEE furnishing a certificate of insurance in substantially the same form and with substantially the same terms as shown in Exhibit C, attached hereto, shall be sufficient to meet the terms of this subparagraph.

- C. LICENSEE shall be responsible for ensuring that any and all agents, representatives, contractors, independent contractors, and any other person or entity on the premises for the benefit of LICENSEE shall also be in compliance with all insurance requirements hereinunder.
- D. LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions of this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.
- E. The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

9. LICENSEE's Risk. Any and all goods, wares, supplies, equipment and personal property of any kind or description are owned by or in the control of LICENSEE that may be on the Premises at any time during the term of this License Agreement shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water,

defective electric wiring, fire, or by any other cause whatsoever.

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

11. Costs of Litigation.

A. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), with or without any fault on LICENSOR's part, each party shall bear its own fees and costs.

B. If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings), with or without any fault on LICENSEE's part, each party shall bear its own fees and costs.

12. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawai'i, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of or resulting from: (1) any act or omission on the part of LICENSEE relating to LICENSEE's use, occupancy, maintenance, or enjoyment of the Premises; (2) any failure on the part of LICENSEE to maintain the portion(s) of the Premises that are under LICENSEE's use and control in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

13. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.

14. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including, but not limited to, Chapter 343, Hawai'i Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, and county clearances.

15. Hazardous Materials.

- A. LICENSOR remains responsible under a prior agreement with the State Department of Land and Natural Resources for addressing any issue identified as having occurred prior to or during Kekaha Sugar's occupancy of the Premises as reported in the Phase I Environmental Assessment prepared by Clayton Group Services dated August 7, 2013 ("Clayton Report"). Any environmental issue occurring on the Premises after the date of this License Agreement shall be governed by the following provisions.
- B. During the term of this License Agreement, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing. In the event that the results of such testing do not establish that there has been any release of hazardous materials on the Premises by LICENSEE, LICENSOR shall be responsible for the costs of such testing.

- C. LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises (other than those already disclosed in the Clayton Report) which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.
- D. LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to LICENSEE's generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License Agreement, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4), including, without limitation, reasonable attorneys' fees.

E. The provisions of this paragraph shall survive the expiration or earlier termination of this License Agreement.

16. Commercial Operations. LICENSEE shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever are permitted without the prior written approval of LICENSOR.

17. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land disturbance and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawai'i Revised Statutes, and shall notify LICENSOR of these events.

18. Land Clearing. The area of the Premises has not had a completed archaeological inventory survey. Prior to commencement of the term of this License Agreement, LICENSOR shall notify LICENSEE in writing of any historic sites in the area of the Premises known to LICENSOR. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division ("HPD") shall be contacted prior to any work. A field check will be required and shall be performed by the HPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeological inventory performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to HPD for review and approval. The report shall include:

- (i) detailed drawings of burials and deposits to scale;
- (ii) sketches and photographs of all artifacts;
- (iii) analyses of all perishable and datable remains;
- (iv) stratigraphic profiles that are drawn and made to scale;
- (v) an overall map of the project area, which includes the location of all historic sites;

- (vi) initial significance evaluations for each historic site found; and
- (vii) documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries during work, all in accordance with Hawai'i Revised Statutes Section 6E-43.

19. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees to the Property, including the Premises.

20. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.

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

22. Exhibits. Incorporation in License. All Exhibits referred to in this License Agreement are attached to this License Agreement and are hereby deemed incorporated by reference.

23. Counterparts. This Agreement may be executed in counterparts and shall be effective upon the date above written.

24. Recordation. LICENSEE and LICENSOR agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawai'i or with the Assistant Registrar of the Land Court of the State of Hawai'i, as applicable, to give notice of this License Agreement to third parties and of the license of the Facilities granted hereunder by LICENSOR to LICENSEE for the term specified herein.

25. Definitions. As used in this License Agreement, unless the context otherwise requires:

"Property" means the approximately 12,500 acres of land set aside to LICENSOR under Governor's Executive Order No. 4007, as modified by Governor's Executive Order nos. 4034 and 4165, including buildings and improvements.

"Premises" includes the land hereby licensed, containing an land area of thirty (30) acres, more or less, and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License Agreement.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state or local environmental law, regulation, ordinance, rule or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the

Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its successors and permitted assigns.

"Waste" includes (1) conducting any act or omission that causes the Premises or any portion thereof to become unduly damaged or failure to take proper precautions or make reasonable effort to prevent or correct same; and (2) conducting any act or omission that causes any material increase in noxious weeds or alien plant species in or on the Premises or any portions thereof.

"Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this _____ day of _____, 20____.

LICENSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By _____
Executive Director

LICENSEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii not-for-profit electric cooperative

By David J. Bissell
David J. Bissell
Its President & Chief Executive Officer

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 28th day of August, 2017.

LICENSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By _____
Executive Director

LICENSEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii not-for-profit electric cooperative

By _____

Its President & Chief Executive Officer

APPROVED AS TO FORM:

_____
Deputy Attorney General

Dated: 8/23/17

STATE OF HAWAII

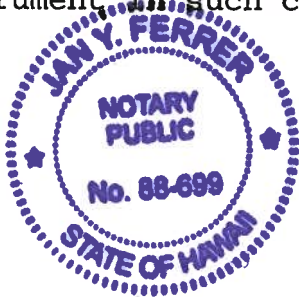
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) SS.

CITY AND COUNTY OF HONOLULU

)

On this 28th day of August, 2017, before me personally appeared James J. Nakatani, to me personally known or adequately proven to be the person in and who executed the foregoing License Agreement, dated undated, 20-, in the First Judicial Circuit of the State of Hawaii, consisting of 76 pages, 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.



[Signature]

Notary Public, State of Hawaii
Print Name: **Jan Y. Ferrer**

My commission expires: 11/29/20

STATE OF HAWAII

)

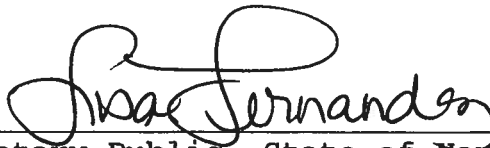
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SS.

)

COUNTY OF KAUAI

On this 11th day of August, 2017, before me personally appeared David J. Bissell, to me personally known or adequately proven to be the person in and who executed the foregoing License Agreement, dated undated, 20-, in the Fifth Judicial Circuit of the State of Hawaii, consisting of -78- pages, 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.



Notary Public, State of Hawaii

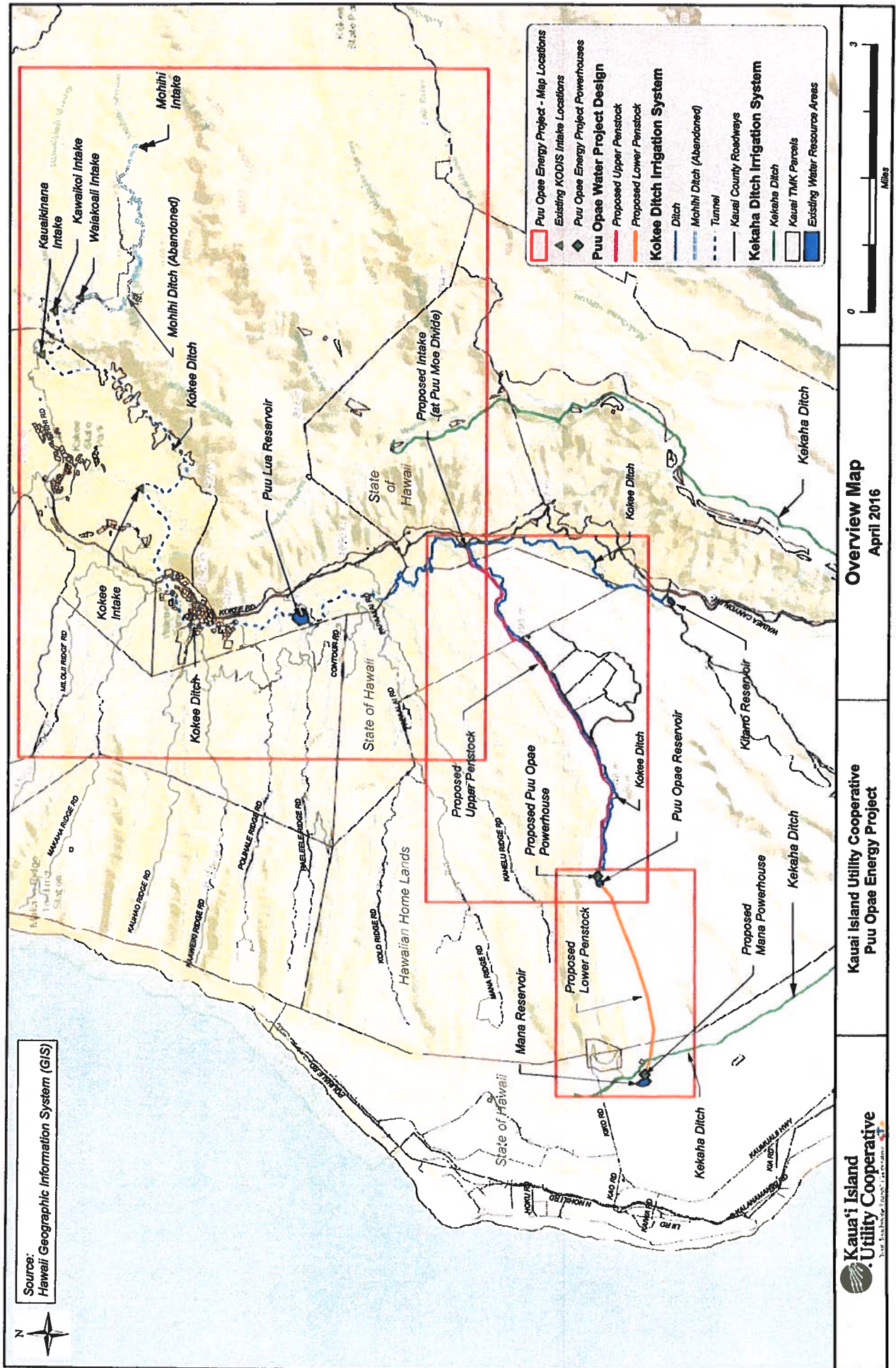
Print Name: Lisa Fernandez

My commission expires: 8/11/18



EXHIBIT "A"

[Map showing location of Facilities]



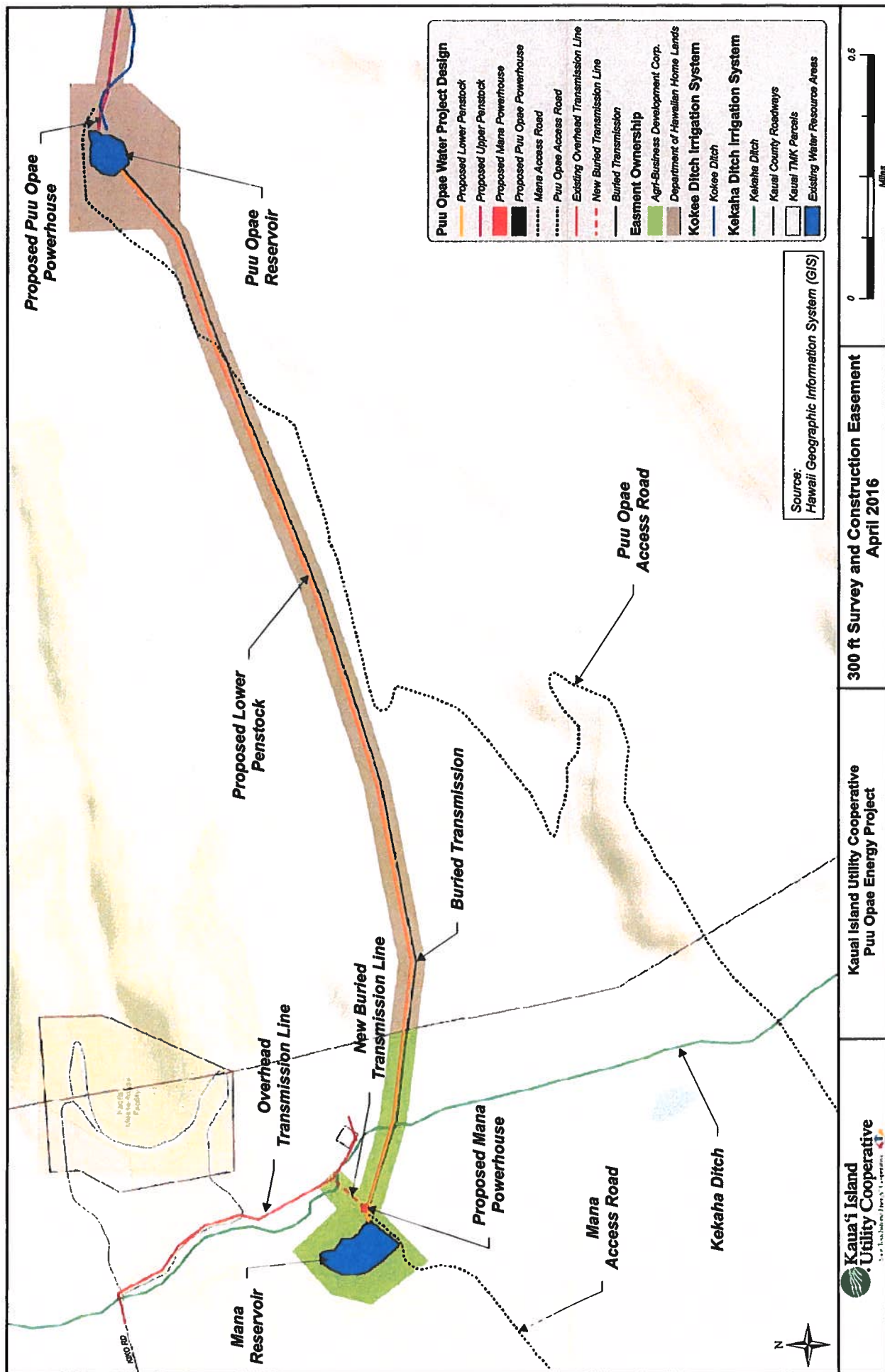


EXHIBIT "B"

[Lease]

LEASE AGREEMENT NO. _____

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LESSOR

and

KAUAI ISLAND UTILITY COOPERATIVE
a Hawaii not-for-profit electric cooperative
as LESSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LEASE AGREEMENT NO. _____

THIS LEASE made and issued this _____ day of _____, 20__, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LESSOR," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii not-for-profit electric cooperative, the place of business and mailing address of which is 4463 Pahee Street, Suite 1, Lihue, Kauai, Hawaii 96766-2000, hereinafter called "LESSEE."

W I T N E S S E T H:

WHEREAS, LESSOR is obligated to manage and operate that certain parcel of land situated at Kekaha, Waimea, Kauai, identified as "Portion of the Government Crown Land of Waimea," and further identified by Tax Map Key (4)1-2-02:por.1, under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, hereinafter referred to as the "Property"; and

WHEREAS, included within the Property are the existing Mana Reservoir and lands surrounding the Mana Reservoir which are suitable for the construction of a hydroelectric facility, hereinafter referred to as the Mana Powerhouse, all as shown on Exhibit "1"; and

WHEREAS, LESSOR is authorized to grant leases for the use of this land and the facilities thereon for public purposes; and

WHEREAS, LESSEE has proposed a project to make the most efficient use of the Kokee Ditch water resource on the Property by allowing LESSEE to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side of Kauai, more specifically, by constructing hydroelectric energy generation utilizing the Kokee Ditch from the Kokee Diversions to and ending at the Mana Reservoir (shown on Exhibit "1"), and integrating pumped storage, store and release hydroelectric generation, and the delivery of water for agricultural irrigation (the "Puu Opae Project"); and

WHEREAS, pursuant to License Agreement No. _____, issued on _____, 2017 ("License"), LESSEE (as the Licensee under said License Agreement) has conducted studies necessary for the development of the Puu Opae Project; and

WHEREAS, LESSEE has met the environmental assessment requirements of Hawai'i Revised Statutes Chapter 343 ("343 Requirements"), by publication and acceptance of the Final Environmental Impact Statement as noticed in the _____, 201_ Bulletin of the Office of Environmental Quality Control; and

WHEREAS, LESSEE has exercised its option to convert the License to this Lease, in accordance with the action taken by LESSOR's Board of Directors, at its regular meeting held on November 16, 2016;

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LESSEE, LESSOR, pursuant to and as set forth in this Lease Agreement, hereby grants to LESSEE the exclusive right to use that portion of land and the improvements thereon, now existing or to be repaired, improved, or constructed, hereinafter referred to as the "Facilities", as outlined on the map attached hereto and incorporated herein as Exhibit "1", and more particularly described in Exhibit "2" attached hereto and incorporated herein, containing a land area of twenty (20) acres, more or less, hereinafter referred to as the "Premises."

The lease of the Premises hereby granted by LESSOR to LESSEE shall be together with the right to use, in common with other licensees and lessees, lands and/or other facilities included within the Property, the roadways providing ingress and egress to and from the Premises and the right to use utility easements serving the Premises.

THE TERMS AND CONDITIONS upon which LESSOR grants the aforesaid Lease are as follows:

1. Term of Lease.

- A. The term of this Lease shall commence on the date above written and expire on the earlier of (a) midnight of the last day of the month which is sixty-five (65) years following the date that LESSEE places the Puu Opae Project in service; or (b) such time as LESSEE ceases to operate the Puu Opae Project; unless

sooner terminated or extended as herein provided. For purposes of this Lease, the date that the Puu Opae Project is placed in service shall be the date that the Mana Powerhouse first generates and delivers electrical energy to the LESSEE's grid. LESSEE shall provide LESSOR written notice of the placed in service date and documentation substantiating said date in the form of Mana Powerhouse revenue meter readings.

2. Lease Fee. There shall be no lease fee charged to the LESSEE during the term of this Lease Agreement. However, as consideration for these presents, LESSEE shall perform and deliver the following:

A. Component 1 - Infrastructure Repairs and Improvements: During the term of this Lease Agreement, LESSEE, itself or through its agents, shall:

- i. Rehabilitate and repair the Mana Reservoir, including repairs necessary to bring the Mana Reservoir into compliance with the State of Hawaii's Dam Safety Regulations.
- ii. Construct a pressurized pipe system for water delivery between the Puu Opae Reservoir and the Mana Reservoir, as shown on Exhibit "1".
- iii. Construct a powerhouse with generating and pumping equipment.
- iv. Construct a substation adjacent to the new powerhouse and an overhead transmission line to connect the Puu Opae Project to the existing KIUC power lines.

B. Component 2 - Operation & Maintenance of Facilities: Commencing on the date that the Puu Opae Project is placed in service and thereafter throughout the term of this Lease, LESSEE shall assume the expense and responsibility for the ongoing operation and maintenance of the Mana Reservoir.

C. Component 3 - Delivery of Irrigation Water: Commencing on the date that the Puu Opae Project is placed in service and thereafter throughout the term of this Lease, LESSEE shall deliver irrigation water to lands owned or controlled by LESSOR as set forth in Paragraph 4 of the Addendum to this Agreement.

3. Taxes, Assessments, and Utilities. LESSEE shall pay, if and when due, LESSEE's proportionate share of all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of the Lease be lawfully charged, assessed, imposed, or become due and payable upon or in respect of the Premises and the improvements now on or hereafter erected by LESSEE thereon. In the event that any taxes or similar rates, assessments, charges, or outgoings are levied against any tract of land or property, including the Property, which includes the Premises, LESSEE's proportionate share shall be based on the ratio that the total acreage comprising the Premises bears to the total acreage of such larger property subject to any such taxes, rates, assessments, charges, and outgoings.

4. Character of Use. LESSEE shall not commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.

- A. LESSEE shall use the Premises solely for purposes related to making the most efficient use of the water resource on the Property, to allow LESSEE to maximize renewable generation during the evening peak demand hours, and to support irrigation on the west side of Kauai. LESSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this Lease Agreement.
- B. No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.
- C. All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.
- D. No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LESSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

E. No solid or liquid animal waste shall be disposed of at the Premises.

F. LESSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LESSEE's use of the Premises and to address any material increase in weeds or litter on the Premises.

5. Utilization and Development of the Land. LESSEE shall utilize and develop the Premises in accordance with the submittal from the Executive Director of the Agribusiness Development Corporation ("ADC") to the ADC Board of Directors dated November 16, 2016, attached as Exhibit "3" hereto. Any material modification or deviation from LESSEE's utilization and development plan without the prior written approval of LESSOR may constitute a breach of this Lease and a cause for termination thereof.

