

JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



WENDY GADY  
EXECUTIVE DIRECTOR

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**  
HUI HO'OU LU AINA MAHIAI

## Regular Meeting of the Board of Directors

Held via Teleconference with In-Person Viewing Location

December 5, 2024  
9:00 a.m.

Pursuant to section 92-3.7, *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. If possible, we request that testimony be received by our office not less than seventy-two 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](mailto:dbedt.adc@hawaii.gov) or sent via U.S. Postal Service, or delivered to:

Agribusiness Development Corporation  
235 S. Beretania Street, Suite 205  
Honolulu, Hawaii 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 minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://us06web.zoom.us/j/87995714901>  
Telephone: (669) 900-6833, Webinar ID: 879 9571 4901  
In-Person: at the meeting location indicated below

### ICT ACCESS

To view the meeting and provide live oral testimony, please use the link above. You will be asked to enter your name in order to access the meeting as an attendee. 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](mailto:****@****.com).

As an attendee, 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 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.

### TELEPHONE ACCESS

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

Upon dialing the number, you will be prompted to enter the Meeting ID that is listed next to the Telephone Number above. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. You will not have a panelist number. 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 telephone’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

*Board Meeting Agenda*  
December 5, 2024

Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. 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 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., Suite 204  
Honolulu, HI 96813

For 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 minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty 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 thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four 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 meeting process, including translation or interpretation services, please contact staff at (808) 586-0186 or by email at [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov).

Please allow sufficient time for ADC staff to meet requests for special assistance, accommodation, modifications, auxiliary aids, translation, or interpretation services.

**NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, SUITE 205, HONOLULU, HAWAII 96813 ON AND AFTER NOVEMBER 27, 2024.**

**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:

Mark Takemoto  
Acting Title VI Non-Discrimination Coordinator  
235 S. Beretania St., Ste 205 Honolulu, HI 96813  
(808) 586-0186  
[dbedt.adc.titlevi@hawaii.gov](mailto:dbedt.adc.titlevi@hawaii.gov)

If you believe that you have been discriminated against with respect to an Agribusiness Development Corporation program or activity, you may contact the Acting Non-Discrimination Coordinator identified above.

## **AGENDA**

- A. Call to Order
- B. Approval of Minutes
  - 1. Regular Session Minutes, October 24, 2024
  - 2. Regular Session Minutes, November 1, 2024
  - 3. Regular Session Minutes, November 21, 2024
- C. Chairperson's Report
  - 1. None
- D. Committee & Permitted Action Group Reports
  - 1. Presentation of report and findings of the land opportunities project for small and disadvantaged farmers on Kauai
  - 2. Presentation of report and findings of the executive director goals and objectives permitted interaction group
  - 3. Presentation of report and findings of the value-add permitted interaction group
- E. Action Items
  - 1. Request for approval to terminate Lease Agreement No. LE-K1201 assigned to Hawaii Department of Education; and delegate authority to the executive director to execute a Memorandum of Agreement with the Hawaii Department of Education regarding access to ADC-tenant operations in Kekaha, County of Kauai, State of Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)
  - 2. Request for approval to issue a new land license agreement to State of Hawaii, Department of Education for 4.8 acres, more or less, of land for the purpose of building a centralized kitchen facility in Whitmore Village, City and County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.); :004 (por.)
  - 3. Request to accept and approve the findings and recommendations of the land permitted action group
  - 4. Request to accept and approve the findings and recommendations of the land opportunities project for small and disadvantaged farmers on Oahu

5. Request to accept and approve the findings and recommendations of the distribution permitted interaction group
6. Request to accept and approve the findings and recommendations of the CIP permitted interaction group
7. Request to establish a permitted interaction group to take public testimony and develop a policy regarding solar energy production on ADC lands; appointment of members thereto
8. Request for approval to hire a Special Deputy Attorney General to represent the State of Hawaii, Agribusiness Development Corporation in matters relating to the National Pollutant Discharge Elimination System (NPDES) Draft Permit for the Mana Plain drainage ditch system on Kauai resulting from orders issued by United States District Court Judge Derrick K. Watson in *Na Kia'i Kai, et al. v. Nakatani*, Civil No. 18-00005, and *Na Kia'i Kai v. County of Kauai, et al.*, Civil No. 22-00304
9. Request for approval to issue a Right of Entry to Mana Solar + Storage, LLC (a subsidiary of AES Corporation) to Fields 218, 219, 220 and 321 to conduct due diligence activities for a proposed solar energy production project in Kekaha, County of Kauai, State of Hawaii, Tax Map Key (4) 1-2-002:001 (por.)

F. Informational Items

1. Presentation by Nick Molinari, Director of Project Development for AES Hawaii, and Shane Peters, President of Peters Communication LLC regarding a proposed solar project in Kekaha, County of Kauai, State of Hawaii, Tax Map Key (4) 1-2-002:001
2. Executive Director's Reports ([10/21](#), [10/28](#), [11/4](#), [11/11](#))

G. Adjourn

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*The Board may go into executive session on any agenda item pursuant to the exceptions provided under section §92-5, Hawaii Revised Statutes.*

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

D-1

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 05, 2024

Subject: Presentation of the Land Application permitted interaction group's findings and recommendations for developing a program for small, disadvantaged farmers on Kauai

Applicant: Agribusiness Development Corporation (ADC)

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

## BACKGROUND:

On March 19, 2024, the ADC solicited applications from interested farmers to fill the remaining vacant farm lots on Oahu and Kauai. Using their discretion and expertise, the committee evaluated the land applications and awarded points for each of the following categories: Experience, Marketability of Products, Finances, Business Plan and Farming Practices.

In total, the ADC received 43 land applications. Of the 43 land applications received, only 7 met or exceeded the minimum score established.

On November 21, 2024, the ADC Board established a second permitted interaction group to consider a potential land opportunity project for small and disadvantaged farmers on Kauai who may be imminently displaced from their current farming operations and did not meet the minimum qualifications and/or submitted a land application after the May 3, 2024 deadline.

## FINDINGS:

### Findings #1:

The ADC Board identified available land in Kekaha and Kalepa as an ideal location for this program.

- A. Size: Various Gross Acres that is usable for diversified farming. Minimum size lot for diversified agriculture operation is 10 acres.
- B. Location: Kekaha and Kalepa
- C. Water source: water is readily available on Kekaha, while Kalepa has no available water. A possible second water source on Kalepa is an irrigation ditch: The Licensee is also responsible for the development of the irrigation water infrastructure, including transporting water and constructing its own water storage onsite.
- D. Condition of property: The land on Kalepa is overgrown with grass and tall trees. The land will require clearing before any agricultural activities can begin and will be issued "as is." The Licensee is responsible for developing the land in accordance with applicable laws and license provisions. The Kekaha land is readily available for farming.

### Finding #2:

In total, the ADC received 6 land applications for Kauai. Of the 6 land applications received, 3 did not meet the minimum qualification established. Many of these farmers are small and disadvantaged farmers on Kauai who may be imminently displaced from their current farming operations (see Exhibit A).

Finding #3:

Based on the size of available lands and the number of applicants remaining, ADC needs to establish a selection criterion based on merit to ensure ADC selects the top applicants based on their experience, marketability of product, finances, business plan, and farming practices.

Finding #4:

A minimum and maximum size for field crops should be established so that the farmers have enough area to implement crop rotation with cover crops and other non-food crops for pest mitigation. Furthermore, the committee believes it's important to accommodate as many small, disadvantaged farmers as possible, and that the farmer has enough farmland to achieve the economies of scale.

RECOMMENDATIONS:

The discussion suggested that a selection criterion for this program to support small, disadvantaged farmers on Kauai is needed. The committee's recommendations for the Board's review and consideration are summarized below:

Recommendation #1:

ADC shall use the list of applications already received prior to 10-16-2024 and select the highest-rated applicants. The applicants shall meet the criteria of small and disadvantaged, which is defined by the United States Department of Agriculture as a socially disadvantaged farmers and ranchers (SDFRs) as those belonging to groups that have been subject to racial or ethnic prejudice. SDFRs include farmers who are Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander. For some but not all USDA programs, the SDFR category also includes women.

Recommendation #2:

The Committee suggest that ADC limits the program to truck crop farmers.