6. Sublease and Assignment. LESSEE shall not sublease or rent the whole or any portion of the Premises, or assign this Lease Agreement, without the prior consent of LESSOR, which consent may be withheld in LESSOR's sole discretion. Any sublease or assignment request shall be submitted in writing to LESSOR, together with the material terms of the sublease agreement for LESSOR's consideration. Profit on any sublease or assignment charges are not allowed, and therefore, shall not be sought by LESSEE. Notwithstanding the above, LESSOR hereby consents to and approves of LESSEE subleasing the Premises (or any portion thereof) or assigning this Lease Agreement to subsidiary of LESSEE or to a joint venture in which LESSEE is a joint venturer.

At no time during the term of the Lease shall LESSEE assign, mortgage, pledge, or otherwise encumber its interest in this Lease or its interest in the Facilities without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

7. Sanitation. LESSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this Lease.

8. Improvements. During the term of this Lease, LESSEE shall not construct, place, maintain, or install on the Premises any

building, structure, signs, or improvement, except with the prior written approval of LESSOR and upon such conditions as LESSOR may impose. The preceding sentence shall not apply to (i) any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LESSOR under any prior permit or agreement pursuant to which LESSEE or any of LESSEE's permitted assigns, sub-lessees, or permittees occupied the Premises before the effective date of this Lease Agreement, and (ii) the infrastructure repairs and improvements set forth as Component 1 of the Lease Fee in Paragraph 2. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph ("Improvements") shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LESSEE until the expiration or sooner termination of this Lease, at which time LESSOR, at LESSOR's option, may acquire ownership of any or all of said Improvements by purchasing same from LESSEE at fair market value, or shall be removed by LESSEE at LESSEE's sole cost and expense; provided, however, that at the termination of this Lease, ownership of the improvements set forth in Component 1 of Paragraph 2, above (Lease Fee) shall be in LESSOR.

9. Repairs to Improvements. LESSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except as explicitly provided herein, LESSEE shall have no obligation under this Lease Agreement to keep, repair, or maintain, or to pay any assessment or charges for, any other infrastructure improvements on, in, or around the Premises.

10. Involuntary Liens. LESSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LESSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LESSEE.

11. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LESSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.

12. Non-Discrimination. LESSEE shall not use the Premises, nor permit the Premises to be used, in support of any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LESSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

13. Breach or Default. It is expressly agreed that this Lease is contingent upon the continuing condition that, if LESSEE fails to observe or perform substantially the provisions contained herein, and if LESSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, after delivery by LESSOR of a written notice of such failure by personal service or by registered or certified mail to LESSEE; or, if LESSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LESSEE's debts, liabilities or obligations; then, in any such event, LESSOR may, at its option, to the extent permitted by law, cancel this Lease and thereupon take immediate possession of the Facilities, after a reasonable time or pursuant to any right of action which LESSOR may have.

14. Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this Lease, of LESSOR's right to re-entry for breach of covenant, or of LESSOR's right to declare and enforce a forfeiture for any breach; and the failure of LESSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

16. Liability Insurance. LESSEE shall procure and maintain during the entire period of this Lease a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LESSEE. The minimum limit of said policy or policies shall not be less than \$1,000,000.00 for each occurrence and aggregate, with an

insurance company or companies licensed to do business in the State of Hawai'i or such other insurance company or companies as may be approved by LESSOR. LESSEE shall have no obligation under this Lease to procure or maintain any commercial general liability insurance with regard to any activities of any other entity (including LESSOR) which has control from time to time over any of the other infrastructure improvements on the Property.

LESSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of its Lease, whichever is sooner, shall furnish LESSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the Lease, and furnish like certificate(s) upon each renewal of the policy(s). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LESSEE, except that, in the event this Lease is terminated, said insurance may be terminated on the same date as the Lease. The policy shall name LESSOR as an additional insured. LESSOR concurs that LESSEE furnishing a certificate of insurance in substantially the same form and with substantially the same terms as shown in Exhibit 4, attached hereto, shall be sufficient to meet the terms of this paragraph.

LESSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Lease. If, in the opinion of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR, LESSOR may require LESSEE and any permitted sub-lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LESSOR incorporating the required changes within thirty (30) days of LESSEE's receipt of the notice from LESSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LESSEE's liability under this Lease. Notwithstanding the policy(ies) of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury,

or loss caused by LESSEE's negligence or neglect connected with this Lease.

17. Property Insurance. At all times during the term of this Lease, LESSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LESSOR prior to the commencement date of this Lease Agreement, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LESSOR as an additional insured.

LESSEE shall furnish to LESSOR on or before the commencement date of this Lease a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LESSEE, except that, in the event this Lease is terminated, said insurance may be terminated on the same date as the Lease. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

17. Right to Enter. LESSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.

18. Inspection of Premises. LESSEE shall permit LESSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LESSEE in connection with the administration of this License.

19. Surrender. At the end of the term or other sooner termination of this Lease, LESSEE shall peaceably deliver unto LESSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this Lease. Furthermore, upon the expiration, termination, or revocation of this Lease, should LESSEE fail to remove any and all of LESSEE's personal property from the Premises, LESSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such

personal property in storage at the cost and expense of LESSEE. LESSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LESSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

20. Withdrawal for Public Purpose; Condemnation.

- A. LESSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this Lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes; provided that, upon any withdrawal or taking which causes any portion of the Premises to become unusable for the specific use or uses for which it was leased, the Lease Fee, as set forth in Paragraph 2, shall be reduced in proportion to the value of the Premises withdrawn or made unusable to the Puu Opae Project. If any permanent improvement constructed upon the land by LESSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LESSOR to LESSEE based upon the unexpired term of this Lease; provided that upon any withdrawal or taking, LESSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LESSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. If any withdrawal or taking in LESSEE's reasonable determination makes the Premises unusable by LESSEE for the purposes and uses for which LESSEE is then using the Premises or makes the Puu Opae Project unfeasible or uneconomical, LESSEE shall have the right to terminate this Lease Agreement, without waiving any other rights of LESSEE by reason of such withdrawal or taking.
- B. Condemnation. If at any time, during the term of this Lease Agreement, any portion of the Premises shall be condemned or required for public purposes by the Federal government or any county or city and county, or any governmental agency of either, the Lease Fee, as set forth in Paragraph 2, and any other charges under this Lease Agreement, shall be reduced in proportion to the value of the portion of the Premises condemned to the Puu Opae Project. LESSEE shall be

entitled to receive from the condemning authority the proportionate value of LESSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease Agreement; provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. LESSEE shall not by reason of the condemnation be entitled to any claim against the LESSOR for compensation or indemnity for the lease interest and all compensation payable or to be paid for or on account of the land comprising the Premises by reason of the condemnation shall be payable to and be the sole property of the LESSOR. The foregoing rights of LESSEE shall not be exclusive of any other rights to which LESSEE may be entitled by law, and LESSEE shall have the right to claim and recover from the condemning authority, but not from LESSOR, such compensation as may be separately awarded or recoverable in LESSEE's own right on account of such condemnation of LESSEE's interest under this Lease Agreement and any improvements constructed by LESSEE on the Premises. Where the portion of the Premises taken renders the remainder of the Premises unsuitable for the use or uses for which the Premises were leased, or makes the Puu Opae Project unfeasible or uneconomical, LESSEE shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that LESSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LESSOR.

21. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this Lease, LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LESSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE.

22. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LESSOR, for good cause shown, may

allow additional time beyond the time or times specified herein in which LESSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this Lease.

23. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that, upon compliance with Paragraph 2, above (Lease Fee), at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LESSEE to be observed and performed, LESSEE shall have, hold, possess, and enjoy the Premises for the term that the Premises is leased to LESSEE, without hindrance or interruption by LESSOR or any other person or persons lawfully claiming by, through, or under LESSOR.

24. Abandonment and Termination. If, after putting the Premises into service, LESSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, LESSOR shall have the right to terminate this Lease. Any abandonment, termination, or cessation shall not affect or release any liability of LESSEE at such time existing by reason of a breach of any of the terms hereof.

25. Non-warranty. LESSOR does not warrant the condition of the Premises, as the same is being leased "as is." LESSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this Lease, LESSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this Lease, and LESSOR (and/or LESSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.

26. LESSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this Lease, regardless of ownership of such property, shall be at the sole risk and hazard of LESSEE, and LESSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.

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

28. Costs of Litigation. If LESSOR shall be made a party to any litigation commenced by or against LESSEE (other than condemnation proceedings), with or without any fault on LESSOR's part, each party shall bear its own fees and costs.

If LESSEE shall be made a party to any litigation commenced by or against LESSOR (other than condemnation proceedings), with or without any fault on LESSEE's part, each party shall bear its own fees and costs.

29. Indemnity. LESSEE shall indemnify, defend, and hold harmless the State of Hawaii, LESSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, growing out of or caused by any failure on the part of LESSEE to maintain the Premises in a safe condition, or by any act or omission of LESSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

30. Hunting. No hunting shall be allowed on the Premises during the term of this Lease.

31. Boundary Stakeout. LESSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LESSEE shall be solely responsible for any survey and boundary stakeout of the Premises.

32. (Reserved) (Fences).

33. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this Lease. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LESSOR's prior written consent which may be conditioned upon appropriate measures undertaken by

LESSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LESSOR. LESSOR shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

34. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of any successor or substitute entity (including LESSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LESSEE may cross and may have access over and upon all such easements located on the Premises at any point.

35. Compliance with Laws. LESSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.

36. Environmental Regulations. LESSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LESSEE shall be responsible for obtaining all necessary federal, state, or county clearances.

37. Hazardous Materials. LESSOR remains responsible under a prior agreement with the State Department of Land and Natural Resources for addressing any issue identified as having occurred prior to or during Kekaha Sugar's occupancy of the Premises as reported in the Phase 1 Environmental Assessment prepared by Clayton Group Services dated August 7, 2003 ("Clayton Report"). Any environmental issue occurring on the Premises after the date of this Lease shall be governed by the following provisions.

- A. During the term of this Lease, LESSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LESSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be

brought onto the Premises any such materials except to use in the ordinary course of LESSEE's business, and then only after written notice is given to LESSOR of the identity of such materials and upon LESSOR's consent, which consent may be withheld at LESSOR's sole and absolute discretion. LESSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LESSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LESSEE, LESSEE shall, in addition to LESSEE's other obligations hereunder, be responsible for the cost of such testing. In the event that the results of such testing do not establish that there has been any release of hazardous materials on the Premises by LESSEE, LESSOR shall be responsible for the costs of such testing.

- B. LESSEE shall execute affidavits, representations, and the like from time to time at LESSOR's request concerning LESSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LESSEE. If LESSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises (other than those already disclosed in the Clayton Report) which could subject LESSOR, LESSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LESSEE shall immediately advise LESSOR thereof in writing and provide to LESSOR such detailed reports thereof as may be reasonably requested by LESSOR. LESSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.
- C. LESSEE shall be responsible for and shall indemnify, defend, and hold harmless LESSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release,

threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this Lease Agreement, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LESSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LESSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LESSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorneys' fees.

D. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

38. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this Lease, LESSOR, for good cause, may require LESSEE to conduct at LESSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on or within the Premises during the term of this Lease. The termination of this Lease will not be approved by LESSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this Lease.

39. Soil Erosion. It is understood that LESSEE shall be operating diversions, ditches and other appurtenant water control infrastructure. LESSEE shall make efforts and use reasonable and prudent operation procedures and techniques to minimize and prevent soil erosion on or around the Premises, and shall at all times properly implement its conservation plans or soil erosion and sediment control plans.

40. Encumbrances. This Lease is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this Lease, LESSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LESSEE's use of the Premises.

41. Interpretation. The use of any gender shall include all genders. If there is more than one LESSEE, all words used in the singular shall extend to all LESSEES.

42. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Lease.

43. Exhibits - Incorporation in Lease. All Exhibits referred to in this Lease are attached to this Lease and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

44. Holding Over. Any holding over by LESSEE after the expiration of the term of this Lease with the consent of LESSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this Lease Agreement and shall otherwise be on the terms and conditions herein specified, so far as applicable.

45. Recordation. LESSOR and LESSEE agree that this Lease or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this Lease to third parties and of the lease of the Premises granted hereunder by LESSOR to LESSEE for the term specified herein.

46. Force Majeure. LESSEE shall not be in default under this lease if LESSEE's performance is delayed or prevented, or if interruptions, shortages or deficiencies in the delivery of irrigation water, is due to acts of God, the elements, earthquakes, power failure, actions of the federal, state and county governments or agencies thereof, including without limitation, enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or

materials, wars, insurrections, rebellions, civil disorder, declaration of national or state emergencies, or any other cause beyond LESSEE's reasonable control; provided, however, that in the event of a repairable failure, LESSEE shall make reasonable efforts at restoration and performance within a reasonable period of time.

DEFINITIONS

As used in this Lease, unless the context otherwise requires:

"Property" means the approximately 12,500 acres of land set aside to LESSOR under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, including buildings and improvements.

"Premises" includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the Lease.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls,

chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Facilities.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LESSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LESSEE's knowledge, contemplated or threatened by any third party against LESSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LESSEE" includes LESSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly damaged or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or

alien plant species in or on the Premises or any portions thereof; (3) failure to employ all of the usable portions of the Premises; and (4) abandonment of the Premises.

"Days" shall mean calendar days, unless otherwise specified.

THIS LEASE IS SUBJECT TO THE PROVISIONS OF THE ADDENDUM ATTACHED HERETO, WHICH MODIFIES CERTAIN OF THE FOREGOING PROVISIONS OF THIS LEASE. IN CASE OF ANY CONFLICT BETWEEN THE FOREGOING PROVISIONS AND THE PROVISIONS OF THE ADDENDUM, THE PROVISIONS OF THE ADDENDUM SHALL BE CONTROLLING.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this _____ day of _____, 20____.

LESSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By _____
Executive Director

LESSEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii not-for-profit electric cooperative

By _____
Its President & Chief Executive Officer

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

STATE OF HAWAII

)

)SS.

CITY AND COUNTY OF HONOLULU

)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known or adequately proven to be the person in and who executed the foregoing _____, dated _____, 20____, in the First Judicial Circuit of the State of Hawaii, consisting of _____ pages, 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.

Notary Public, State of Hawaii

Print Name:

My commission expires:

STATE OF HAWAII

)

) SS.

COUNTY OF KAUAI

)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known or adequately proven to be the person in and who executed the foregoing _____, dated _____, 20____, in the Fifth Judicial Circuit of the State of Hawaii, consisting of _____ pages, 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.

Notary Public, State of Hawaii

Print Name:

My commission expires:

ADDENDUM

The foregoing Lease and the provisions thereof shall be subject to the following provisions of this Addendum, and, in the event of any conflict between the foregoing terms of the Lease and this Addendum, the provisions of this Addendum shall be controlling. Unless otherwise specified, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

1. Hawaii Revised Statutes, Chapter 343. LESSEE shall comply with the environmental assessment requirements of Hawaii Revised Statutes, Chapter 343, prior to commencing construction of any energy facilities on the Premises.
2. Governmental Permits. LESSEE shall obtain any governmental (e.g., federal, state, or county) permits that are required for the Puu Opae Project. LESSOR agrees to cooperate with and assist LESSEE in obtaining such approvals.
3. Termination Without Penalty. This Lease Agreement shall be terminated without penalty: (i) if LESSEE does not obtain all governmental permits, approvals, and agreements required for the Puu Opae Project by December 31, 2022 (or any later date mutually agreed to by LESSOR and LESSEE), or (ii) if LESSEE does not obtain financing for the Puu Opae Project within two (2) years of obtaining all of the governmental permits, approvals, and agreements required for the Puu Opae Project.
4. Obligation to Deliver Irrigation Water. LESSEE shall deliver irrigation water to LESSOR's lands at the Puu Moe Divide and to the Mana Plains as needed, through the Mana Reservoir. A long-term average (more than 12 months) of up to 11 MGD of irrigation water shall be delivered to the Mana plains through Mana Reservoir. Water will be delivered through Puu Moe Divide to the ADC mauka lands in quantities sufficient for then current irrigation uses but not to exceed 500,000 GPD.

In the event the Kekaha Ditch (shown on Exhibit "1") is not operating due to maintenance, LESSEE shall deliver irrigation water to the Menehune Ditch (shown on Exhibit "1"), as needed; provided that LESSOR or its agent shall notify LESSEE in writing, as much in advance as reasonably possible under the circumstances, of the reason for the need to provide water to the Menehune Ditch, estimated amount of water required to be delivered and the estimated time required to complete the maintenance generating the need to provide water to the Menehune Ditch.

The foregoing obligations to deliver irrigation water are subject to, and limited by, (i) the interim or permanent instream flow standards established by the Hawai'i Commission on Water Resource Management; (ii) actual stream flow availability at any given time; (iii) available reservoir capacity; (iv) force majeure events as set forth in paragraph 46, above; (v) shut downs of the Kokee Ditch diversions, Kokee Ditch system or any component of the Puu Opae Project for reasonable periods for purposes of scheduled or emergency repairs and maintenance as set forth below; and (vi) agreement(s) between LESSOR and the Department of Hawaiian Home Lands relating to proration of water during periods of low ditch flows.

LESSEE may temporarily cease delivery of irrigation water for the purpose of maintenance of, or repairs to, the Kokee Ditch diversions, Kokee Ditch system or any component of the Puu Opae Project. Except in emergencies, LESSEE shall provide LESSOR with no less than ten (10) days notice of LESSEE's intent to shut off water for maintenance or repairs and the period during which water may be shut off for repairs or maintenance; provided that the period during which water may be shut off for scheduled repairs and maintenance shall not exceed seven (7) consecutive days or exceed a total of twenty-one (21) days within a twelve-month period.

5. Discharge Permit. If the State of Hawaii Department of Health Clean Water Branch requires a discharge permit for the discharge of the water not utilized by LESSOR's tenants on the Mana Plains (shown on Exhibit "1"), LESSEE shall obtain such permit.
6. Paragraphs 17, 18, and 21 - Right of Entry and Inspections. In light of the nature of LESSEE's regulated electric public utility activities, LESSOR's right to have reasonable access to the Premises for purposes of inspecting the same shall be

subject to the requirement that LESSOR shall give LESSEE prior written notice of at least seventy-two (72) hours of any such inspection, and LESSOR shall conduct such inspections in accordance with such reasonable guidelines as LESSEE shall provide to protect the security and integrity of such regulated electric public utility activities.

7. Hawaii Public Utilities Commission. LESSOR acknowledges that LESSEE is regulated by the Hawaii Public Utilities Commission ("HPUC") and that therefore, this Lease, or portions thereof, may be subject to approval or investigation by the HPUC. LESSOR agrees to cooperate and assist LESSEE in any such approval or investigation process.