Recommendation #3:

The Committee proposes a minimum size of 10 acres and a maximum size of 100 acres for field crops.

DISCUSSION:

ADC's goal is to develop a program to support small, disadvantaged farmers and select the most qualified applicants and award land licenses to agricultural operators who can help ADC double the local food production. Establishing a program to assist small, disadvantaged farmers will help ADC address its statutory mandate to increase access to farmland for small local farmers and cooperatives. A request to adopt the recommendations of the Land Application permitted interaction group for developing a selection criterion for the small, disadvantaged farmer program shall be presented at the next ADC Board meeting.

RECOMMENDATION TO BOARD:

Based on the foregoing, staff recommends that the Board considers the findings and recommendations of the Land Application permitted interaction group for selecting applicants for the small, disadvantaged farmer program on Kauai.

Respectfully Submitted,



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ROGER CLEMENTE

Property Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director



## Exhibit A

### ADC LAND APPLICATIONS SMALL DISADVANTAGED TRUCK CROP FARMERS

	NAME	FARMING EXPERIENCE	DEMAND/ MARKET SIZE	IMPORT REPLACE MENT	ADEQUATE FINANCING	BUSINESS PLAN	GOOD AGRICULTURE PRACTICES	TOTAL	MAX	PERCENTAGE
1	ALOUN KAUAI FARMING LLC - ALEC SOU - 1107 Acres - Kekaha, Kauai	59	40	40	146	58	9	352.00	400	88.00%
2	TENG DA INC - YIDA ZENG - 200 Acres - PU-14 & PU-04, Oahu	58	40	36	140	58	7	339.00	400	84.75%
3	XIANZHI ZHAO - 10 Acres - Galbraith, Oahu	58	40	34	137	53	6	328.00	400	82.00%
4	MAUKELE RANCH - RON DEREIS & BRIDGET NAPIER - 511 Acres, Wahiawa, Oahu	59	40	38	115	56	0	308.00	400	77.00%
5	KAUAI TARO - 95 Acres - Kekaha, Kauai	48	40	40	128	52	0	308.00	400	77.00%
6	SCOTT WONG KAUAI - 1000 Acres, Kekaha, Kauai	54	38	34	120	55	0	301.00	400	75.25%
7	SCOTT WONG OAHU - 100 Acres - Wahiawa, Oahu	54	38	34	120	55	0	301.00	400	75.25%
8	Chanchai Phaothaisong - 10 acres - Oahu	43	40	35	125	38	5	286.00	400	71.50%
9	KUNHU XIONG - 160 Acres - Parcel 14, Oahu	51	40	34	104	53	3	285.00	400	71.25%
10	LAO AQUA FARM - NORA SISOUNTHONE - 10 Acres - Wahiawa, Oahu	52	35	30	115	42	4	278.00	400	69.50%
11	THANAWAT CHAK ANO - 50 to 80 Acres - Kekaha, Kauai (Parcel 17)	56	35	35	100	47	0	273.00	400	68.25%
12	KHAJORNSAK HANPROMKITTI & SOMTHIAN ARSANOK - 30 Acres - Wahiawa, Oahu	43	40	35	120	34	0	272.00	400	68.00%
13	Suraphon Suwana - 10 acres	43	40	35	114	35	5	272.00	400	68.00%
14	SILA FARMS (CO-OP) - 30 Acres - Parcel 16 Pa'a la a uka, Oahu	47	40	32	103	45	4	271.00	400	67.75%
15	KIATTISAK KULCHARO - 30 Acres - Wahiawa, Oahu	47	40	30	97	52	4	270.00	400	67.50%
16	PHEN KHAEPHUTCHA - 40 to 80 Acres - Wahiawa, Oahu	45	40	38	95	48	3	269.00	400	67.25%
17	SANYA PANHAPHON 17B (CO-OP) - 130 Acres - Wahiawa, Oahu	45	40	37	125	20	2	269.00	400	67.25%
18	THANONGSAK & PHANNEE CHUMPHANG - 50 Acres - Parcel 16 Pa'a la a uka, Oahu	42	40	37	100	40	7	266.00	400	66.50%
19	TAWORN PANYAMEE - 20 Acres - Kekaha, Kauai	57	39	34	103	33	0	266.00	400	66.50%
20	SOPHIA NUANBUNMA - 20 Acres - Wahiawa, Oahu	48	40	35	105	37	0	265.00	400	66.25%
21	Rungnapa Haoharn - 10 acres - Oahu	41	40	35	109	32	5	262.00	400	65.50%

	NAME	FARMING EXPERIENCE	DEMAND/ MARKET SIZE	IMPORT REPLACE MENT	ADEQUATE FINANCING	BUSINESS PLAN	GOOD AGRICULTURE PRACTICES	TOTAL	MAX	PERCENTAGE
22	SUPPHASIT YASAKA - 30 Acres - Kalepa, Kauai- DECLINED	57	40	37	95	25	7	261.00	400	65.25%
23	THIRAWAT & MANREET VONGCAMMAR - 50 Acres - Parcel 16 Pa'a la a uka, Oahu	51	40	35	85	40	5	256.00	400	64.00%
24	Komkwan Moses - 10 acres - Oahu	38	39	34	108	32	5	256.00	400	64.00%
25	LONG SPOON FARMS - KALEO - 5 Acres - Waimanalo, Oahu	40	30	30	105	50	0	255.00	400	63.75%
26	ANURAT FARM LLC. - WARAWUT TRUATNOK - 40 Acres - Wahiawa, Oahu	45	40	30	100	35	2	252.00	400	63.00%
27	JANNARONG TRUATNOK & JIUNSIRI SRIHABUT - 30 Acres - Wahiawa, Oahu	43	40	35	97	37	0	252.00	400	63.00%
28	SURIWONG CHAIYACHET - 50 Acres - Parcel 16 Pa'a la a uka, Oahu	39	40	32	105	35	0	251.00	400	62.75%
29	SID PRODUCE #17D (CO-OP)	45	40	32	105	20	2	244.00	400	61.00%
30	LIU'S PLANTATION - DEHUA LIU - (PU-14) No Acres Listed, Wahiawa, Oahu	47	40	40	83	30	0	240.00	400	60.00%
31	PHIROM & THONG ON KRINSOONGNOEN - 20 Acres - Wahiawa, Oahu	41	30	30	110	29	0	240.00	400	60.00%
32	LAOS SUGAR CANE JUICE - PADTHANA HANSANA - 6 Acres - Galbraith, Oahu	39	33	33	105	25	0	235.00	400	58.75%
33	THONG DAM & PATARAWAT RATCHAM - 30 Acres - Parcel 16 Pa'a la a uka, Oahu	46	40	30	80	35	3	234.00	400	58.50%
34	WEETASAK KHOTKHAM & MALAI WAN - 20 Acres - Parcel 16 Pa'a la a uka, Oahu	46	40	30	85	27	3	231.00	400	57.75%
35	ERIK K. HORN - 5 Acres - 1938 Wilikina Drive, Oahu	39	38	25	75	45	8	230.00	400	57.50%
36	KEALA FOUNDATION - 600 Acres - Waimea, Kauai	40	30	15	110	25	2	222.00	400	55.50%
37	WILAWAN KUNDET - 5 Acres - Parcel 16 Pa'a la a uka, Oahu	39	34	29	95	24	0	221.00	400	55.25%
38	MAY K. MAHARATHE - No phone number listed -5 Acres-Wahiawa, Oahu	35	35	35	90	25	0	220.00	400	55.00%
39	VINCENT HU SINGHA NA (CO-OP)	45	35	32	75	25	2	214.00	400	53.50%
40	Samart Khotwongthong - 10 acres - Oahu	32	30	25	78	22	5	192.00	400	48.00%
41	JATURONG & BUAON JAI RUAN - Unknown Acres & Location	25	37	17	70	27	2	178.00	400	44.50%
42	HAWAII MUSHROOM FARM - MIMI LAI - 2 Acres - Wahiawa, Oahu	22	40	40	35	16	0	153.00	400	38.25%
43	JAYJAY SAGUCIO - Unknown Acres & Location - Information not on application	43	23	23	25	10	0	124.00	400	31.00%

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

D-2

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Presentation of report and findings of the executive director goals and objectives permitted interaction group

Applicant: Agribusiness Development Corporation

Authority: Section 163D-4(a)(15), Hawaii Revised Statutes

Respectfully Submitted,

*Ingrid Hisatake*

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INGRID HISATAKE  
Secretary III

*Approved for Submittal:*



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Wendy Gady  
Executive Director

State of Hawaii, Agribusiness Development Corporation  
Performance Objectives and Goals for Fiscal Year 2024 to 2025 (July 1, 2024 to June 30, 2025) for  
Executive Director Wendy Gady

For Use In Addressing December 6, 2024 Agenda Item E-1, Request to Accept and Approve the report and findings of the Executive Director Evaluation permitted interaction group.