EXHIBIT "1"

[Map showing location of Facilities]

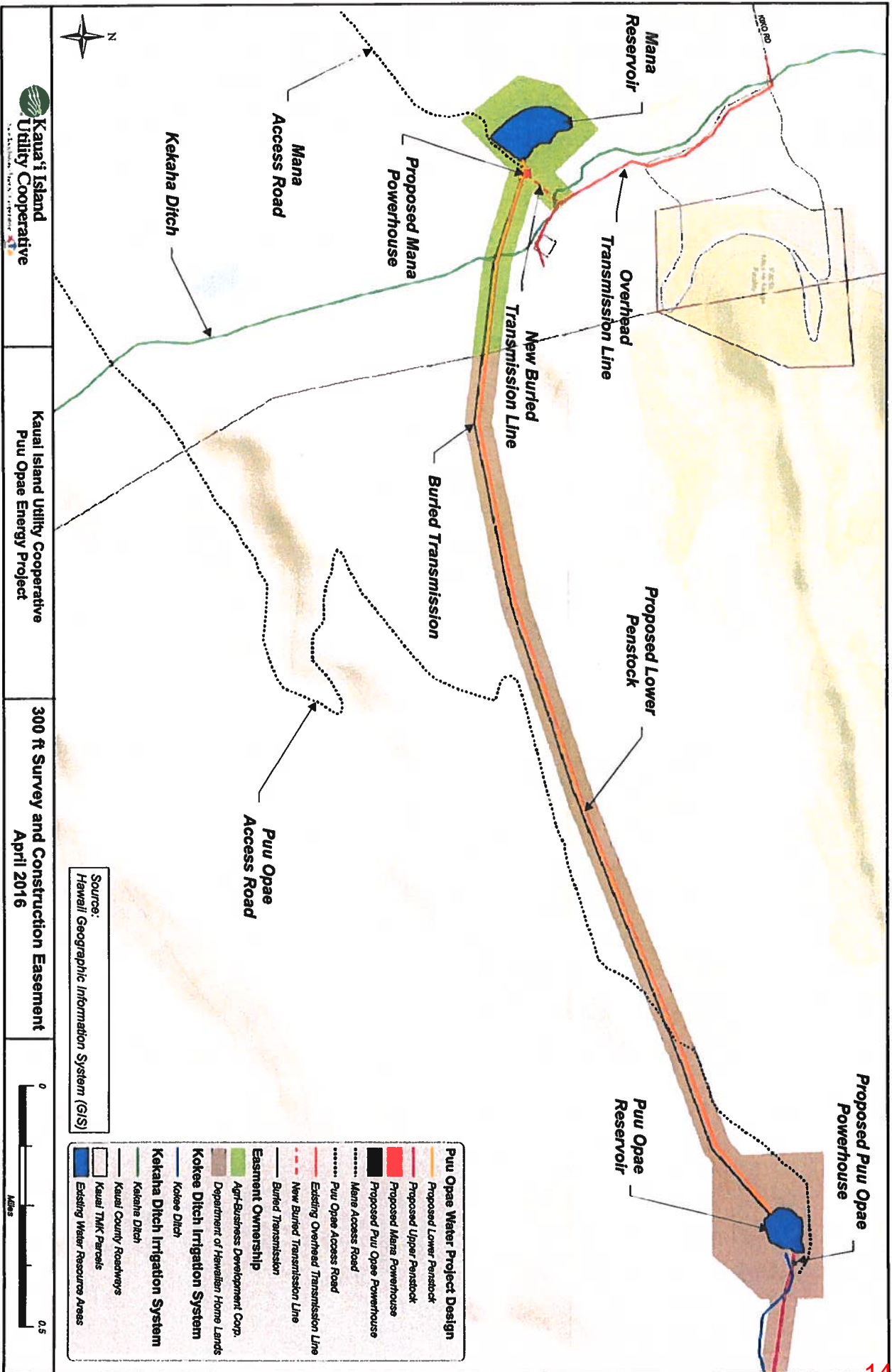


EXHIBIT "2"

[property description of premises]

EXHIBIT "3"

[Board submittal]



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

August 17, 2022

Subject: Presentation by the Board's Investigative Committee on
Agricultural Policy of the Land Management Policy & Procedure
Manual

Authority: Sections 163D-4(a)(15) & 163D-3(f), Hawaii Revised Statutes

BACKGROUND:

On November 10, 2021, the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) authorized the establishment of the Investigative Committee on Land Management Policy and Procedures (Committee) pursuant to section 92-2.5(b)(1), Hawaii Revised Statutes for the purpose of developing land management policies and procedures for ADC..

ADC Chair Fred Lau appointed Board members Mary Alice Evans, Karen Seddon and Glenn Hong, to serve with him on the Committee. At the convening meeting of the Committee, Ms. Evans was elected as chair of the Committee and Ms. Seddon was elected as vice-chair of the Committee.

Staff compiled current policy materials into a "*Land Management Policy and Procedure Manual*" document, and over the course of the past nine months, the Committee and staff met to discuss and refine the policies and procedures and develop policies for unaddressed concerns. Your Committee held their final meeting on August 1, 2022 and agreed to present their work at the next Board meeting (see Exhibit "A").

DISCUSSION:

Your Committee has worked diligently with staff to develop detailed written policies and procedures that will provide ADC's Board of Directors and employees with a framework to ensure transparency and accountability in the conduct of ADC.

Your Committee members and staff have attempted to create a balance between the need for predictable standard processes and the ability to be flexible in a dynamic business environment. The Committee believes this framework will provide general guidance to ADC staff, while allowing the ADC Board to approve modifications as new conditions arise in the future.

RECOMMENDATION:

Pursuant to section 92-2.5(b)(1), Hawaii Revised Statutes, the Committee respectfully submits its "*Land Management Policy & Procedure Manual*" for consideration by the Board and requests the adoption thereof at a subsequent meeting of the Board as required by section 92-2.5(b)(1)(C), Hawaii Revised Statutes.

Respectfully Submitted,

· Mary Alice Evans

Mary Alice Evans
Committee Chair

EXHIBIT A

“Land Management Policies & Procedures Manual”

[see following pages]

Land Management Policy & Procedure Manual

State of Hawaii,
Agribusiness Development Corporation

FINAL DRAFT

This manual (v. 1.0) was approved by
the ADC Board of Directors on [insert
date].

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1.0 Definitions

“ADC” means the State of Hawaii, Agribusiness Development Corporation, an attached agency to the Hawaii Department of Business, Economic Development, and Tourism.

“Board” means the eleven members, collectively, of the ADC Board of Directors.

“FSMA” means the “Food Safety Modernization Act of 2011”.

“GAP” means “Good Agricultural Practices”.

“License” means a legal document by which ADC may grant a limited ownership interest to its property, or a portion thereof. Unless otherwise indicated herein, “license” shall be inclusive of the term “lease.”

“Licensee” means any person or entity to whom ADC has issued a fully executed license. Unless otherwise indicated herein, “licensee” shall be inclusive of the term “lessee.”

“Revocable Permit” means a legal document by which ADC may grant a highly limited ownership interest to its property on a month-to-month basis with an annual renewal. Such disposition is intended to be temporary and short-term.

“Right of Entry” means a legal document by which ADC may grant a right-to-enter a certain property or properties to accomplish a certain task, but which right conveys no ownership interest to the property.

“Staff” means the employees of ADC, including the executive director.

2.0 Criteria to Consider for Types of Agricultural Activities

In planning what types of agricultural activities are most appropriate for certain properties, consideration should be given to the following factors, including but not limited to: access to water (both irrigation and potable), access to utilities, topography, soil types, state land use district, zoning, trust land status, existing improvements, and proximity to external population centers (i.e. houses, schools, parks, commercial centers, etc.).

3.0 Property Disposition and Evaluation Procedures

3.1 Published Notice of Availability

Notices of Availability or Requests for Application shall be published at least once in the following publications: Star-Advertiser, ADC website, ADC newsletter/mailling list, and local agricultural organizations, including but not limited to, Hawaii Farm Bureau, Hawaii Farmers Union United, and University of Hawaii, College of Tropical Agriculture and Human Resources.

The notice shall include the following information: maps and descriptions of land and infrastructure (size, location, and intended disposition), parcel challenges and condition of property, water source (type and availability), date of site inspections, deadline to applicants, applicant requirements, evaluation process and criteria, general terms of license, and anti-discrimination notice.

3.2 Procedure for Galbraith & Whitmore Lands

- A. Send request for applications. When a parcel or lot is available, issue a request for applications via written notification, email, online posting, and public announcement (for Star Advertiser ads, one posting per notification). The notification should include a brief description of the area, an outline of the basic requirements, type of agricultural activity, and a deadline or cutoff date to submit applications. ADC staff may meet with investigative committee appointed by the ADC Board Chair to discuss and develop a notification.
- B. Create a distributions list. Develop a list of potential applicants, which include but is not limited to county, state, and federal agencies, local non-profits with agricultural ties, and community groups. The list should also include the individuals who submitted expression of interest for land on Oahu. Use the information from the "ALL EXPRESSION OF INTEREST CONTACTS" in the "Request for land Application" folder in ADC shared. Include the expression of interest that selected the type of farming ADC is seeking (i.e. if the available area has been designated for field crops, include the expression of interest that selected "Field Crops").

Create a separate excel spreadsheet for each notification to track requests and responses. Include the contact person for the agencies, groups, and individuals, address, the date the notification was sent, and the date ADC received the application/acknowledgement and call it "CONTACT LIST FOR (INSERT DATE) NOTIFICATION." Create a subfolder in "Request for Land Application" and name file after the available area (i.e. Galbraith Agricultural Lands Lots 1 & 2) and file the list in the subfolder along with the notification.

- C. Review and rate submitted applications and proposal (business plan, land utilization plan, financials, etc.) Review all submitted applications, even if they don't meet the application requirements and check for incomplete forms or ineligible applicants. ADC staff may make a request to the ADC Board Chair to form an investigative committee to review and vet submitted applications. If there are multiple applicants interested in a parcel or lot, it is highly recommended to make a request to the ADC Board Chair to form an investigative committee to review and rate applications and formulate a report of their recommendations to be presented to the ADC Board of Directors (ADC Board). Use the ADC Rating Sheet for Application which has a maximum score of 100 points to determine the best applicant. Choose the highest scores.

- D. Conduct farm visits. Concurrent with paragraph “C”, conduct a site visit at the applicant’s current farming operations. This is optional, but very helpful when trying to evaluate the applicant and their operation.
- E. Negotiate terms and conditions of Land License, Lease, or Revocable Permit. Meet with the selected applicant to discuss the terms and conditions of the Land License/Lease/Permit (License). Any request for special conditions is subject to review by the Attorney General’s (AG’s) office and the approval of the ADC Board. There are general conditions within the License agreement that are standard and non-negotiable. Consult with the AG’s office if necessary.
- F. Submit a request to the ADC Board for approval to issue a License. Prepare a submittal to request approval from the ADC Board to issue License to the applicant. The submittal shall include but not be limited to, background information, the land request, operational plan, and recommendations to the ADC Board. All land agreements are subject to the ADC Board’s approval.
- G. Execute the License. Draft a License based on the terms and conditions approved by the AG’s office and the ADC Board. Send the final version to the applicant for signature. Prior to the execution of the License, the Executive Director may issue a right-of-entry to allow the approved applicant the opportunity to conduct due diligence, field clearing, conservation planning, and other appropriate pre-farming activities.
- H. Concurrent with paragraph “G”, request proof of liability insurance and approved conservation plan, or, alternately, proof of development of soil conservation plan (i.e. signed agreement with soil conservation agency and proof of payment).
- I. Issue notice to proceed. Once the Licensee/Lessee/Permittee (Licensee) has submitted a copy of their liability insurance, their approved soil conversation plan or proof of development thereof, and their License is fully executed, send notification to inform the Licensee that they may begin farming on the land.
- J. Send a copy of the fully executed License to City & County of Honolulu Real Property Assessment Division (RPAD) mapping. Mail or email a copy of the fully executed License to RPAD mapping.
- K. Inform the Licensee via written notification that they are responsible for petitioning the City to receive agricultural tax rates. Attach appropriate forms from the RPAD website to the letter.
- L. Inform Licensee via written notification that they may be eligible to receive City and State incentives for joining the Enterprise Zone (EZ) Program. Attach tax forms from the EZ Program website to the letter. Send a letter to the Licensee and attach all forms to be completed and submitted by the Licensee.

- M. In situations where exigent circumstances exist that have caused an ADC tenant to be displaced from their ADC premises, ADC reserves the option to bypass the forgoing procedures 3.2(A) – 3.2(D), with justification and approval by the ADC Board.

3.3 Procedure for Kekaha Lands

- A. Review submitted application and proposal (business plan, land utilization plan, financials, etc.) Review submitted applications and check for incomplete forms or ineligible applicants. ADC staff may make a request to the ADC Board Chair to form an investigative committee to review and vet submitted applications. Inform the applicant to contact the Kekaha Agricultural Association (KAA) to receive comments from the KAA members about the applicant's proposed farming activities. Consult with the ADC Board's Kauai delegate. If a specific field or area has not been identified in the application, consult with applicant and KAA to identify a field or area.
- B. Conduct farm visits. Concurrent with paragraph "A", conduct a site visit at the applicant's current farming operations. This is optional, but very helpful when trying to evaluate the applicant and their operation.
- C. Negotiate terms and conditions of License. Meet with the applicant to discuss the terms and conditions of the License. Any request made by the applicant for special conditions is subject to review by the AG's office and approval of the ADC Board. There are general conditions within the License agreement that are standard and non-negotiable. Consult with the AG's office if necessary.
- D. Submit a request to the ADC Board for approval to issue a License. Prepare a submittal to request approval from the ADC Board to issue License to the applicant. The submittal shall include but not be limited to, background information, the land request, operational plan, and recommendations to the ADC Board. All land agreements are subject to the ADC Board's approval.
- E. Execute the License. Draft a License based on the terms and conditions that were reviewed by the AG's office and approved by the ADC Board. Send the final version to the applicant for signature. Prior to the execution of the License, the Executive Director may issue a right-of-entry to allow the approved applicant the opportunity to conduct due diligence, field clearing, conservation planning, and other pre-farming operations.
- F. Concurrent with paragraph "E", request proof of liability insurance and approved conservation plan, or, alternately, proof of development of soil conservation plan (i.e. signed agreement with soil conservation agency and proof of payment).
- G. Issue notice to proceed. Once the Licensee has submitted a copy of their liability insurance, their approved soil conversation plan or proof of development thereof, and their License is fully executed, send notification to inform the Licensee that they may begin farming on the land.

- H. In situations where exigent circumstances exist that have caused an ADC tenant to be displaced from their ADC premises, ADC reserves the option to bypass the forgoing procedures 3.3(A) – 3.3(D), with justification and approval by the ADC Board.

3.4 Procedure for Kalepa Lands

- A. Review submitted applications and proposal (business plan, land utilization plan, financials, etc.) Review submitted applications and check for incomplete forms or ineligible applicants. ADC staff may make a request to the ADC Board Chair to form an investigative committee to review and vet submitted applications. Staff should consult with Kalepa Coalition for their thoughts and concerns.
- B. Conduct farm visits. Concurrent with paragraph “A”, conduct a site visit at the applicant’s current farming operation. This is optional, but very helpful when trying to evaluate the applicant and their operation.
- C. Negotiate terms and conditions of License. Meet with the applicant to discuss the terms and conditions of the License. Any request made by the applicant for special conditions is subject to review by the AG’s office and approval of the ADC Board. There are general conditions within the License agreement that are standard and non-negotiable. Consult with the AG’s office if necessary.
- D. Submit a request to the ADC Board for approval to issue a License. Prepare a submittal to request approval from the ADC Board to issue License to the applicant. The submittal shall include but not be limited to, background information, the land request, operational plan, and recommendations to the ADC Board. All land agreements are subject to the ADC Board’s approval.
- E. Execute the License. Draft a License based on the terms and conditions that were reviewed by the AG’s office and approved by the ADC Board. Send the final version to the applicant for signature. Prior to the execution of the License, the Executive Director may issue a right-of-entry to allow the approved applicant the opportunity to conduct due diligence, field clearing, conservation planning, and other pre-farming operations.
- F. Concurrent with paragraph “E”, request proof of liability insurance and approved conservation plan, or, alternately, proof of development of soil conservation plan (i.e. signed agreement with soil conservation agency and proof of payment).
- G. Issue notice to proceed. Once the Licensee has submitted a copy of their liability insurance, their approved soil conversation plan or proof of development thereof, and their License is fully executed, send notification to inform the Licensee that they may begin farming on the land.
- H. In situations where exigent circumstances exist that have caused an ADC tenant to be displaced from their ADC premises, ADC reserves the option to bypass the forgoing procedures 3.4(A) – 3.4(D), with justification and approval by the ADC Board.

3.5 Procedure for Hold-over Tenants

Upon expiration of the License, including any extensions, if the land is not otherwise disposed, ADC may allow the Licensee to continue to hold the land on a month-to-month basis for a period not to exceed one year, upon such rent, terms and conditions as provided for the last year of the term of the License. Requests to hold-over must be submitted to the ADC Board in writing no less than thirty days prior to the License expiration date. Requests submitted less than thirty days prior to the License expiration date may be summarily denied unless exigent circumstances exist.

4.0 Land Document Policies

4.1 Rent Setting Policy

Rent shall be based on agricultural fair market appraised value, however, the ADC Board may modify the rent rates and schedules, if appropriate.

4.2 Rent Credit (Deferments, Credits, and Discounts for Improvements)

A rent reduction or waiver is available to induce a Licensee to invest in the demolition of aged improvements or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public farm lands, including infrastructure improvements that would benefit both the Licensee and other ADC tenants.

The ADC Board may reduce or waive the License rental at the beginning of the License term for public land to be used for any agricultural, pastoral or agricultural service use where the land requires substantial improvements in order to support the activities. When a License requires a Licensee to demolish existing improvements or provide basic infrastructure, including water, electricity, roads and other utilities, before the Licensee can make productive use of the land, the ADC Board may approve a reduction or waiver of License rental for a period of up to twenty years; provided that the aggregate amount of the reduced or waived License rental shall not exceed the amount of the Licensee's total expenditures for demolition or provision of the infrastructure. Rent credit may be extended, as appropriate, with a License extension.

4.3 Term of License

In general, it shall be the policy of ADC to issue Licenses for up to thirty-five years. Exceptions may be made with appropriate justification and approval by the ADC Board.

4.4 License Re-opening

In general, it shall be the policy of ADC to issue Licenses with re-opening clauses for the purpose of adjusting the rental rate, every five years with an escalator at 2.5% of current rent. Exceptions may be made with appropriate justification and approval by the ADC Board.

4.5 License Extension

In general, it shall be the policy of ADC to issue Licenses for thirty-five years which shall include an option to extend. Beginning in the twenty-fifth year, Licensees may request in writing to extend the term of the License for a term not to exceed an additional thirty-five-year term. Any such extension option may be approved by the ADC Board, which approval may be withheld at the ADC Board's sole discretion.

4.6 License Renewal After Expiration

In general, it shall be the policy of ADC to allow the renewal of an expired License upon the faithful and diligent execution of all terms and conditions of the License, upon the request of the Licensee, and subject to approval by the ADC Board, which approval may be withheld at the ADC Board's sole discretion.

FINAL DRAFT

5.0 Environmental Policies and Procedures

5.1 Requirement of Remediation of Hazardous Materials Prior to License Termination

Where there is good cause to believe actions by the Licensee have caused the unwarranted or illegal release of a hazardous substance(s), pollutant(s), or contaminant(s) onto the Licensed property or near-environment during the term of the License, the Licensee shall, at its own cost and expense, conduct a Phase I Environmental Site Assessment (ESA).

What circumstances constitute good cause shall be determined by ADC, at its sole discretion, after consideration of the various Hazardous Materials laws, which include the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §5101, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. §§2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar federal, state or local laws, ordinances, rules, and regulations.

The Phase I ESA shall be conducted by an environmental professional utilizing the standards established by the American Society for Testing and Materials (ASTM), consistent with CERCLA.

Should the Phase I ESA identify potential contamination, Licensee shall at its own cost and expense, hire a trained environmental professional to conduct a Phase II ESA for purposes of confirming and identifying the presence of hazardous materials through sampling and laboratory analysis.

Where laboratory analysis confirms the presence of hazardous materials, Licensee at its sole cost and expense shall require the environmental professional who conducted the Phase II ESA to identify any further investigative needs, and develop action plans necessary to remediate the property.

Licensee, at its own cost and expense, shall institute the remedial action plan for purposes of restoring the property back to a safe condition that does not pose a danger to health or the environment.

Should the Phase I ESA reveal no unwarranted or illegal release of a hazardous substance(s), pollutant(s), or contaminant(s) occurred during the License term, ADC shall reimburse Licensee for the cost of the Phase I ESA.

5.2 Requirement of a Phase I Environmental Assessment for Hazardous Materials

A Phase I ESA utilizing standards established by the ASTM shall be conducted when ADC considers acquiring land that has previously been used for commercial purposes. Standards shall be consistent with the CERCLA. The services of a trained environmental professional shall be procured for purposes of conducting the Phase I ESA.

Where a Phase I ESA identifies potential contamination, a Phase II ESA including sampling and laboratory analysis shall be conducted by a trained environmental professional to confirm and identify the presence of hazardous materials.

Where laboratory analysis confirms the presence of hazardous materials, the Phase II ESA environmental professional shall identify any further investigative needs, and develop action plans necessary to remediate and clean up the property. The information obtained through the Phase I EAS, and if necessary, the Phase II EAS, shall be used to inform ADC's decision regarding acquisition of the land or renegotiation of the terms and conditions of the sale.

5.3 Soil Conservation Plan

It shall be the general policy of ADC that all agricultural operations shall submit an approved soil conservation plan within one year of the execution of their License, or an updated soil conservation plan within one year of the execution of a License amendment that may affect land holdings under the amended License. Licensees shall be required to update their approved soil conservation plan upon any significant change in use, or at the request of ADC. ADC may execute a License prior to the development of an approved soil conservation plan if the approved applicant provides a signed agreement and deposit payment to the soil conservation agency.