At the September 19, 2024, the Board was provided copies of the last few years of executive director evaluations for the former executive director. The new Executive Director Evaluation permitted interaction group presented its report and recommendations to the Board. From that report and recommendation, specific ED goals and objectives have been created for each category established by the ED evaluation group. These specific goals and objectives are provided for the Board's consideration.

The First ED evaluation group presented the following findings and recommendations:

Staff Development: Continue fostering a high performance team through mentorship, coaching, and professional growth opportunities. Clarify priorities for staff to better manage tasks. Specific goals include:

Continue to hold staff meetings on at least a bi-weekly basis.

Develop methods for cross-training in order to lessen the work load on individual staff members who may be overloaded due to their experience and length of service to ADC.

Provide educational experiences for staff through the State of Hawaii Human Resource Development classes or private continuing education opportunities.

Maintain a system of monitoring work assigned to individual staff members and check-in with staff at least quarterly to evaluate if work load is appropriate. Redistribute work as necessary to ensure workload is evenly distributed.

Hire new an employee with the specialized skills necessary for grant writing. This may require re-describing a vacant position or seeking legislative support for a new position.

Leadership: Lead with clear communication, transparency, and a commitment to ADC's mission. Serve as a role model for courage, perseverance, and willingness to learn.

Assign a staff member to each permitted interaction groups to facilitate organization and communication between the ED, staff, and the permitted interaction group.

Complete the acquisition of the Dole Wells. This has been an outstanding item for several years and still has not been completed. This acquisition will increase water availability for Galbraith.

Follow-up on other projects that remain uncompleted by the former executive director such as the purchase and installation of the HPP machine and completing a readily accessible list of ADC properties, assets, tenants.

Management: Execute the strategic plan effectively; improve organizational efficiency; and address outstanding audit issues.

The audit revealed many areas where ADC needed to improve. One of the audit findings was the lack of organization regarding files, both physical and electronic. A lack of file organization was demonstrated with the HDOA ag park leases that were transferred to ADC in 2021 but were never flagged as needing to be transferred to ADC licenses due to the elimination of the Kekaha ag park, and transfer of the property for purposes of diversified agriculture.

Develop systems for storage and retrieval of physical files for land licenses/leases, and contracts, along with a system of transferring hard copies to electronic files.

Develop an ADC specific records retention policy.

Board Relations: Maintain open communications with the Board; and align with expectations and priorities; Provide regular updates on progress and implement board directives collaboratively.

Continue to provide weekly updates to the Board and CIP spreadsheet.

Ensure that the ED reports are added to the ADC website weekly.

Work with staff to ensure board submittals contain relevant, accurate, timely, and complete information.

Personal Development: Further develop delegation skills; seek personal and professional growth; and enhance communication by balancing detailed information with concise summaries. Advocate within the state legislature to address misperceptions about ADC's professionalism and commitment to its mission.

Use discretion when determining if meetings with groups, committees, organizations, and the public require the ED's participation or whether it can be delegated to a staff member, in order to be available to address urgent situations as they arise or raise awareness of staff needs.

Enhance public image of ADC by improving communication skills with the media or seek educational opportunities to develop proficiency in public relations.

The Second ED evaluation group presents the additional following recommendation:

Demonstrate Fiscal Responsibility: Continue to work with staff and stakeholders to fulfill the Board of Directors focus on fiscal responsibility and demonstrate accomplishment of that focus.

Uphold Fiscal Stewardship:

Collaborate with staff and stakeholders to align with the Board of Directors' priority on fiscal responsibility. Highlight measurable accomplishments that reflect this focus.

Annual Budget Review and Analysis:

Conduct a thorough review and analysis of the budget each year in preparation for drafting the fiscal year budget. Partner with the Board of Directors and the Department of Business, Economic Development, and Tourism (DBEDT) to refine and finalize the budget.

Five-Year Capital Improvement Plan (CIP):

Develop a five-year CIP plan annually based on the approved budget, past accomplishments, and identified needs. Work closely with the Board of Directors and DBEDT to ensure alignment with organizational goals.

Legislative Obligation Analysis:

Perform an annual analysis of completed legislative obligations and remaining commitments. Maintain a running comparison of lapsed funds to track progress and accountability effectively.

Asset Tracking and Management:

Leverage the Yardi software program to monitor and analyze assets, including land acquisitions, land released for applications, and turnover. Use this data to inform strategic decisions and maintain transparency in asset management.

Retain the ED for another year.

Determine if salary should remain the same or should be increased as incentive to continue excellent work that has been provided over the last year.

All state employees were given a cost of living increase last year – the ED's salary remained the same. The ADC budget allows for the ED salary to be increased to \$156,960 for FY 2025.

We propose a parity pay increase retroactive to July 1, 2024.

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

**E-1**

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request for approval to terminate Lease Agreement No. LE-K1201 assigned to Hawaii Department of Education; and delegate authority to the executive director to execute a Memorandum of Agreement with the Hawaii Department of Education regarding access to Kekaha agricultural facility in Kekaha, County of Kauai, State of Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Applicant(s): Agribusiness Development Corporation

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

Area: 10.0 acres

Field No(s): 309 (por.) (Premises)

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

Land Status: Set aside to the Agribusiness Development Corporation by Governor's Executive Order No. 4007 (EO4007) 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

Zoning: SLUD: Agricultural  
CZO: Agricultural

Character of Use: Agricultural

Land Doc. Type: Lease

Term: 35 years (currently in year 12)

Rental Rate: \$720 per acre per year  
**Annual Rent: \$7,200**

*Request for approval to terminate Lease Agreement No. LE-K1201 assigned to Hawaii Department of Education; and delegate authority to the executive director to execute a Memorandum of Agreement with the Hawaii Department of Education regarding shared use of agricultural facilities in Kekaha, County of Kauai, State of Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)*

December 5, 2024

#### **BACKGROUND:**

Pursuant to action by the Agribusiness Development Corporation (ADC) Board of Directors (Board) on February 16, 2023 that approved the assignment and transfer of Lease Agreement No. LE-K1202<sup>1</sup> (Lease) for 10 acres in Kekaha (Premises) (Exhibit “A”) from Beck’s Superior Hybrids, Inc. (Beck’s) to the Hawaii Department of Education (HDOE). The assignment was executed and effective on March 10, 2023.

Following extended negotiations, ADC and HDOE (Parties) have reached agreement on terms under which the Lease will be terminated, the Premises will revert to ADC, and the Parties will develop a Memorandum of Agreement (MOA) (Exhibit “B”) under which ADC may facilitate access to the Premises and ADC-tenant operations in Kekaha, subject to tenant consent.

#### **REQUEST:**

Staff requests that the Board terminate Lease Agreement No. LE-K1201 as assigned to the HDOE; and delegate authority to the executive director to execute the MOA between ADC and the HDOE to facilitate access to the Premises and ADC-tenant operations in Kekaha, subject to the Recommendation(s) below. (Request)

#### **OPERATIONAL PLAN:**

Upon termination of the Lease and reversion of the Premises to ADC, ADC intends to fully license the Premises to various farmers and agricultural-related entities for office and storage space, and processing facilities. As space permits, ADC shall, in accordance with the MOA, facilitate access to the Premises for HDOE’s use, pursuant to the Agricultural and Related Purpose public purpose set forth in E4007, and all applicable zoning and use laws and designations.

#### **CONSERVATION PLAN:**

N/A

#### **CHAPTER 343 – ENVIRONMENTAL ASSESSMENT COMPLIANCE:**

Under section 343-5(a), Hawaii Revised Statutes, an environmental assessment shall be required for actions, that propose, among other things, the “(1) use of state land or county lands, or the use of state or county funds[.]” In this case of the use of state lands, staff believes the action is de minimis (routine maintenance or operations) and will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment pursuant to chapter 343, Hawaii Revised Statutes.