6.0 Termination of License Procedures

6.1 Procedure for Pre-Default Remediation

A. Financial Default

Form Letters shall be drafted for each of the following action triggers:

1. “Notice of Past Due Rents” letter. When the License payment is thirty days overdue, the Property Manager (PM) will send a “friendly reminder letter” to the Licensee via email or U.S. Postal Service.
2. “Notice of Violation for Past Due Rents” letter. If there is no response to the “friendly reminder letter”, and the payment continues to be overdue, at sixty days, the PM will send a “past due letter” notifying the Licensee of the delinquent payment amount(s), accrued late fees, accrued interest, and any other accrued fees. The “past due letter” shall include a demand for payment to bring the account current within thirty days to avoid further fees and shall note that failure to do so will result in referral of the License to the ADC Board for referral to the AG’s office for collection action. The PM shall send the “past due letter” to the Licensee via certified mail, return receipt requested.
3. “Notice of Violation for Past Due Rents & Board Hearing” letter. If there is no response to the “past due letter”, and payment continues to be overdue, at ninety-days, the PM shall send a “Board Hearing letter” notifying the Licensee of the matter of delinquent payment amount(s), accrued late fees, accrued interest, and any other accrued fees has been set for hearing before the ADC Board. The “board hearing letter” shall notify the Licensee of the date and time of the ADC Board meeting and that referral to the AG’s office will result in collection actions that may affect their credit rating as well as possible garnishment of bank accounts. The “board hearing letter” shall be sent to the Licensee via certified mail, return receipt requested.
4. “Notice of Board Action and Referral to AG’s Office” letter. Following the ADC Board meeting, the PM shall notify the Licensee of the ADC Board’s decision. If the ADC Board approves the referral to the AG’s office, the PM shall notify the Licensee that the matter has been referred to the AG’s office for collection and possible termination of the License. The “referral letter” shall be sent via certified mail, return receipt requested.

Final action as recommended by the AG’s office shall be submitted to the ADC Board for approval.

The PM shall be empowered to make payment arrangements with those Licensees who, prior to action by the ADC Board, have promptly notified the PM of any extenuating circumstances that have delayed monthly payment obligations in an effort to allow the Licensee to continue productive use of the Licensed property.

The PM, in collaboration with the AG’s office, shall draft standardized form letters.

B. Non-Financial Default

Form letters shall be drafted for each of the following action triggers:

1. Notification of Inspection. The PM shall notify the Licensee by phone or by email to schedule the inspection with no less than twenty-four-hour notice to the Licensee for regularly scheduled inspections. For suspected violations outside of a regularly scheduled inspection, the PM shall not be required to give notification and may enter the property at will, notwithstanding any License prohibitions to the contrary.
2. "Notice of Violation" letter. The PM shall notify the Licensee in writing of any License violations or concerns within five business days of the inspection via certified mail, return receipt requested. The notice will request that remediation of all concerns be resolved within thirty days from the date of the letter and will schedule a follow-up inspection at the close of the thirty-day window. PM shall be empowered, in consultation with the Executive Director, to allow a longer period of time for informal remediation before proceeding to the next step.
3. "Notice of Board Referral" letter. The PM shall notify the Licensee in writing of any outstanding License violations or concerns within five business days of the follow-up inspection via certified mail, return receipt requested, or process server. The notice will notify the Licensee that the matter will be considered by the ADC Board for referral to the AG's office at the next scheduled meeting. PM shall also send notice of the ADC Board meeting to the Licensee as soon as the meeting is publicly noticed.
4. "Notice of Board Action and Referral to AG's Office" letter. The PM shall notify the Licensee in writing of any action by the ADC Board and any referral of the License to the AG's Office within five business days of the ADC Board meeting via certified mail, return receipt requested.

Final action as recommended by the AG's office will be submitted to the ADC Board for approval.

The PM shall be empowered to make arrangements with those Licensees who, prior to delivery of the Final Notice Letter, have promptly notified the PM of any extenuating circumstances that have delayed obligations in an effort to allow the Licensee to continue productive use of the Licensed property.

The PM, in collaboration with the AG's office, shall draft standardized form letters.

6.2 Procedure for Default & Termination

- A. Upon failure to reach a satisfactory resolution under any pre-default proceedings that have been properly referred to the AG's office, ADC may initiate termination proceedings pursuant to the terms of the License. Staff shall include the request for termination on the ADC Board's meeting agenda and prepare the appropriate submittals.

- B. Notification to Licensee of Possible ADC Board Action to Terminate. Staff shall advise the Licensee of possible action by the ADC Board to terminate the License as soon as possible, but in any case not less than six days before the ADC Board meeting at which consideration of the License termination is to be heard via certified mail, return receipt requested.
- C. Notification of the ADC Board's Action; Demand to Vacate. The AG's office shall issue a letter by certified mail, return receipt requested, notifying Licensee of action taken by the ADC Board. When the ADC Board approves the termination of the License, the letter shall allow a reasonable amount of time for the Licensee to voluntarily leave the property and shall include a demand to clear the property of trash and personal belongings.
- D. Should the Licensee remain on the property after the deadline to vacate, the AG's office shall file an action to formally evict any hold-over Licensee. The resulting Writ of Ejectment shall be served by appropriate law enforcement and the officer(s) shall remove the Licensee.
- E. In the event that ADC is required to remove any personal property left on the premises and ADC expends funds to accomplish the removal, the AG's office may return to court to seek an order for damages against the Licensee.

6.3 Requirement of Remediation of Hazardous Materials Prior to License Termination

Where there is good cause to believe actions by the Licensee have caused the unwarranted or illegal release of hazardous substance(s), pollutant(s), or contaminant(s) onto the Licensed property or near-environment during the term of the License, the Licensee shall, at its own cost and expense, conduct a Phase I Environmental Site Assessment (ESA).

What circumstances constitute good cause shall be determined by ADC, at its sole discretion, after consideration of the various Hazardous Materials laws, which include the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §5101, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. §§2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar federal, state or local laws, ordinances, rules, and regulations.

The Phase I ESA shall be conducted by an environmental professional utilizing the standards established by the American Society for Testing and Materials (ASTM), consistent with CERCLA.

Should the Phase I ESA identify potential contamination, Licensee shall at its own cost and expense, hire a trained environmental professional to conduct a Phase II ESA for purposes of confirming and identifying the presence of hazardous materials through sampling and laboratory analysis.

Where laboratory analysis confirms the presence of hazardous materials, Licensee at its sole cost and expense shall require the environmental professional who conducted the Phase II ESA to identify any further investigative needs, and develop action plans necessary to remediate the property.

Licensee, at its own cost and expense, shall institute the remedial action plan for purposes of restoring the property back to a safe condition that does not pose a danger to health or the environment.

Should the Phase I ESA reveal no unwarranted or illegal release of a hazardous substance(s), pollutant(s), or contaminant(s) occurred during the License term, ADC shall reimburse Licensee for the cost of the Phase I ESA.

FINAL DRAFT

7.0 Document Management Policies and Procedures

7.1 Pre-Acquisition Due Diligence Considerations

- A. Gather general property information -- county planning departments, real property assessment offices, internet searches, etc., and analyze for appropriateness for ADC ownership. Consider:
 - i. Tax Map Key Identification
 - ii. Parcel Size/Area
 - iii. Location/address (if any)
 - iv. Flood Zone Designation
 - v. State Land Use Classification
 - vi. County Zoning Designation
 - vii. Special District Designation
 - viii. Other Reasonable Inquiries as Information is Obtained
- B. Title – depending upon negotiated terms, receive or procure and review documents in Preliminary Title Report (PTR) to determine if all documents are acceptable or if particular exceptions to title need to be changed or deleted. Compare title report information against county real property planning or tax assessment division information on property for consistency. Review every document listed in PTR for reasonableness and to learn about easements, leases, licenses, permits, rights of way, grants, encroachments, etc. encumbering the property, lack of legal access, availability of irrigation and/or potable water, electricity, sewage, telecommunication issues, restrictive covenants, easements, analyze the impact of such encroachments on the value of the property, the intended use of the property, and potential liability that may arise therefrom. Confer with title company on questionable exceptions. Prepare letter to seller requesting removal of exceptions, if necessary, and negotiate same.
- C. Prepare request to seller for any and all information pertaining to the property that arises from site inspections, document reviews or generally known public information. Include any and all prior title reports, environmental reports and documents, surveys, take lead from these reports as appropriate.
- D. Environmental Phase 1 Report – procure environmental site assessment report. Review report for compliance with All Appropriate Inquiries (AAI) standards under 40 CFR Part 312 (final rule) and ASTM E1527-05. Confer with contractor concerning any questionable or objectionable environmental concerns. Determine if Phase II is required and proceed as appropriate.
- E. Value – procure and review appraisal report for completeness and correctness and appropriate adjustments to value. Confer with appraiser concerning any questionable or objectionable adjustments to value. Confirm purchase price with seller.

- F. Boundaries – determine whether boundary survey, ALTA-standard survey, or something in between would be reasonable and necessary, and procure and review the same for appropriateness, reasonableness, and acceptability.
- G. Obtain any and all subdivision or condominium property regime documents and maps, if applicable, review restrictions for appropriateness, reasonableness, and acceptability.
- H. Corporate Authority – verify seller is in good corporate standing with State of Hawaii DCCA, BREG. If seller is foreign corporation, verify good standing with state of incorporation's secretary of state. If necessary or if questionable, develop understanding of corporate seller, its various affiliates, and any impact of the corporate structure on transaction.
- I. Improvements, Additional Considerations:
 - i. Height limitations
 - ii. Sewage and solid waste requirements
 - iii. Potable water requirements
 - iv. Fire hydrants and fire code restrictions or requirements
 - v. Permitted and legal accesses
 - vi. Drainage restrictions and requirements
 - vii. Power issues
 - viii. Telecommunication issues
 - ix. Other reasonable inquiries, as information is obtained

Contact DAGS, Risk Management office with any questions on extraordinary risk issues.

7.2 Requirement of a Phase I Environmental Assessment for Hazardous Materials

A Phase I ESA utilizing standards established by the ASTM shall be conducted when ADC considers acquiring land that has previously been used for commercial purposes. Standards shall be consistent with the CERCLA. The services of a trained environmental professional shall be procured for purposes of conducting the Phase I ESA.

Where a Phase I ESA identifies potential contamination, a Phase II ESA including sampling and laboratory analysis shall be conducted by a trained environmental professional to confirm and identify the presence of hazardous materials.

Where laboratory analysis confirms the presence of hazardous materials, the Phase II ESA environmental professional shall identify any further investigative needs, and develop action plans necessary to remediate and clean up the property. The information obtained through the Phase I EAS, and if necessary, the Phase II EAS, shall be used to inform ADC's decision regarding acquisition of the land or renegotiation of the terms and conditions of the sale.

7.3 Soil Conservation Plan

It shall be the general policy of ADC that all agricultural operations shall submit an approved soil conservation plan within one year of the execution of their License, or an updated soil conservation plan within one year of the execution of a License amendment that may affect land holdings under the amended License. Licensees shall be required to update their approved soil conservation plan upon any significant change in use, or at the request of ADC. If the soil conservation planning agency does not request an executed land document prior to conservation planning, ADC may require the conservation planning be completed prior to the execution of the License agreement. ADC may execute a License prior to the development of an approved soil conservation plan if the approved applicant provides a signed agreement and deposit payment to the soil conservation agency.

8.0 Property Management Policies

8.1 Inspections; Frequency

In general, it shall be the policy of ADC that Licensee inspections shall occur at least annually in order to document the ongoing condition of the property, as well as to document any License violations or unauthorized activity. Inspections for each Licensee shall be conducted pursuant to the terms and conditions of the respective License agreements.

8.2 Inspections; Advance Notice

In general, it shall be the policy of ADC that Licensees shall receive at least two days advance notice of a formal annual inspection. However, ADC reserves the right to enter the premises without notice to the Licensee in cases where the PM believes that time is of the essence.

8.3 Inspections; Scope

In general, it shall be the policy of ADC to conduct inspections that document, by written form and photographic evidence, the condition of each Licensed premises and the Licensee's conformance with the terms and conditions of the License. Additionally, ADC may document additional parameters including, but not limited to, GAP, FSMA, and environmental concerns.

9.0 Standard Terms and Conditions for Licenses Policy

9.1 Licensee Reporting Requirements

In general, it shall be the policy of ADC to include a License requirement for Licensee to submit an annual report to ADC that shall include crops in production, quantity of crops produced for the report period, and status report on permitted subleases and rent received. ADC may allow Licensees who are members of cooperative arrangements with other Licensees to submit “crops in production” and “quantity of crops produced” data in aggregate.

9.2 Security Deposits & Performance Bonds

In general, it shall be the policy of ADC to require an amount equal to two month’s base rent for security deposit. Exceptions may be made upon request of the Licensee, and with appropriate justification to, and approval by, the ADC Board. In the event the cost of a performance bond is prohibitive, ADC may accept alternatives including, but not limited to, a joint ownership of certificate of deposit for the term of the License.

9.3 Consent to Mortgage

In general, it shall be the policy of ADC to not include a consent to mortgage as a standard License provision. Exceptions may be made upon request of the Licensee, and with appropriate justification and approval by the ADC Board.

9.4 Consent to Sublicense

In general, it shall be the policy of ADC not to allow the sublicensing of its properties. Exceptions may be made with appropriate justification and approval by the ADC Board.

9.5 Termination of License for Cause

In general, it shall be the policy of ADC to terminate a License for un-remediated cause. ADC reserves the right to sue for damages.

9.6 Termination of License by Licensee Request

In general, it shall be the policy of ADC to reserve the right to sue for damages in the event of the early termination of a License by the Licensee after a reasonable effort has been made by the Licensee to find a new and suitable tenant. ADC further reserves the right to approve or disapprove any proposed assignee based on their use conformance with ADC’s mission.

9.7 Disposition of Abandoned Property

In general, it shall be the policy of ADC that upon the expiration, or earlier termination, of a License, the Licensee shall remove all personal property from the premises. In the case of termination, Licensee shall have thirty days from the date of termination, or such other time as approved by the ADC Board, to remove their personal property. Thereafter, any remaining personal property shall be considered abandoned. ADC may dispose of the property or sue to enforce the removal and/or for damages.

ADC, at its sole discretion, may charge rent for the storage of any personal property left on the premises.

10.0 Entitlement Revenue Policy

It shall be the policy of ADC that revenue derived by ADC from Lease rents, License rents, Permit rents, or royalty fees, from the utilization of public lands shall be collected by ADC to the extent required by law. Accordingly, thirty per cent (30%) of the state receipts derived from lands previously cultivated as sugarcane lands shall be separated and deposited into a separate account for transfer to the native Hawaiian rehabilitation fund in compliance with Article XII, section 1 of the Hawaii State Constitution, the "Hawaiian Homes Commission Act." Additionally, twenty per cent (20%) of the state revenues derived from the public land trust established by Section 5 of The Admission Act, shall be separated and deposited into a separate account as directed by the Department of Budget and Finance for transfer to the Office of Hawaiian Affairs in compliance with Article XII, section 6 of the Hawaii State Constitution, and sections 10-3(1) and 10-13.5 of the Hawaii Revised Statutes.

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STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

August 17, 2022

Subject: Request for Approval to Issue a Grant of Easement to Hawaiian Electric Company, Inc. for the Installation of Electrical Service at Galbraith Small Farm Lots at Wahiawa, Oahu, Tax Map Key (1) 7-1-012:001 (por.)

Grantee: Hawaiian Electric Company, Inc.

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 0.115 acres

Field No(s).: Lot 12

Tax Map Key: (1) 7-1-012:001

Land Status: Acquired in fee by the Agribusiness Development Corporation in 2012.

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ____ No X

Zoning: AG-1

Character of Use: Public Utility

Land Doc. Type: Easement

Term: Perpetual

Rental Rate: N/A

BACKGROUND:

At their meeting on May, 20, 2020, the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) gave approval to Ho Farms, LLC (Licensee) for the construction of shade house for agricultural production on their premises under License Agreement No. LI-GA1611 for Lot 11 (see Exhibit "A") at the Galbraith Farm Lots.

Included with that approval was permission to bring electrical service onto the property. ADC has a concurrent interest in bringing electrical service to the property in the eventual conversion of the Bott Well pump motor, currently a diesel motor, to an electric motor. Hawaiian Electric Company, Inc. (HECO) requires a grant of easement (see Exhibit "B") as part of the agreement to bring in electrical service to the premises.

LAND REQUEST:

HECO requests a grant of easement for 0.115 acres at Galbraith Farm Lots, Tax Map Key (1) 7-1-012:001 (por.) (see Exhibits "B" and "C") for the purpose of installing electrical service.

WATER NEEDS AND SOURCE OF WATER:

For the purpose of this request, there is no need for water.

OPERATIONAL PLAN:

The electrical service will provide power for the Licensee's farm and shade house operations, and may, at a later date, provide power to ADC's Bott Well pump motor.

CONSERVATION PLAN:

N/A

DISCUSSION:

The requirement of a grant of easement is standard for HECO electrical service installation. The easement provides HECO with a right to access all areas within the easement in order to maintain their equipment and access the meter. There will be no rent fees assessed to HECO in connection with this grant of easement.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Land Request above, subject to the following conditions:

Request for Approval to Issue a Grant of Easement to Hawaiian Electric Company, Inc. for the
Installation of Electrical Service at Galbraith Small Farmer Lots at Wahiawa, Oahu, Tax Map Key
(1) 7-1-012:001 (por)
August 17, 2022
Page 3 of 6

1. The easement will be in substantially the same form, with substantially the same terms and conditions as shown in Exhibit "B".

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A

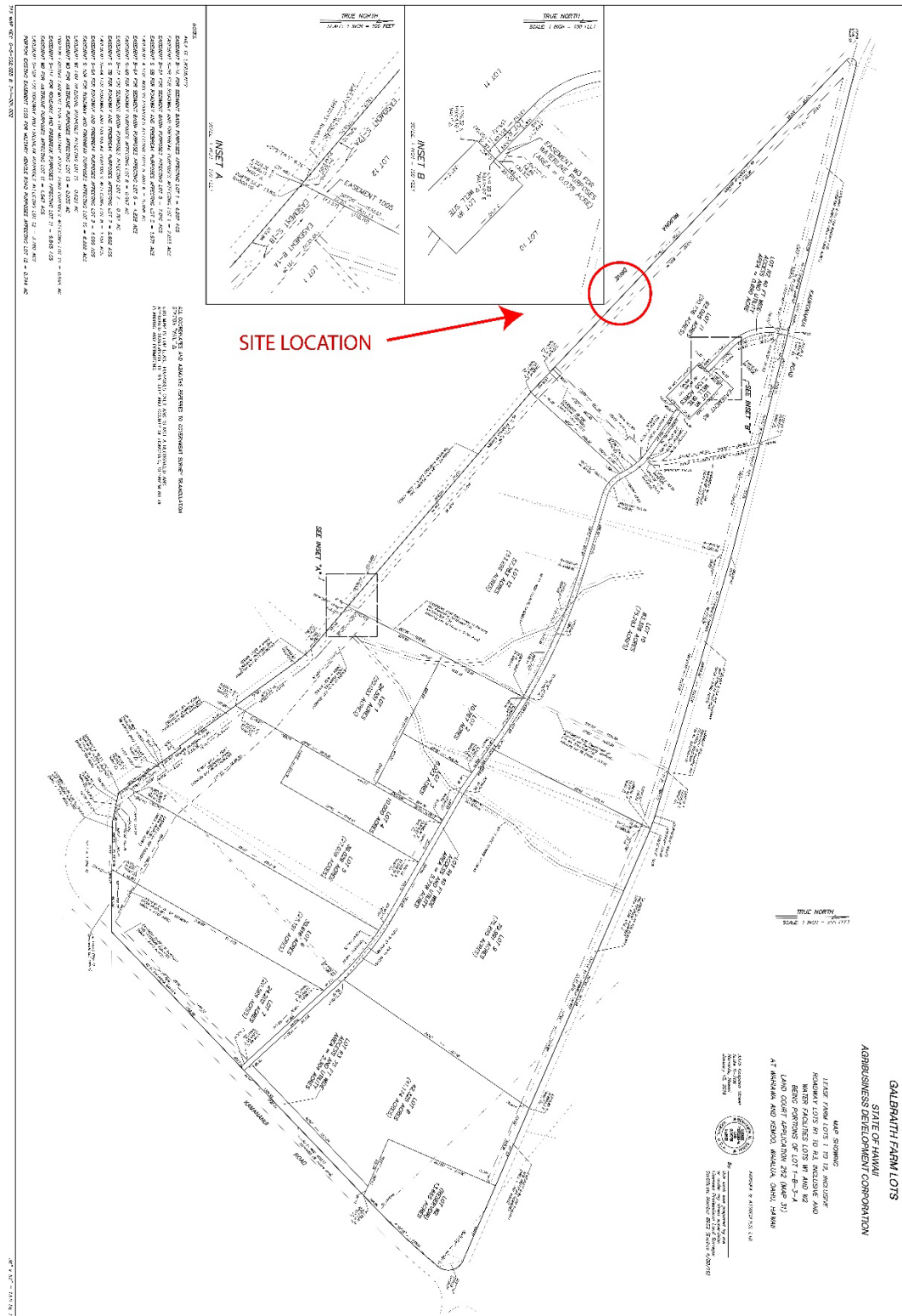


EXHIBIT B

Standard Grant of Easement

[see following pages]

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By: ☐ Mail ☒ Pickup

Hawaiian Electric Company, Inc.
Survey Division
P. O. Box 2750
Honolulu, HI 96840-0001

This document contains _____ pages

HECO WO# _____/JP# _____

TITLE OF DOCUMENT(S):

R/W _____ - _____

GRANT OF EASEMENT

PARTIES TO DOCUMENT:

GRANTOR(S)

GRANTEE(S): **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation

DESCRIPTION: Those certain premises situated off [describe property]

Tax Map Keys: (1) _____

Address: _____

GRANT OF EASEMENT

THIS GRANT, made this _____ day of _____, 20____, by and between _____, (collectively, the "Grantor"), and **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, whose principal place of business is 1001 Bishop Street, Suite 2500, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii, 96840, (the "Grantee"),

WITNESSETH THAT:

The Grantor, in consideration of the sum of One Dollar (\$1.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, grants and conveys unto the Grantee a perpetual right and easement to construct, reconstruct, operate, maintain, repair and remove poles, guy wires, anchors, overhead and/or underground wire lines and such other appliances and equipment as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communications and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor's land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon, across and through that certain parcel of land situate off [describe property and easement]. .