#### **REMARKS & DISCUSSION:**

At this time, it is not possible to establish an accurate valuation associated with the Request, however, in March 2023, HDOE paid \$5,960,000.00 to Beck’s to acquire the Lease.

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<sup>1</sup> Further background regarding the Lease may be accessed at <https://dbedt.hawaii.gov/adc/files/2023/02/2023-02-16-Board-Meeting-Package-signed.pdf> (see item E-2)



*Request for approval to terminate Lease Agreement No. LE-K1201 assigned to Hawaii Department of Education; and delegate authority to the executive director to execute a Memorandum of Agreement with the Hawaii Department of Education regarding shared use of agricultural facilities in Kekaha, County of Kauai, State of Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)*

December 5, 2024

Staff has concerns about the use of the Premises by school children in close proximity to agriculture-related activities and the implications of federal worker protection standards on their activities. However, staff will assess specific HDOE requests for space on a case-by-case basis.

Given that ADC is giving consideration for the \$5,960,000.00 that HDOE paid to Beck's to acquire the Lease through the granting of a land license in Whitmore Village, Oahu valued at more than \$28,000,000.00 (see agenda item "E-2"), staff believes that MOA should be unilaterally terminable given that ADC intends to fully lease Premises.

RECOMMENDATION(S):

Based on the foregoing, it is recommended that the Board:

1. Approve the Request, subject to the following conditions:
  - a. Termination of the License shall be effective at 12:00 a.m. on January 1, 2025; and
  - b. The MOA shall be terminable by either party; and
  - c. All educational activities conducted by HDOE on ADC property shall be agriculture-related in accordance with the *Agricultural and Related Purpose* public purpose set forth in EO4007, and
  - d. All educational activities conducted by HDOE on the property shall be in accordance with applicable zoning and use laws and designations.
2. Declare that, pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, the proposed action is de minimis (routine maintenance or operations) and will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to Chapter 343, Hawaii Revised Statutes

Respectfully Submitted,



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LYLE ROE  
Asset Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director

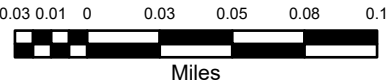
EXHIBIT A



STATE OF HAWAII  
**AGRIBUSINESS**  
DEVELOPMENT CORPORATION

Lease Agreement No.  
LE-K1201

State of Hawaii, Department  
of Education



Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS, Esri, CGIAR, USGS, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community. This work is licensed under the Esri Master License Agreement. [View Summary](#) | [View Terms of](#)





MEMORANDUM OF AGREEMENT  
BETWEEN  
STATE OF HAWAII AGRIBUSINESS DEVELOPMENT CORPORATION  
AND  
STATE OF HAWAII DEPARTMENT OF EDUCATION

This MEMORANDUM OF AGREEMENT (MOA), is executed on the respective dates indicated below and effective \_\_\_\_\_, 2024, by and between the STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION (ADC), whose business address is 235 S Beretania Street, Suite 205, Honolulu, HI 96813 and the STATE OF HAWAII, DEPARTMENT OF EDUCATION (HIDOE), whose mailing address is P O Box 2630, Honolulu, HI 96804 Each may be referred to as a "Party" or collectively as "Parties"

RECITALS

WHEREAS, ADC is obligated to control and manage a certain parcel of land, which is a "Portion of the Government (Crown) Land of Waimea," for agricultural and related purposes, situated at Kekaha, Waimea, Kauai, Hawaii, pursuant to Governor's Executive Order No 4007, dated September 16, 2003, as modified by Governor's Executive Order Nos 4034, 4165, and 4330 (Property),

WHEREAS, pursuant to section 205-2, *Hawaii Revised Statutes* (HRS), the Property is located on land within an agricultural district where only certain agricultural activities as identified in section 205-4 5, HRS, may be pursued without a special use permit Under section 205-6, HRS, and chapter 13 of the *Rules of Practice and Procedure of the Kauai County Planning Commission*, a petitioner may apply for a special use permit that would allow unusual and reasonable uses to be conducted within designated agricultural districts if granted by the county planning commission,