TO HAVE AND TO HOLD the same unto the Grantee, forever.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee's use of the granted premises, its lines, appliances and equipment, or Grantee's access to and maintenance of said lines, appliances and equipment.

AND the Grantee hereby covenants and agrees that:

1. Due Care and Diligence. It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

2. Indemnification. The Grantee, will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by such Grantee's failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee's failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent

that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

A. Condemnation. If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee, to the extent of its interest.

B. Landscaping. The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant.

C. Warranty of Title. The Grantor, for itself, its heirs and assigns, covenant with the Grantee, their successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and have good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land.

D. Definitions. All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine, feminine or neuter gender, as the context of this grant shall require. The term "person" shall mean an individual, partnership, association, trust, corporation or other entity as the context may require.

E. Parties in Interest. The covenants contained in this Grant of Easement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns.

F. Counterparts. The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

STATE OF HAWAII)
 : ss.
CITY AND COUNTY OF HONOLULU)

Type or print name: _____
Notary Public, First Circuit, State of Hawaii

[Affix Seal]

APPROVED
Land & Rights of Way
By _____

HAWAIIAN ELECTRIC COMPANY, INC.,
a Hawaii corporation

By _____
Name: ERIN P. KIPPEN
Title: Vice President

Grantee

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

HECO

On this ____ day of _____, 20____, before me appeared ERIN P. KIPPEN, to me personally known, who, being by me duly sworn, did say that such person is the Vice President of **HAWAIIAN ELECTRIC COMPANY, INC.,** a Hawaii corporation, and the foregoing ____-page instrument entitled GRANT OF EASEMENT, dated _____, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

Notary Signature

Type or print name: _____
Notary Public, First Circuit, State of Hawaii

My commission expires: _____

[Affix Seal]

EXHIBIT C

Metes & Bounds of Easement, Map of Easement

[see following pages]

**HO FARMS
ELECTRIC EASEMENT**

**EASEMENT E-1
(FOR ELECTRIC PURPOSES)**

Affecting Farm Lot 11
Being a Portion of Lot 1-B-3-A
of Land Court Application 262
as Shown on Map 31

Situated at Kamananui, Waialua,
Island of Oahu, Hawaii

Beginning at the South corner of this Easement on the North side of Wilikina Drive, the direct azimuth and distance to the South corner of Farm Lot 11 being: 313° 30' 276.51 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAILI" being 2,733.11 feet South and 10,083.90 feet West thence running by azimuths measured clockwise from true South:

1. 133° 30' 50.00 feet along the Northeast side of Wilikina Drive;
2. 226° 06' 100.00 feet along the remainder of Farm Lot 11, along the remainder of Lot 1-B-3-A of Land Court Application 292 as shown on Map 31;
3. 313° 30' 50.00 feet along same;
4. 46° 06' 100.00 feet along same to the point of beginning and containing an area of 0.115 Acres.

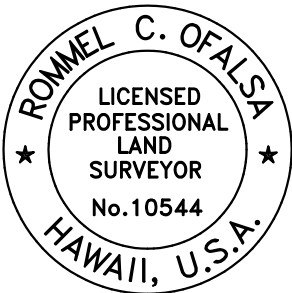
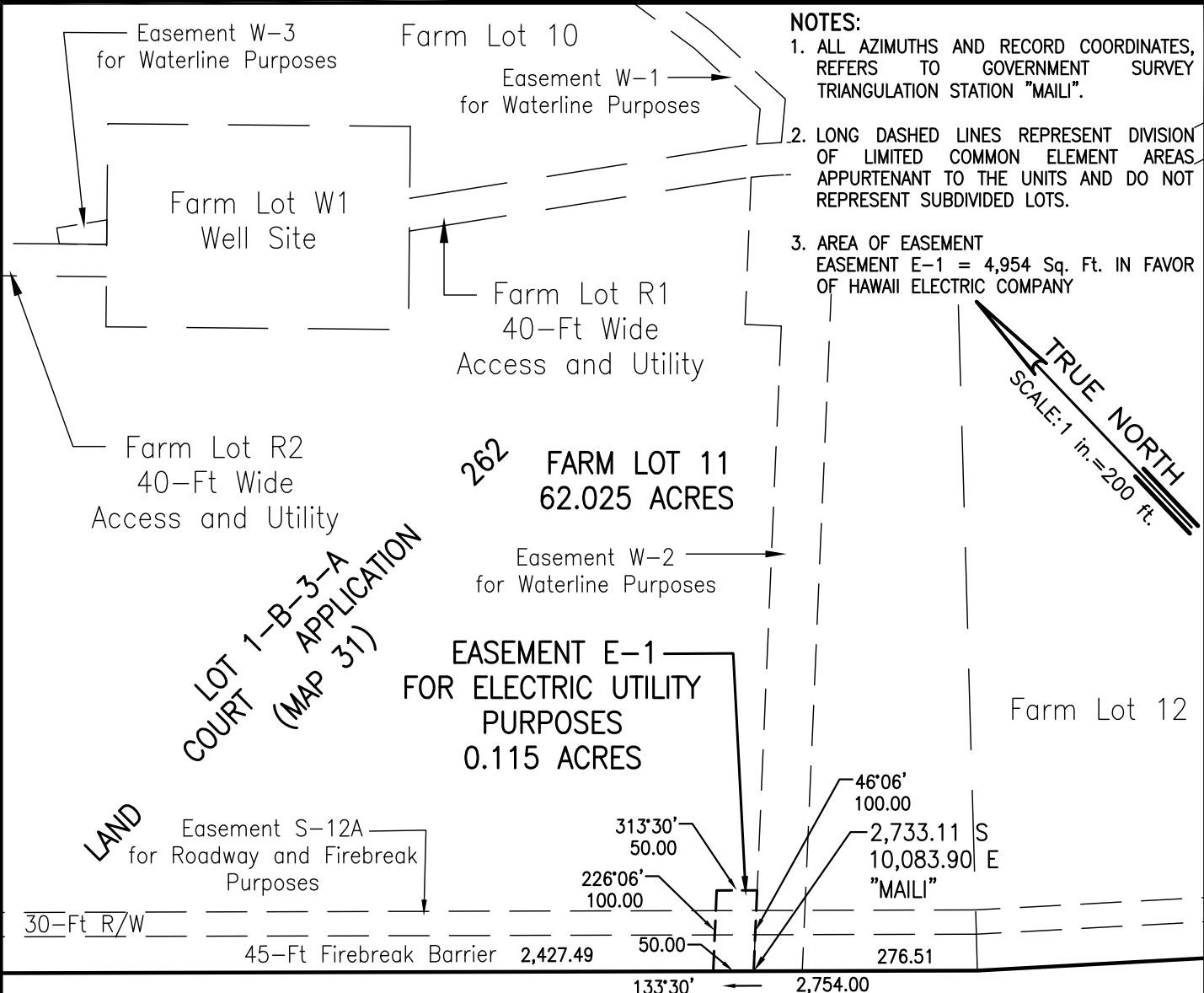


November 8, 2021
SOH # 210340

Descriptions Prepared By:

 Exp. 4/30/22

Rommel C. Ofalsa
Licensed Professional Land Surveyor
Certificate Number 10544



W I L I K I N A D R I V E

LEGEND:

- EASEMENT E-1 LINE
- - - EASEMENT LINE
- LIMITED COMMON ELEMENT
- PROPERTY LINE

**HO FARMS
ELECTRIC EASEMENT**

**DESIGNATION OF
EASEMENT E-1 AFFECTING FARM LOT 11
BEING A PORTION OF LOT 1-B-3-A
OF LAND COURT APPLICATION 262
AS SHOWN ON MAP 31**

**SITUATED AT KAMANANUI, WAIALUA,
ISLAND OF OAHU, HAWAII**

THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION.

Rommel C. Ofalsa

ROMMEL C. OFALSA
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 10544

License Expires: 4/30/2022

TAX MAP KEY : (1)7-1-001:002
OWNER : STATE OF HAWAII
SITE ADDRESS : NONE

NOVEMBER 15, 2021





STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

August 17, 2022

Subject: Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

Licensee: Waste Management of Hawaii Inc. and County of Kauai

Authority: Section 163D-4(5),(15), Hawaii Revised Statutes

Area: 66.98 acres, more or less

Field No(s).: Field 102 (mud-pond site)

Tax Map Key: (4) 1-2-002:001

Land Status: Set aside by the Governor's Executive Order Nos. 4007 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes ☒ No ☐

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ☒ No ☐

Character of Use: Soil removal for cover material for Kekaha Phase II Landfill

Land Doc. Type: License

Term: August 1, 2008 – December 1, 2019 (terminated by Licensee)

Rental Rate: Royalty Rate: \$1.00 per cubic yard (no rental rate)

BACKGROUND:

On May 22, 2008, the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) approved the issuance of a license agreement to Waste Management of Hawai'i, Inc (WMH) and the County of Kauai (COK) to use soils and sediments from the former mud pond site for cover material at the Kekaha Landfill. License Agreement No. LI-K1103 was issued on June 14, 2011 (the "License")

retroactive to August 1, 2008 and charged a royalty rate of \$1.00 per cubic yard of soil removed. See Exhibit A. Soil removal was limited to 45,000 cubic yards of soil per year. The License required that WMH and COK fill, finish, clear, and/or smooth the area in which the soil was taken to a condition reasonably satisfactory to ADC (see paragraphs 10, 17 of Exhibit A).

On November 5, 2019, WMH provided written notice to ADC that their operating agreement with the COK was ending in December 2019 and requesting to terminate the License.

In December 2019, WMH met with KAA and proposed a grading plan for the mud ponds. The grading plan was deemed unacceptable.

Thereafter the parties engaged in confidential settlement negotiations.

REQUEST:

On the advice of the Attorney General's office, ADC requests that the Board approve the settlement offer.

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

N/A

DISCUSSION:

This matter is covered by Rule 408 of the Hawaii Rules of Evidence, and attorney-client privilege pursuant to Rule 1.6 of the Hawaii Rules of Professional Conduct. This matter will be closed to the public pursuant to section 92-5(a)(4), to allow the Board to consult with the Board's attorney.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the request noted above.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A

License Agreement (includes maps)

[see following pages]

STATE OF HAWAI'I
AGRIBUSINESS DEVELOPMENT CORPORATION

LAND LICENSE NO. LI-K1103

THIS LICENSE made and issued this 14th day of June, 2011, by and between the State of Hawai'i by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 South Beretania Street, Room 205, Honolulu, Hawai'i 96813, hereinafter called "LICENSOR," and the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i, whose mailing address is 4444 Rice Street, Room 255, Lihue, Hawai'i 96766, and WASTE MANAGEMENT OF HAWAI'I, INC., a Delaware corporation, whose address is Post Office Box 1259, Kekaha, Hawai'i 96752, hereinafter, collectively, called "LICENSEES."

W I T N E S S E T H:

WHEREAS, the LICENSOR was established pursuant to Hawai'i Revised Statutes §163D for the specific purpose of promoting the development of agricultural enterprises in order to make optimal use of former sugar and pineapple lands in the State and the various supporting irrigation, drainage, road, and other infrastructure systems associated with those lands;

WHEREAS, pursuant to Governor's Executive Order No. 4007, the LICENSOR has been granted responsibility for and is obligated to manage and operate those certain lands and improvements located thereon, which lands and improvements were formerly under the jurisdiction of the Department of Land and Natural Resources, State of Hawai'i (hereinafter, "DLNR"), consisting of approximately 12,860.642 acres in the district of Kekaha, on the Island of Kaua'i, State of Hawai'i;

WHEREAS, the Kekaha Agriculture Association ("Co-op") is a farmers cooperative association organized under the laws of the State of Hawai'i by certain farmers for the purpose of promoting the effective and compatible agriculture/aquaculture business uses of the lands that are demised, leased, licensed, or permitted by the LICENSOR (or any other agency of the State of Hawai'i or other person) to the farmers and specifically to hold, manage, operate, develop, upkeep, maintain, repair, and control the common infrastructure resources, facilities, equipment, and systems located on or serving lands that are demised, leased, licensed, or permitted by the LICENSOR to the farmers in the district of Kekaha, on the Island of Kaua'i;

WHEREAS, the LICENSEES desire to continue to remove soils and/or sediments ("Soils") from the former plantation settling ponds and pond berms for cover material at the Kekaha Phase II Landfill; in consideration of the fees to be paid and the

terms, conditions, and agreements herein contained, all on the part of the LICENSEES to be kept, observed, and performed, does hereby grant said License to the LICENSEES to enter and remove Soils on an "AS NEEDED" basis from the Kekaha Mud Ponds situated at Kekaha, Kaua'i, Hawai'i, TMK (4) 1-2-02:Por. 1 and defined in Exhibit A, hereinafter referred to as the "Licensed Area," and

WHEREAS, the Agribusiness Development Corporation (ADC) Board at its meeting held on May 22, 2008, found that public interest would be best served by disposition of a License.

NOW, THEREFORE, the terms and conditions under which this License is issued are as follows:

1. The LICENSEES shall pay in legal tender of the United States of America, at the Agribusiness Development Corporation, Honolulu, Hawai'i, a royalty rate the sum of ONE DOLLAR (\$1.00) for each cubic yard of Soils removed. The LICENSEES shall not under any condition, remove more than 45,000 cubic yards of Soils per year from said Licensed Area. Delinquent payments due to the LICENSOR shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.
2. The LICENSEES shall confine operations strictly to the Licensed Area and shall take all reasonably necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawai'i and/or under Lease or License to the Co-op incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the LICENSEES at its own expense to the satisfaction of the LICENSOR and the Co-op.
3. The LICENSEES shall meet with the LICENSOR and the Co-op in advance of any removal of Soils to discuss removal plans and safety requirements for the removal activity. The removal of the Soils shall be under the supervision of the LICENSOR and shall be taken from only those areas so designated by the LICENSOR. No removal shall occur without such designation. The LICENSEES shall not resell any portion of the removed Soils.

The LICENSEES shall give the LICENSOR and the Co-op prior notice of at least 48 hours before entering the Licensed Area or removing any Soils; and prior notice of at least 48 hours before leaving the Licensed Area, when the allotted cubic yards are removed.

4. This License is non-transferable. If Waste Management of Hawai'i, Inc., is a partnership, joint venture, corporation or LLC, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the LICENSOR to terminate this License effective of the date of sale or transfer.

5. The LICENSOR reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the LICENSOR, or by any other Licensee(s) of the LICENSOR in such a manner as to interfere unreasonably with the herein the LICENSEES in the free use of said Licensed Area for the purpose herein specified.

6. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

7. The LICENSEES shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies reasonably acceptable to the ADC Board and licensed to do business in the State of Hawai'i, in an amount of at least \$1,000,000.00 for each occurrence and aggregate. The policy or policies of insurance shall name the Agribusiness Development Corporation and the Co-op as additional insured. The insurance shall cover the entire Licensed Area. The LICENSEES, prior to entry and use of the Licensed Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the LICENSOR with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the LICENSOR.

The LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the reasonable opinion of the LICENSOR, the insurance provisions in this License do not provide adequate protection for the Licensor, the LICENSOR may require the LICENSEES to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The LICENSOR's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The LICENSOR shall notify the LICENSEES in writing of changes in the insurance requirements and the LICENSEES shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the LICENSOR incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit the LICENSEES' liability under this License nor to release or relieve the LICENSEES of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, the LICENSEES shall be obligated for the full and total amount of any damage, injury, or loss caused by the LICENSEES' negligence or neglect connected with this License.

It is agreed that any insurance maintained by the LICENSOR will apply in

excess of, and not contribute with, insurance provided by the LICENSEES' policy(s).

8. The LICENSEES shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the Licensed Area.

9. The LICENSEES shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the Licensed Area or any part thereof; nor shall the LICENSEES cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the Licensed Area or any part thereof, except special permission for the same may be given by the LICENSOR.

10. The LICENSEES shall fill, finish, clear, and/or smooth the area in which the Soils is taken to a condition reasonably satisfactory to the LICENSOR.

11. All work incident to the removal of Soils shall be accomplished without cost to the LICENSOR.

12. No stockpiling of Soils shall occur in the Licensed Area.

13. The term of the License shall begin effective retroactively on August 1, 2008 and shall end at the earlier of July 31, 2028, or at such time that both parties mutually agree suitable soil is no longer available, providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the LICENSEES shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the LICENSEES, or for any breach of the terms and conditions of this License.

14. At the end of each month that the License is in effect, the LICENSEES shall transmit to the LICENSOR and the Co-op, certified reports of the quantity of Soils removed from the permitted area and the royalty payment. Said report and royalty payment shall be due within thirty (30) days following the end of the month. Such removal shall not exceed 45,000 cubic yards of Soils per year.

15. The LICENSEES shall indemnify, defend, and hold the LICENSOR harmless from and against any claim or demand for loss, liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the LICENSEES relating to the LICENSEES' use, occupancy, maintenance, or enjoyment of the Licensed Area; 2) any failure on the part of the LICENSEES to maintain the Licensed Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of the LICENSEES to maintain any of the LICENSEES' equipment within the Licensed Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the LICENSEES' non-observance or non-

performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. In case the LICENSOR shall, without any fault on its part, be made a party to any litigation commenced by or against the LICENSEES (other than condemnation proceedings), the LICENSEES shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the LICENSOR; furthermore, the LICENSEES shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the LICENSOR in enforcing the terms and conditions of this License, in recovering possession of the Licensed Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

17. The LICENSEES shall remove from the Licensed Area all equipment, machinery and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination, or upon expiration, or abandonment of this License.

The LICENSEES shall, at its sole cost and expense, restore the Licensed Area to a condition reasonably satisfactory to the LICENSOR, normal wear and tear excepted, upon termination, abandonment, or expiration of this License.

18. The LICENSEES shall pay all cost and expense incurred by the issuance of this License.

19. The LICENSOR reserves the right to reopen and adjust the royalty rate per cubic yard upon receipt of an appraisal report approved to by the Board of the Agribusiness Development Corporation at the ending of years 1, 5, 10 and 15 of this License. The LICENSOR shall notify the LICENSEES of the revised royalty rate per cubic yard by written notice. The LICENSEES shall have thirty (30) calendar days after receipt thereof to terminate the License if not in agreement with the revised royalty rate. The royalty rate shall not be revised downward.

20. Any and all disputes and/or questions arising under this License shall be referred to the ADC Board of the Agribusiness Development Corporation and its determination of these disputes or questions shall be final and binding on the parties.

21. The LICENSOR, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the LICENSEES, have access to all books, accounts, records, and reports of the LICENSEES relating to the Soils removed from the Licensed Area herein described for the purpose of inspection, examination or audit. If the audit by the LICENSOR shall disclose that the royalty rate has been underpaid by five percent (5%) or more in dollar value for the period under examination, the LICENSOR shall have the right to terminate this License.

22. The LICENSEES shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. The LICENSEES shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Licensed Area any such materials except to use in the ordinary course of the LICENSEES' business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon the LICENSOR's consent which consent may be withheld at the LICENSOR's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the LICENSEES, then the LICENSEES shall be responsible for the reasonable costs thereof. In addition, the LICENSEES shall execute affidavits, representations and the like from time to time at the LICENSOR's request concerning the LICENSEES' best knowledge and belief regarding the presence of hazardous materials on the Licensed Area placed or released by the LICENSEES.

The LICENSEES agree to indemnify, defend, and hold the LICENSOR harmless, from any damages and claims resulting from the release of hazardous materials on the Licensed Area occurring while the LICENSEES is in possession, or elsewhere if caused by the LICENSEES or persons acting under the LICENSEES. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

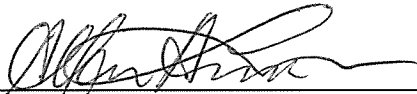
23. Time is of the essence in this License and if the LICENSEES shall fail to pay the royalty rate, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the LICENSOR of a written notice of breach or default, or if the LICENSEES shall become bankrupt, or shall abandon the Licensed Area, except if any maximum amounts of material have been removed from the Licensed Area, or if this License and Licensed Area shall be attached or taken by operation of law, or if the LICENSEES shall fail to observe and perform any of the covenants, terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the LICENSOR of a written notice of breach or default, by personal service, registered mail or certified mail to the LICENSEES at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the LICENSOR may at once re-enter the Licensed Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; the Co-op shall retain all royalty paid in

advance to be applied to any damages.

IN WITNESS, WHEREOF, the parties hereto have caused these present to be executed this 14th day of June, 2011.

LICENSOR

STATE OF HAWAI'I, AGRIBUSINESS DEVELOPMENT CORPORATION

By 
Executive Director

APPROVED AS TO FORM:

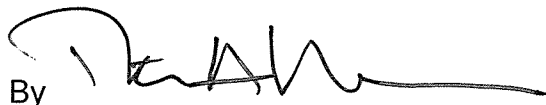

Deputy Attorney General

Dated: June 14, 2011

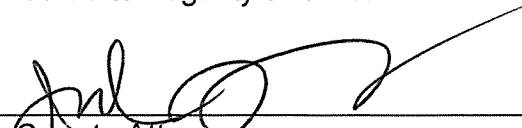
LICENSEES

COUNTY OF KAUA'I

By 
Wallace G. Rezentes, Jr.
Its Finance Director

By 
Peter A. Nakamura
Its County Clerk

Approved as to Legality and Form


County Attorney

WASTE MANAGEMENT OF HAWAII, INC.


By Joseph R. W. Kelom
Its: Vice President

ACKNOWLEDGED & APPROVED:
KEKAHA AGRICULTURE ASSOCIATION

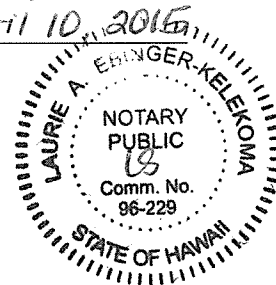
By Ant R. Rodger


STATE OF HAWAII)
) ss:
COUNTY OF KAUAI)

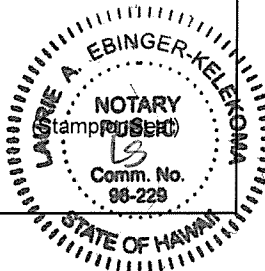
On this 28th day of April, 2011, before me appeared **WALLACE REZENTES, JR.**, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the COUNTY OF KAUAI, Agreement political subdivision of the State of Hawaii; that the seal affixed to the foregoing instrument is the seal of said COUNTY OF KAUAI and that said instrument was signed and sealed on behalf of said COUNTY OF KAUAI by authority of its Charter; and said **WALLACE REZENTES, JR.** acknowledged said instrument to be the free act and deed of said COUNTY OF KAUAI.



Notary Public, State of Hawaii
Laurie A. Ebinger-Kelekoma
My commission expires: April 10, 2015

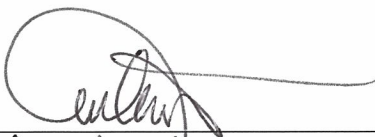


Doc. Date: <u>March 23, 2011</u>	# Pages: <u>14</u>
Notary Name: <u>Laurie A. Ebinger-Kelekoma Fifth</u> Circuit	
Doc. Description: <u>Land License</u> <u>to promote/develop agricultural enterprises</u>	
 Notary Signature	<u>4.28.11</u> Date

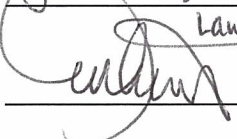


STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)


On this 2nd day of June, 2011, before me appeared **PETER A. NAKAMURA**, to me personally known, who, being by me duly sworn, did say that he is the County Clerk of the COUNTY OF KAUAI, a political subdivision of the State of Hawaii; that the seal affixed to the foregoing instrument is the seal of said COUNTY OF KAUAI, and that said instrument was signed and sealed on behalf of said COUNTY OF KAUAI by authority of its Charter; and said County Clerk acknowledged said instrument to be the free act and deed of said County of Kauai.


Aida Okasaki
Notary Public, State of Hawaii
My Commission expires: June 7 2011



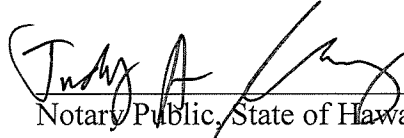
Doc. Date: _____	# Pages: <u>14</u>
Notary Name: <u>Aida Okasaki</u>	<u>5th</u> Circuit
Doc. Description: <u>State of Hawaii</u> <u>Agri Business Development Corporation</u> <u>Land License No.</u>	
	<u>6-2-2011</u>
Notary Signature	Date

(Stamp of Seal)



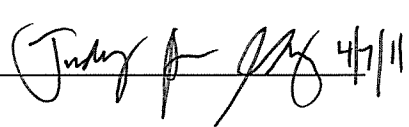
STATE OF HAWAII)
) ss:
COUNTY OF HONOLULU)

On this 7 day of April, 2011, before me appeared **JOSEPH WHELAN** to me personally known, who being by me duly sworn, did say that he is the Vice President of **WASTE MANAGEMENT OF HAWAII, INC.**, a Delaware corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said appeared **JOSEPH WHELAN** acknowledged said instrument to be the free act and deed of said corporation.

 Judy Ann Gaygay
Notary Public, State of Hawaii

My commission expires: 9/27/2014 *LS.*

LS.

Doc. Date:	<u>4/7/11</u>	# Pages:	<u>13</u>
Notary Name:	<u>Judy Ann Gaygay</u>	<u>First</u>	Circuit
Doc. Description:	<u>Land</u> <u>License</u>		
		<u>4/7/11</u>	
Notary Signature		Date	(Stamp or Seal)

STATE OF HAWAI'I)
) ss.
CITY & COUNTY OF HONOLULU)

On this 14th day of June, 2011, before me appeared **ALFREDO A. LEE** to me personally known, who, being by me duly sworn, did say that he/she is the Executive Director of the **AGRIBUSINESS DEVELOPMENT CORPORATION**, a public body corporate and politic; that said instrument was signed on behalf of said Agribusiness Development Corporation; and said **ALFREDO A. LEE** acknowledged said instrument to be the free act and deed of said Agribusiness Development Corporation.

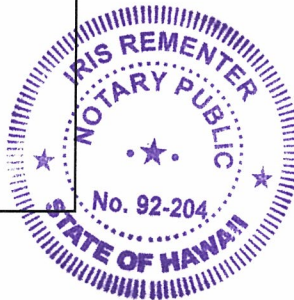


Iris Rementer

Iris Rementer
Notary Public, State of Hawai'i

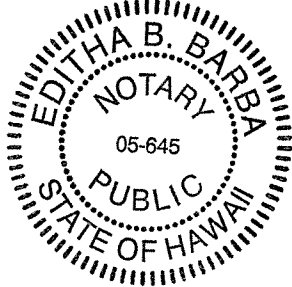
My commission expires: 3/20/2012

Doc. Date: <u>undated</u>	# Pages: <u>14</u>
Notary Name: <u>Iris Rementer</u>	Circuit
Doc. Description: <u>SOW/ADC</u>	
<u>Land License</u>	
<u><i>Iris Rementer</i></u>	<u>6/14/11</u>
Notary Signature	Date (Stamp or Seal)



STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this 23RD day of MARCH, 2011, before me appeared CURTIS R RODGERS to me personally known, who, being by me duly sworn, did say that he/she is the PRESIDENT of the Kekaha Agriculture Association, a Hawaii'i agriculture cooperative; that said instrument was signed on behalf of said Association; and said PRESIDENT acknowledged said instrument to be the free act and deed of said Kekaha Agriculture Association.



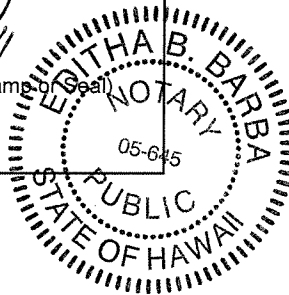
Editha B Barba

Notary Public, State of Hawai'i

EDITHA B BARBA

My commission expires: 10-30-13

Doc. Date:	<u>MAR 23, 2011</u>	# Pages:	<u>13</u>
Notary Name:	<u>EDITHA B BARBA</u>	<u>5th</u>	Circuit
Doc. Description:	<u>LAND LICENSE</u>		
<i>Editha B Barba</i> 3/23/11			
Notary Signature	Date	(Stamp or Seal)	

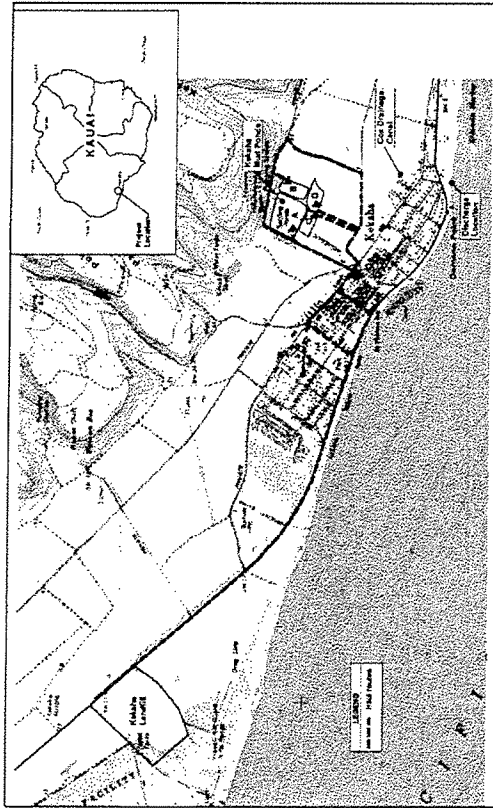




KEKAHA MUDPOND GRADING

KAUAI, HAWAII

September 2007



INDEX		TITLE
DRAWING NO.		TITLE AND INDEX
1		PARISH GRADING PLAN
2		CROSS SECTIONS
3		PARISH GRADING EROSION CONTROL
4		NOTES

APPROVALS

COUNTY ENGINEER, DEPARTMENT OF PUBLIC WORKS
COUNTY OF KAUAI

DATE

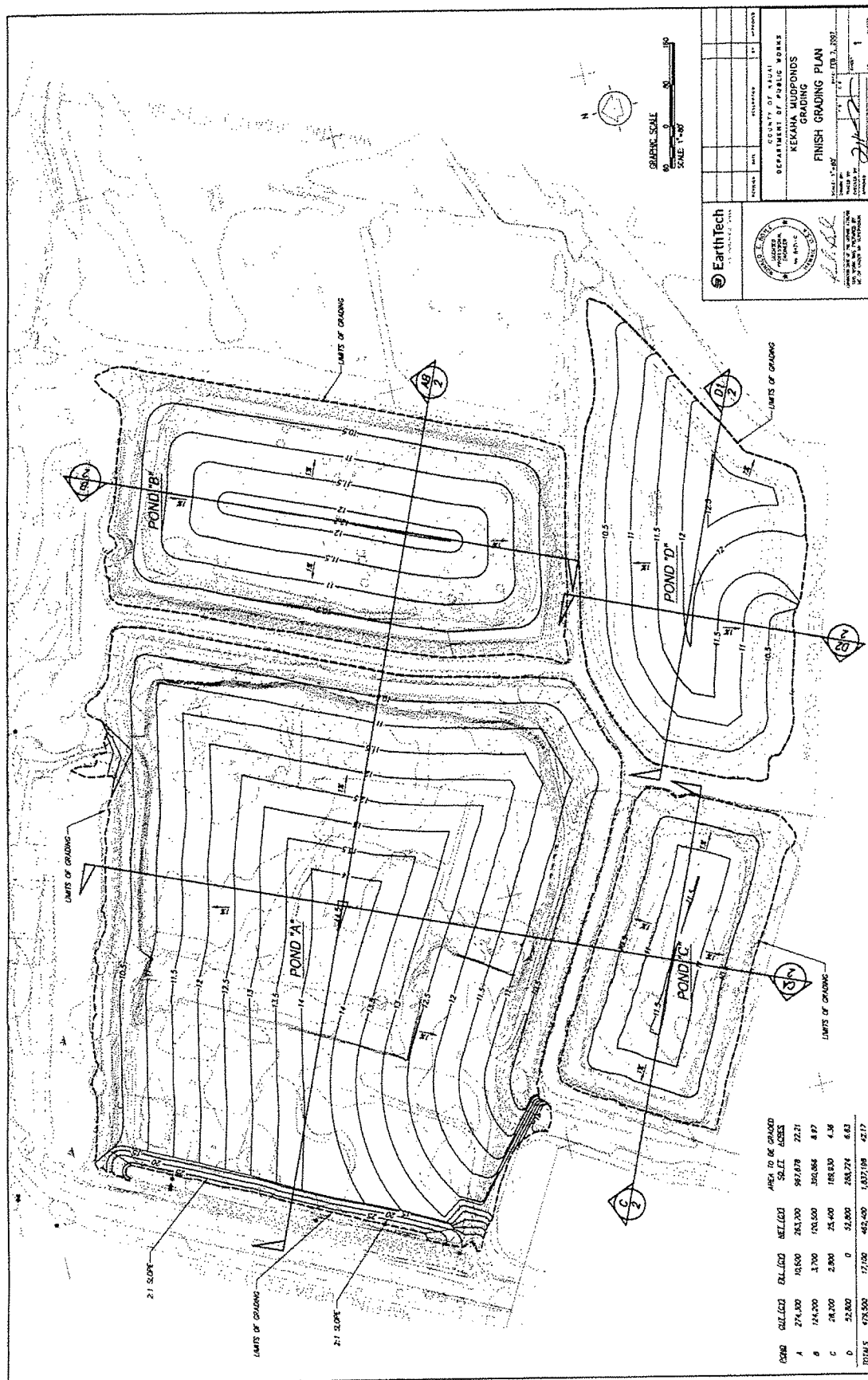
EarthTech

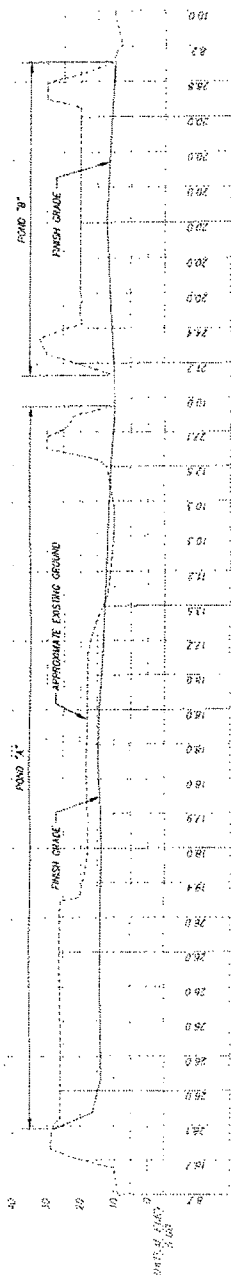
PREPARED FOR:
COUNTY OF KAUAI, SOLID WASTE DIVISION
4444 ROSE STREET
LILUOUE, KAUAI, 96746
KEKAHA LANDFILL
KEKAHA, KAUAI, HI 96751
808-337-5813

EarthTech
1000 KALANANĀʻOHI AVE.
SUITE 200
HONOLULU, HI 96813
TEL: 808-943-8800
FAX: 808-943-8801
WWW.EARTHTECH.COM

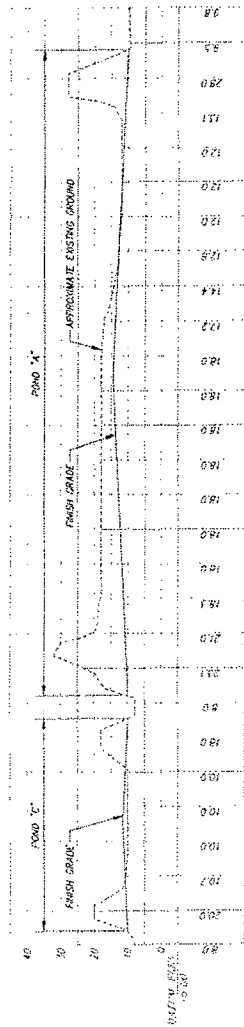
COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS
KEKAHA MUDPONDS
GRADING

DATE: 9/11/07
DRAWN BY: [Signature]
CHECKED BY: [Signature]
APPROVED BY: [Signature]

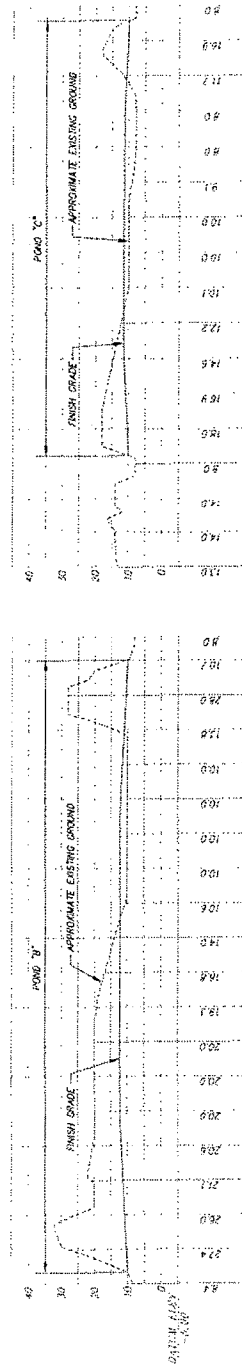




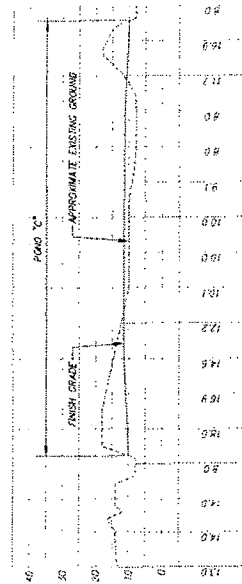
CROSS SECTION A-B



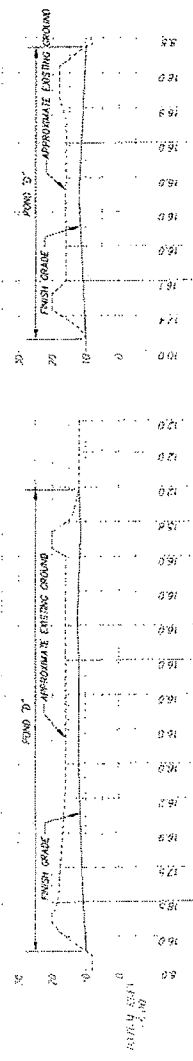
CROSS SECTION C-A



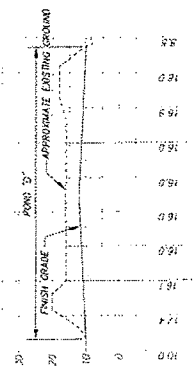
CROSS SECTION B



CROSS SECTION C



CROSS SECTION D1



CROSS SECTION D2

HORIZONTAL SCALE: 1"=40'
VERTICAL SCALE: 1"=10'

EarthTech
Engineering & Construction



COUNTY OF NAJAL
DEPARTMENT OF PUBLIC WORKS
KEKANA MUDPODS
GRADING
CROSS SECTIONS

DATE: 11/15/2021
DRAWN BY: [Signature]
CHECKED BY: [Signature]
SCALE: 1"=40'
SHEET: 2 OF 2

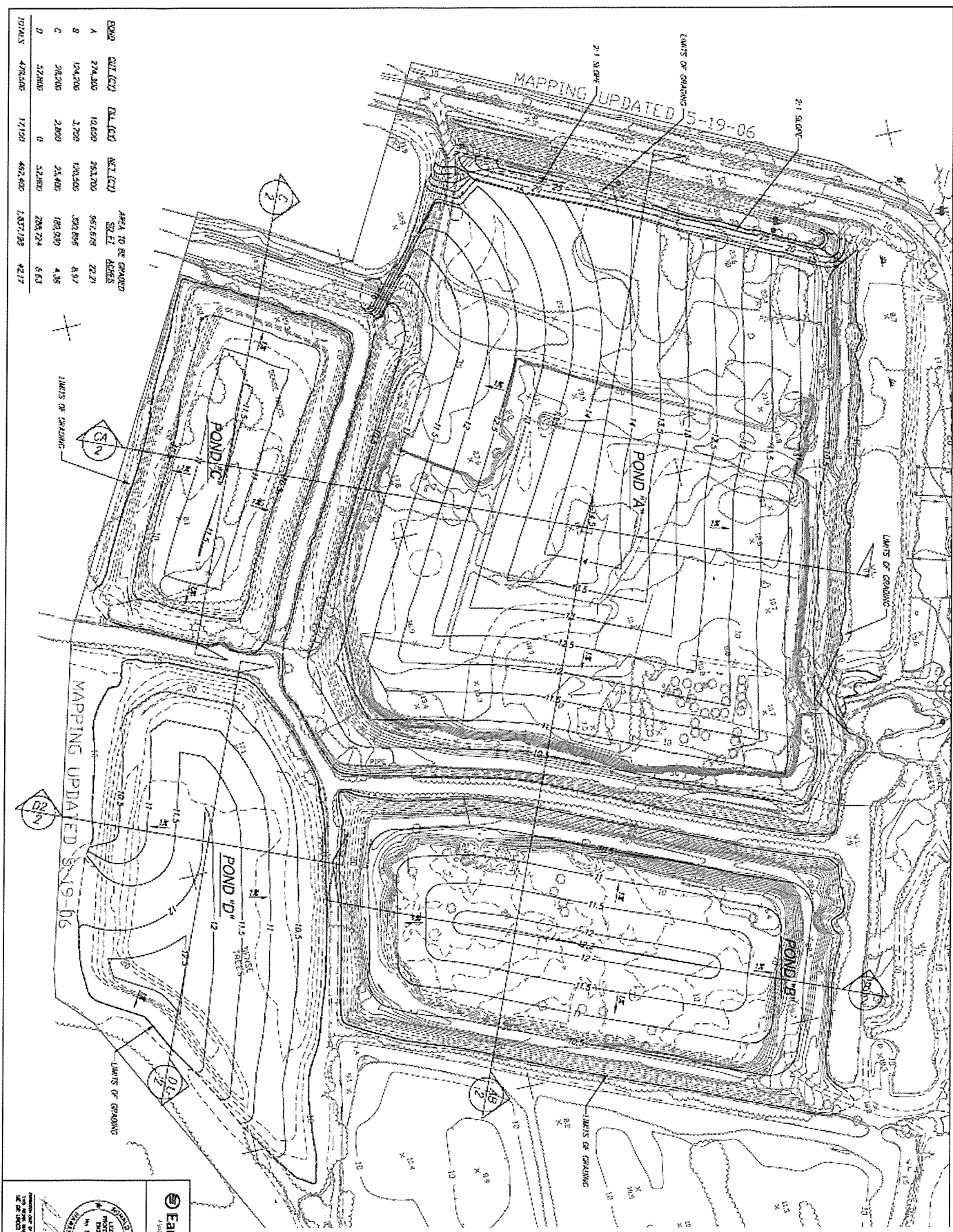


EXHIBIT "A"



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

August 17, 2022

Subject: Request for Approval to Amend License Agreement No. LI-KA1405
Issued to Elesther Calipjo, an Individual, for 305.43 Acres, More or
Less, in Kalepa, Kauai, Tax Map Keys (4) 3-9-002:020 (por.), (4) 3-
9-002:009 (por.)

Licensee: Elesther Calipjo, an individual

Authority: Section 163D-5(a)(5), Hawaii Revised Statutes

Area: 305.45 acres, more or less

Field No(s).: Unit K: 300 acres, more or less
Unit K-1: 5.43 acres, more or less

Tax Map Key: (4) 3-9-002:020, (4) 9-9-002:009

Land Status: Set aside by the Governor's Executive Order Nos. 4328 and 4401
to the Agribusiness Development Corporation for Agricultural and
Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act (Parcels 20, 9)
Yes ☒ No ☐
DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? (Parcel 20 only)
Yes ☒ No ☐

Character of Use: Unit K: Pastural
Unit K-1: Diversified Agriculture

Land Doc. Type: License

Term: 35 years (currently in year 7)

Rental Rate: Unit K \$30.75 per acre per year
Unit K-1 \$102.50 per acre per year
Annual Rent: \$9,781.58

BACKGROUND:

Governor's Executive Order No. 4328, issued on August 24, 2010, set aside 5,963.972 acres, more or less, (the "Property") to the Agribusiness Development Corporation for agricultural and related purposes. The transfer of the Property included a number of tenants, including Licensee, under revocable permits issued by the Department of Land and Natural Resources under whom the Property had been previously managed.

The Board of Directors (Board) of the Agribusiness Development Corporation (ADC) approved License Agreement No. LI-KA1405 (License) (Exhibit "A") issued to Elesther Calipjo, an individual, for 305.43 acres, more or less, of Units K and K-1 at their meeting on June 12, 2013.

REQUEST:

Licensee requests that the License be amended by changing the named licensee from "Elesther Calipjo" to "GK's Janitorial & Landscaping, Inc.", a legal corporation under Licensee's control (see Exhibits "B" and "C").

DISCUSSION:

Licensee's request is primarily administrative and does not significantly amend the License, nor does the request have any fiscal impact to ADC.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the request noted above, subject to the following conditions:

1. Standard terms and conditions of the most current license amendment form for the Kalepa area shall apply; and
2. All other terms and conditions of the License, notwithstanding the above request, shall remain unchanged.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

Request for Approval to Amend License Agreement No. LI-KA1405 Issued to Elesther Calipjo, an Individual, for 305.43 Acres, More or Less, in Kalepa, Kauai, Tax Map Keys (4) 3-9-002:020 (por.), (4) 3-9-002:009 (por.)
August 17, 2022
Page 3 of 5

EXHIBIT A

License Agreement No. LI-KA1405 (includes map)

[see following pages]

LICENSE AGREEMENT NO. LI-KA1405

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LICENSOR

and

ELESTHER CALIPJO

an Individual
as LICENSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-KA1405

THIS LICENSE made and issued this 23rd day of January, 2015, and effective as of December 1, 2014, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and ELESTHER CALIPJO, an individual, whose business address in the State of Hawaii for purposes of this License Agreement is P.O. BOX 1781, Lihue, Hawaii 96766, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Wailua (Kalepa), Lihue, Kauai, identified as "Wailua Agricultural and Related Purpose Site," situated makai of Lihue-Koloa Forest Reserve and between Hanamaulu and the North Fork of the Wailua River," and further identified by Tax Map Key (TMK) numbers (4)3-09-001:002 (por.); (4)3-09-002:001 (por.), :009 and :020; and (4)4-02-001:003 (por.), containing a gross area of 6,177.852 acres, more or less, and a net area of 6,084.395 acres, more or less, under Governor's Executive Order No. 4328, dated August 24, 2010, modified by Governor's Executive Order No. 4401, dated February 20, 2012, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for agricultural and related purposes; and

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Kalepa, Kauai for agricultural purposes;

WHEREAS, the Kalepa Koalition, a Hawaii agriculture/fish co-op (the Kalepa Koalition) is, at the time of the execution of this License, an organization comprised of the existing revocable permittees and licensees of the Property described hereinabove, all of whom have worked collectively and cooperatively with the State of Hawaii to equitably parcel the lands amongst themselves, and who have also successfully designed and installed roads and a security gate system throughout the Property ("Road Facilities") thereby allowing necessary ingress into and egress from the Property by all revocable permittees and license holders; and

WHEREAS, LICENSOR has agreed to allow the Kalepa Koalition to manage the maintenance of the common roads and security gates at the Property in exchange for mutual consideration and other agreed upon terms, as set forth in that certain Memorandum Of Understanding dated January 10, 2013, between the Licensor and the Kalepa Koalition, as amended from time to time ("MOU");

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use that portion of land, situated at Kalepa, Kauai, Hawaii, TMKs (4)3-09-002:020 (por.), and (4)3-09-002:009, and outlined on the map attached hereto and incorporated herein as Exhibit "A", which is within a portion of the Property more particularly described in Exhibit "B" attached hereto and incorporated herein, containing a land area of 300 acres, more or less, in (4)3-09-002:020 (por.), (designated as Unit K; and 5.43 acres, more or less, in (4)3-09-002:009 designated as Unit K-1 in Exhibit "A"), for a total land area of 305.43, more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the Premises that are under the control, operation, or management of the Kalepa Koalition or any other entity, including LICENSOR.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees or revocable permittees of other lands included with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Kalepa Koalition or any other entity, including LICENSOR).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for thirty-five (35) years, commencing on the 1st day of December, 2014 or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided.

Notwithstanding any provision to the contrary, wherever applicable, the LICENSOR, for good cause shown, may allow

additional time beyond the time or times specified herein to the LICENSEE, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this License.

2. License Fee. The base license fee for the tillable acres of this License shall be as outlined on the table below, payable in monthly installments, on or before the first of each month.

EFFECTIVE	CLASSIFICATION	BASE RENT PER ACRE PER YEAR	ACRES	ANNUAL RENT PER CLASSI- FICATION
Upon execution until last day of 5th year	Pasture	\$30	300	\$9,000.00
	Diversified Ag	\$100	5.43	\$543.00
	(blank)			

LICENSOR and LICENSEE agree that the Premises consist of 300.00 tillable acres and -0- non-tillable acres within TMK (4)3-09-002:020(por.) (Unit K) and 5.43 tillable acres in TMK (4)3-09-002:009 (Unit K-1) for a total of 305.43 gross acres, of which, for the purpose determining base rents, 300 acres are classified as Pasture; and 5.43 acres are classified as Diversified Agriculture. For purposes of this License Agreement, "tillable acres" shall include all portions of the Premises measured in acres that are suited for cultivation in accordance with normal agronomic practices, and "non-tillable acres" shall include all portions of the Premises measured in acres that are not suited for cultivation in accordance with normal agronomic practices.

LICENSOR AND LICENSEE agree that the Premises consist of 305.43 total acres, more or less.

The total acreage in the preceding paragraph is subject to further review. Upon clarification of more accurate acreage, LICENSEE agrees to pay any additional applicable license fees that may have accrued.

LICENSOR reserves the right to adjust the License Fee based on LICENSOR's determination that the character of use has changed substantially

3. [Reserved.]

4. Increase of Base Annual License Fee.

Every five years (on the first day of the beginning of the 6th, 11th, 16th, 21st, 26th, and 31st years), an additional two and one-half percent (2.50%) shall be applied to the base rent, which new base rent shall become the base rent for each subsequent rent increase.

5. Interest on Delinquent License Fees. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each delinquent payment.

6. [Reserved.]

7. Taxes, Assessments, and Utilities. LICENSEE shall pay, if and when due, LICENSEE's proportionate share of all taxes and similar rates, assessments, charges, and outgoings, if any, of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or in respect of the Premises and the improvements now on or hereafter erected by LICENSEE thereon.

8. Character of Use. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.

(a) LICENSEE shall use the Premises solely for pastoral and related purposes on TMK (4)3-09-002:20 (por.) and diversified agriculture on TMK (4)3-09-002:009, as set forth in LICENSEE's land utilization plan attached hereto as Exhibit "C". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License.

(b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.

(c) All livestock production operations shall be operated and maintained so as not to create any public health

problems as determined by the State Department of Health.

- (d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.
- (e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.
- (f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises by LICENSEE and to address any material increase in weeds or litter on the Premises.
- (g) LICENSOR reserves the right to adjust the License Fee based on LICENSOR's determination that the character of use has changed substantially.

- 9. Utilization and Development of the Land. LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "C" hereto. Any material modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.
- 10. Sublicensing. LICENSEE shall not sublicense or rent the whole or any portion of the Premises without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR's sole discretion. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sub-licensee's land utilization plan and rental payment schedule for LICENSOR's consideration. Profit on any sublicense charges are neither allowed, nor shall be sought by LICENSEE.
- 11. Good Husbandry and Conservation Practices. Insofar as LICENSEE's use of the Premises (as set forth in LICENSEE's land utilization plan) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all

times practice good husbandry with regard to the use of the Premises for the use permitted. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. Sanitation. LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.
13. Improvements. During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner

termination of this License, at which time the ownership thereof shall, at the option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

14. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except for the payment of Common Road Improvement Costs and other related assessments to the Kalepa Koalition, pursuant to the MOU and to the Charter, Bylaws, Rules and/or duly adopted Resolutions of the Kalepa Koalition ("Kalepa Koalition Documents"), LICENSEE shall have no obligation under this License to keep, repair, or maintain any common road or security gate improvements.
15. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.
16. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.
17. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.
18. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30) days where the default involves a failure to make timely license fee payments, including payment of any Common Road Improvement Costs (or any

substitute assessment or charges specified in the MOU or the Kalepa Koalition Documents) payable directly to LICENSOR, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.

19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.
20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to two times the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License Agreement have been observed and performed.
21. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of the License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR'S sole discretion.
22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for

personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawai'i. Except for the payment of Common Road Improvement Costs as provided in the MOU or the Kalepa Koalition Documents, LICENSEE shall have no obligation under this License Agreement to procure or maintain any commercial general liability insurance with regard to any activities of the Kalepa Koalition or any other entity (including LICENSOR) which has control from time to time over any of the common infrastructure improvements.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of its License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy shall name LICENSOR as an additional insured.

LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or

certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License Agreement, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of its License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawai'i, its officers, employees, and agents are waived.

24. Right to Enter. LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
25. Inspection of Premises. LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.

26. Surrender. At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

27. Withdrawal for Public Purpose; Condemnation.

A. Withdrawal for a Public Purpose. LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises to become unusable for the specific use or uses for which it was licensed, the base annual rent shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable

because of such withdrawal or taking. In the case of tree crops, LICENSOR shall pay to LICENSEE the Allocated Value of the trees taken and, if there are un-harvested crops, the value of the crops also. The Allocated Value of the trees shall be computed by multiplying the fair market value of the trees at maturity ("FMV") by a fraction whose numerator is the age of the trees at the time of withdrawal or taking ("Age") and whose denominator is the age of the trees at maturity (where maturity is defined as the age when the trees would be scheduled for harvesting) ("Maturity") as expressed by the following formula:

$$\text{Allocated Value} = \text{FMV} \times \frac{\text{Age}}{\text{Maturity}}$$

If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License Agreement, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

B. Condemnation. If at any time, during the term of this License Agreement, any portion of the Premises shall be condemned or required for public purposes by the Federal government or any county or city and county, or any governmental agency of either, the base annual license fee and any other charges under this License Agreement, including LICENSEE's proportionate share of Common Road Improvement Costs, shall be reduced in proportion to the value of the portion of the Premises condemned. LICENSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LICENSEE is not permitted to harvest, and (b) the proportionate value of LICENSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the License Agreement; provided, that LICENSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LICENSEE. LICENSEE shall not by reason of the condemnation be entitled to any claim against the LICENSOR for compensation or indemnity for the license interest and all compensation payable or to be paid for or on account of the land comprising the Premises by reason of the condemnation shall be payable to and be the sole property of the LICENSOR. The foregoing rights of LICENSEE shall not be exclusive of any other rights to which LICENSEE may be entitled by law, and

LICENSEE shall have the right to claim and recover from the condemning authority, but not from LICENSOR, such compensation as may be separately awarded or recoverable in LICENSEE's own right on account of such condemnation of LICENSEE's interest under this License Agreement and any improvements constructed by LICENSEE on the Premises. Where the portion of the Premises taken renders the remainder of the Premises unsuitable for the use or uses for which the Premises were licensed, LICENSEE shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that LICENSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LICENSOR.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License Agreement, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.
29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.
30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term that the same are licensed to LICENSEE hereunder, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.
31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises

for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License Agreement. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.

32. Non-warranty. LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this License Agreement, LICENSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this License Agreement, and LICENSOR (and/or LICENSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.
33. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this License Agreement, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.
34. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
35. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees; furthermore, LICENSEE shall pay all costs and expenses which may be incurred by or paid by LICENSOR in enforcing the covenants and agreements of this License, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges.

If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings),

without any fault on LICENSEE's part, LICENSOR shall pay all costs and expenses incurred by or imposed on LICENSEE, including, but not limited to, attorney's fees; furthermore, LICENSOR shall pay all costs and expenses which may be incurred by or paid by LICENSEE in enforcing the covenants and agreements of this License; PROVIDED THAT, any such litigation arises out of any damage or personal injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death (collectively, the "Claims"), arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments, with the exception of Claims arising out of the wrongful or negligent acts or omissions of LICENSOR. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

37. Hunting. Except as provided herein, no hunting shall be allowed on the Premises during the term of this License. Notwithstanding the restriction on hunting on the Premises, LICENSEE shall be allowed to eradicate animals and other pest animals that threaten or harm LICENSEE's operations or activities on the Premises. LICENSEE or its agents shall first secure all appropriate licenses or permits authorizing any eradication method(s) used on the Premises. Where

practicable, LICENSEE shall ensure that humane methods of eradication be practiced in all eradication activities.

38. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises. To the extent applicable, the parties agree to use the former Plantation Field Maps to determine the boundary of the Premises.
39. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.
40. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License Agreement. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.
41. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Kalepa Coalition or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.

42. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
43. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
44. Hazardous Materials. LICENSOR remains responsible for any issues occurring on the demised Premises prior to the commencement date of this License. Any environmental issue occurring on Premises after the date of this License Agreement shall be the responsibility of LICENSEE.

(a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE

at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

- (b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

- (c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own

expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.

46. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service (NRCS). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.
47. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.
48. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.
49. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.
50. Forest Stewardship Programs. LICENSEE may engage in programs related to forest stewardship and conservation provided that the mission of the program(s) is(are) not contrary to

paragraphs 8, 9 and 11 above; and the LICENSOR has reviewed and does not object to any agreement related to the forest stewardship program(s) that the LICENSEE has executed. Furthermore, the LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any breach of contract under the forest stewardship program(s).

51. [Reserved.]

52. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the License term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.

55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.

57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.

58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the State Historic Preservation Division (SHPD) shall be contacted prior to any work. A field check will be required and shall be performed by the SHPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the HPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Performance bond. The LICENSEE shall procure and deposit with the LICENSOR and thereafter keep in full force and effect during the term of this License, a good and sufficient surety bond in an amount equal to two times the annual base rental, conditioned upon the full and faithful observance and performance by the LICENSEE of the license terms, conditions, and covenants of this License. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the LICENSOR as liquidated and ascertained damages and not as a penalty.

The LICENSOR may waive or suspend the performance bond requirement at its discretion; provided that the LICENSEE has substantially complied with the terms, conditions, and covenants of this License; and provided further that the LICENSOR reserves the right to reinstate the performance bond requirement at any time throughout the term of this License.

60. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the LICENSEE may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the LICENSEE shall furnish and at all times thereafter keep and maintain on deposit with the LICENSOR, security in certified checks, certificates of deposit, or other forms of financial guarantee of performance that are at least equal in value to those withdrawn, and approved by the LICENSOR.

61. [Reserved.]

62. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.

63. Land Swapping. LICENSEE is allowed, but shall not be obligated, to swap land for uses consistent with its land

utilization plan with any other licensees or revocable permit holder of any portions of the Property at no cost to LICENSEE.

64. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees or the Kalepa Koalition and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.
65. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.
66. Cropping Changes. LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.
67. Recordation. LICENSOR and LICENSEE agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawai'i or with the Assistant Registrar of the Land Court of the State of Hawai'i, as applicable, to give notice of this License Agreement to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.
68. East Kauai Water Users Cooperative. In the event LICENSEE determines that irrigation water is needed for the Premises, LICENSEE shall work with the East Kauai Water Users Cooperative ("EKWUC") and properly compensate the EKWUC for use of the water.
69. Kalepa Koalition. LICENSEE shall join or become a member or shareholder of the Kalepa Koalition or execute a written agreement with the Kalepa Koalition relating to LICENSEE's responsibilities on common infrastructure maintenance and all other assessments required by the Kalepa Koalition Documents.

Proof of LICENSEE's membership with the Kalepa Koalition or a copy of a fully executed agreement between the LICENSEE and the Kalepa Koalition relating to LICENSEE's responsibilities on common infrastructure maintenance and all other assessments

required by the Kalepa Koalition Documents, shall be provided to LICENSOR.

70. Irrigation System Maintenance. LICENSEE shall be required to maintain that part of the irrigation system that is within the Premises in its current condition, by keeping the ditches free and clear of vegetative overgrowth and debris. Except for routine maintenance, alteration of these irrigation ditches shall not be allowed without prior written approval from LICENSOR.

DEFINITIONS

As used in this License Agreement, unless the context otherwise requires:

"Days" shall mean calendar days, unless otherwise specified.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost

recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"Intensive agriculture" means the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals, and raising of poultry.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii as determined from time to time by rule of the Hawaii State Department of Agriculture.

"Pastoral" means the conduct of activities concerned with the production and marketing of livestock and livestock products, including activities relating thereto such as grazing, reproducing, cultivating of grasses for livestock forage, but shall not include poultry operations.

"Premises" includes the land hereby licensed by LICENSOR to LICENSEE and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License Agreement.

"Property" means the approximately 6,177.852 gross acres of land set aside to LICENSOR under Governor's Executive Order No. 4328, dated August 24, 2010, as modified by Governor's Executive

Order No. 4421 dated February 20, 2012, including buildings and improvements.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the Premises or any portions thereof; (3) failure to employ all of the usable portions of the Premises; and (4) abandonment of the Premises.

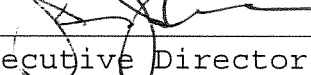
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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 23rd day of January, 20 15.

LICENSOR

STATE OF HAWAII,
AGRIBUSINESS DEVELOPMENT
CORPORATION

APPROVED AS TO FORM:

By 
Its Executive Director


Deputy Attorney General

LICENSEE

ELESTHER CALIPJO
an Individual

By
Its

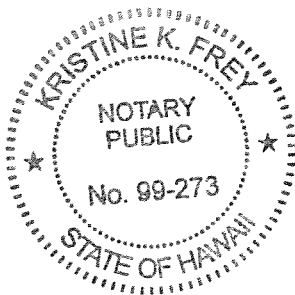


Dated:

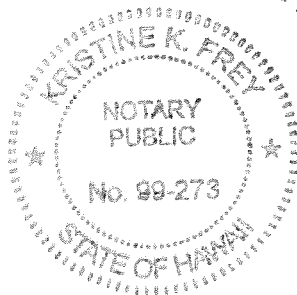
12-17-2014

CITY AND COUNTY OF ~~HONOLULU~~

On this 17th day of December, 2014, before me personally appeared Elester Colipjo and _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that NE executed the same as HIS free act and deed.



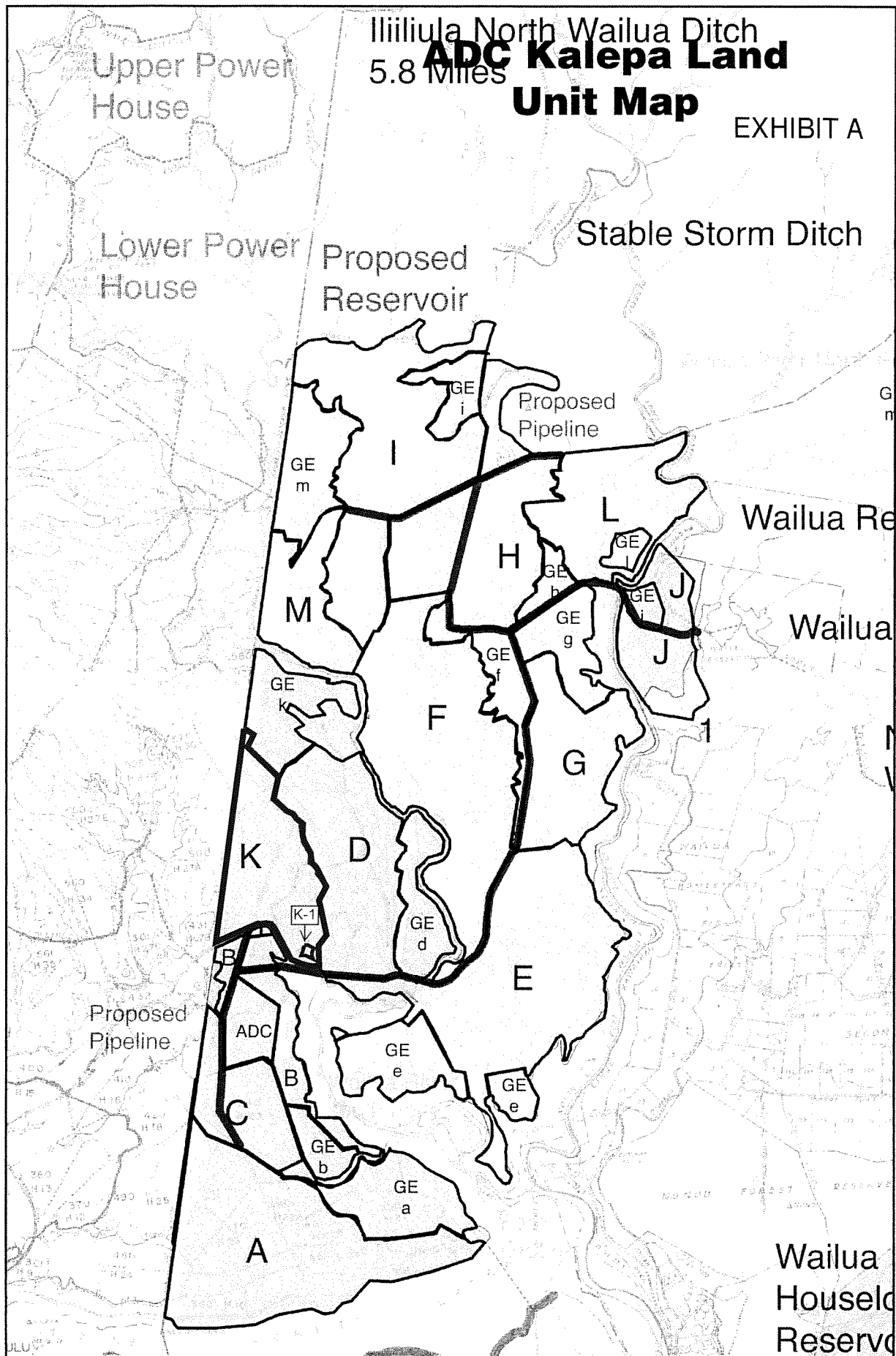
My commission expires:

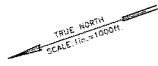


Doc. Description	License

Agreement No 21-KA-403

NOTES





WOMANLY FURNESS ABSENCE
Germans' Thanksgiving started December 27, 1819
Ed. P. C. 5/2/1913

	GROSS AREA =	NET AREA
Lease: Recreational Purpose, 5% Gov. Exec. Ord. 4169	5981.972 Acres	5870.515 Acres
Waikua River, South Park (Not in Waikua River Reserve)	18.007 Acres	
Opitl 8027 to Lease Plantation Co., Ltd	6.005 Acres	
Portion of Maunaloa Road	6.440 Acres	

NET AREA 5870.515 ACRES, MORE OR LESS

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Reid K. Siorat -- State Land Surveyor

WAILUA AGRICULTURAL AND RELATED PURPOSES SITE

Wailua, Lihue, Kauai, Hawaii

- 1 inch = 1000 feet
July 28, 2009

For Description See C.S.F. No. 24,857

H.S.S. PLAT 3042-E

Training By: KI
Job No. K-0786(G2)

Tax Map Key: 5-B-01, G2

Preliminary Plan of Utilization and Development

Our primary production is beef cattle. Total head of cattle is based on total acreage allowing for a minimum of 1 acre per head. The infrastructure plans utilizes all areas of the total parcel as well as best management of grass to avoid over grazing in any areas.

Our secondary production is the breeding of mares and the sale of their off spring.

Water system:

Water is piped in from main water source (currently on Grove Farm property) to holding tanks through 2" HD pipes. Originally water was pumped from ditch bordering Grove Farm property using a high pressure pump but ditch was shut down and water was made available from Grove Farm's water source.

Water is then to be sent to individual water troughs using gravity feed through 1 ¼ inch HD pipes. Shut off valves are installed in logistical locations throughout the lines to shut off water to areas not in use at that time.

Fencing system:

Exterior fencing:

Exterior fencing is 14 gauge hog wire with T posts at 15 foot intervals and ^I eye beam posts at 150 feet intervals or at any turn or gate opening.

Interior Fencing:

Currently: Paddocks are partitioned into larger sections using 14 gauge hog wire or 5 strand bobbed wire with T posts at 20 foot intervals and eye beam posts at 150 feet intervals or at any turn or gate opening.

Future: Paddocks to be reduced in size using electric fences to allow for better rotation of cattle and horses and better grass management.

Gates:

The placements of gates are designed for best movement of cattle and horses and optimum use of water troughs. Each paddock will have at least 1 gate opening that is 20 feet wide to allow for equipment such as mowers to access each paddock.

Roads:

Existing roads are used in the design of the parcel, no additional roads are needed.

Corrals:

Corral #1 is designed not only to work and load animals but also to move animals from paddock to paddock.

Corral #2 is designed not only to work and load animals but also to move animals from paddock to paddock.

Having 2 corrals gives us the ability to work animals in two separate locations. Reducing the need to bring the animals to one location to be worked and allowing for the working of the animal at a minimum of 2 times a year without affecting the grass management plan.

Lease rent and insurance \$2,500.00

Planned Capital Improvements;

Additional interior fencing and gates

Additional water lines and water troughs

Purchase of newer tractor and deck

EXHIBIT B

Licensee's Request

[see following page]

July 19, 2022

Mr. James Nakatani, Exec. Dir.
Agribusiness Development Corp.
235 S. Beretania Street, Rm 205
Honolulu, HI 96813

Re: LICENSE AGREEMENT NO. LI-KA1405

Dear Mr. Nakatani:

Today, I received a telephone call from your employee Lyle Roe, informing me that my Liability Insurance Certificate had expired. I quickly advised my Insurance Company to contact Lyle and send an updated copy to your office. I believe it's been done.

While talking with Lyle, I raised the question as to why my License Agreement was made out to Elesther Calipjo while my Insurance Certificate is under GK's Janitorial & Landscaping Inc. It was always my intention to obtain the License under my company's name so, for a little business housecleaning, I am formally requesting that my License be Amended to change the Licensee to GK's Janitorial & Landscaping, Inc. This change will make my insurance coverage coincide with the License Agreement, while being consistent with all my other business holdings.

Thank you for your help and I stand ready for any questions and/or additional information you may need to execute this change.

Sincerely,

Elesther Calipjo

EXHIBIT C

DCCA Business Registration

[see following page]

DCCA State of Hawaii

Downloaded on August 10, 2022.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

Business Information

MASTER NAME	GK'S JANITORIAL & LANDSCAPING, INC.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	107379 D1
STATUS	Active
PURPOSE	TO ENGAGE IN THE LANDSCAPE CONTRACTING BUSINESS;
PLACE INCORPORATED	Hawaii UNITED STATES
INCORPORATION DATE	Jan 30, 1997
MAILING ADDRESS	[REDACTED] UNITED STATES
TERM	PER
AGENT NAME	ELESTHER CALIPJO
AGENT ADDRESS	[REDACTED] UNITED STATES

Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2022	Feb 3, 2022	Processed
2021	Feb 2, 2021	Processed
2020	Feb 13, 2020	Processed
2019	Feb 1, 2019	Processed
2018	Jan 30, 2018	Processed
2017	Jan 27, 2017	Processed
2016	Feb 22, 2016	Processed
2015	Jan 6, 2015	Processed
2014	Jan 7, 2014	Processed
2013	Jan 22, 2013	Processed
2012	Jan 16, 2012	Processed
2011	Jan 9, 2011	Processed
2010	Mar 16, 2010	Processed
2009	Jan 26, 2009	Processed
2008	Jan 28, 2008	Processed
2007	Mar 2, 2007	Processed
2006	Mar 14, 2006	Processed
2005	Mar 23, 2005	Processed
2004	Mar 11, 2004	Processed
2003	Feb 27, 2003	Processed
2002		Not Required
2001		Processed
2000		Processed
1999		Processed

Officers

NAME	OFFICE	DATE
CALIPJO,ELESTHER	P/T/D	Dec 31, 1997
CALIPJO,MILAGROSE	V/S/D	Dec 31, 1997

Stocks

DATE	CLASS	SHARES	PAID SHARES	PAR VALUE	STOCK AMOUNT
Jan 30, 1997	COMMON	250,000	1,000	1.	



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

August 17, 2022

Subject: Request for Approval to Issue a Revocable Permit to Kekaha Agriculture Association for 1 Acre, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)

Applicant: Kekaha Agriculture Association

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 1 acre, more or less

Field No(s).: Undesignated (located makai of carpenter's shop)

Tax Map Key: (4) 1-2-002:001

Land Status: Encumbered by Governor's Executive Order Nos. 4007 and 4287 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes X No ____

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes X No ____

Character of Use: Office and parking

Land Doc. Type: Revocable Permit

Term: Month-to-month, annual renewal

Rental Rate: \$150 per acre per year
Annual Rent: \$1,800

BACKGROUND:

The Kekaha Agricultural Association (KAA) is a farmer's cooperative made up of existing land tenants that have been on the land since 2003. The KAA has an agreement with the Agribusiness Development Corporation (ADC) to maintain and manage the common areas and infrastructure of the Kekaha Agricultural Lands. The KAA is being displaced from their office location and is in the process of moving out of their current location in

Kekaha town that they lease from a private company and is seeking space on ADC lands to relocate their office operations.

LAND REQUEST:

KAA requests a revocable permit for an area comprising approximately 1 acre, more or less, (Exhibit A, B) located immediately makai of the former carpenter shop.

WATER NEEDS AND SOURCE OF WATER:

The area has access to County water.

OPERATIONAL PLAN:

KAA would like to situate a double-wide office trailer for office and administrative purposes.

CONSERVATION PLAN:

N/A

DISCUSSION:

The request involves the disposition of un-licensed space immediately makai of the former carpenter's shop, and adjacent premises currently licensed to Andros Engineering Corporation. The property is centrally located and is an ideal location for KAA to relocate its operations.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the above request, subject to the following conditions:

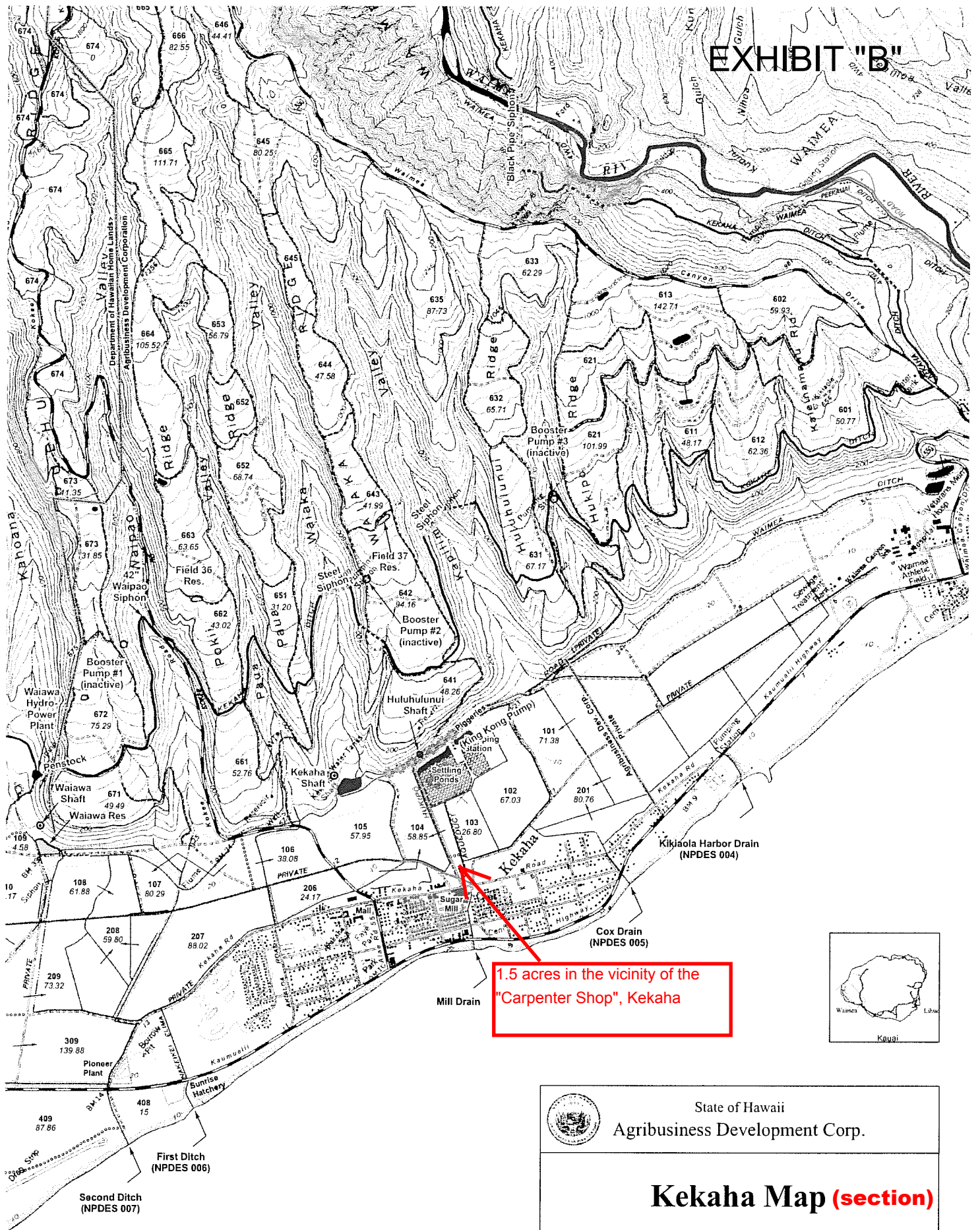
1. The term shall be month-to-month with annual approval, starting on the effective date; and
2. No subletting will be permitted without ADC's prior approval in writing.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT "B"



State of Hawaii
Agribusiness Development Corp.

Kekaha Map (section)

Island of Kauai, Hawaii

Prepared by: Water Resource Associates Honolulu, Hawaii (June 2008)

EXHIBIT B





STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

EXECUTIVE DIRECTOR'S UPDATE

August 17, 2022

**2022 Readiness and Environmental Protection Integration (REPI) Program
Challenge**



Kekaha, Kauai – The Kekaha Agricultural Association (KAA) was awarded \$1.9M grant from the REPI Program to design and plan an open floodable space on the Mana Plains. The project objectives include creating an open floodable space and reducing the number of drainage outlets to the ocean.

The focus for the 2022 REPI Challenge was on projects that promote land conservation or management activities that limit incompatible development, enhance military installation resilience to climate change and extreme weather events, or relieve current or anticipated environmental restrictions at locations hosting key capabilities of strategic importance DoD.

Department of Business, Economic Development, and Tourism

Governor Ige sign Act 219, which transfers the administrative attachment of the ADC from the Hawaii Department of Agriculture (HDOA) to the Department of Business, Economic Development, and Tourism (DBEDT). The transfer has not been complete, but ADC is working with DBEDT staff to transfer all of its files and funding from HDOA. The entire State Government is in a transition phase with the upcoming elections, which will have impacts on all agencies as the new administration takes the helm in November.