WHEREAS, on July 16, 2012, ADC entered into a thirty-five-year lease under LE-K1201 with BASF PLANT SCIENCE L P (BASF) for a ten-acre parcel of land located on the Property in Kekaha, Waimea, Kauai, further identified by Tax Map Key (4) 1-2-002 001 (por ) (Premises) for purposes of building facilities to support the agricultural research operation of BASF,

WHEREAS, paragraph 15 of LE-K1201 states

During the term of this Lease, LESSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except as otherwise allowed herein, without the prior written approval of LESSOR and upon such reasonable conditions as LESSOR may impose 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 the LESSEE until expiration or sooner termination of this Lease, at which time the ownership thereof shall, at the option of LESSOR, vest in LESSOR or shall be removed by LESSEE at LESSEE's sole cost and expense

WHEREAS, with ADC's written consent, BASF placed certain structures for use as a special purpose agricultural research facility for hybrid seed production (Improvements) on the Premises;

WHEREAS, on September 30, 2016, with ADC's written consent, BASF assigned its interest in LE-K1201, including Improvements, to Beck's Superior Hybrids, Inc. (Beck's);

WHEREAS, on August 25, 2021, the ADC Board approved-in-concept the transfer of LE-K1201, including the sale of Improvements, from Beck's to HIDOE for the purpose of promoting agriculture and farming in public education by teaching and building capacity for future farmers; and working to support more local food production to be served in educational institutions across the state of Hawaii;

WHEREAS, on January 30, 2023, with ADC's written consent, HIDOE purchased Beck's interest in the Improvements;

WHEREAS, on February 16, 2023, the ADC Board approved the transfer of LE-K1201, which included transfer of the annual lease fee and common infrastructure improvement costs, from Beck's to HIDOE; for purposes of providing agricultural education through partnerships with local agricultural producers to demonstrate the efficiencies of scale;

WHEREAS, on March 10, 2023, with ADC's written consent, Beck's assigned its interest in LE-K1201 to HIDOE;—

WHEREAS, ADC's statutory mission is to use State agricultural lands, including the ceded lands located in Kekaha, to enhance the local economy, provide employment opportunities, decrease reliance on imported agricultural products, and provide more sources of locally grown food for residents of Hawaii. See Chapter 163D, HRS;

WHEREAS, ADC has been given the responsibility of promoting and developing agricultural enterprises, coordinating industry development, providing industry-wide services, providing marketing assistance, and facilitating investments and coventures in viable enterprises. ADC has the knowledge, capacity, and resources to assist HIDOE in reaching its local farm-to-school meal goal of thirty percent of food served in public schools consisting of locally sourced products. See Section 302A-405.6, HRS; ~~and~~

WHEREAS, HIDOE and ADC can assist each other in educating the next generation of local agricultural entrepreneurs; ~~and~~

WHEREAS, ADC and HIDOE mutually agree to terminate LE-K1201 prior to the end of the lease, at no additional costs, expenses, penalties or any past or future rent owed by HIDOE.

WHEREAS, HIDOE is agreeable to transferring its interests in the LE-K1201 and the improvements to ADC in exchange for ADC's providing HIDOE students and staff access to the Premises and Improvements for education, professional development and work-based training opportunities.

NOW, THEREFORE, in consideration of the promises contained in this MOA, HIDEO and ADC agree as follows:

1. GOALS AND OBJECTIVES

ADC will collaborate with HIDEO in developing and implementing a strategy to advance agricultural education and the pursuit of agricultural enterprises amongst HIDEO students, by providing industry-wide services that include training and new market opportunities. ADC and HIDEO, with the assistance of agricultural industry leaders, will cooperate in the development and execution of workforce training opportunities and marketing assistance including the joint promotion of agricultural infrastructure improvements on Kauai. The Parties will define and establish goals, objectives, policies, and guidelines for the development and implementation of this strategy.

2. SCOPE OF COLLABORATION

HIDEO and ADC agree to perform/oversee the following tasks:

- a. Effective April 30, 2024, ADC will not bill HIDEO for the monthly lease rent and will suspend collection of the common area maintenance fee due under LE-K1201.
- b. HIDEO will work with ADC to identify terms and conditions acceptable to both parties that will lead to the transfer of Improvements to ADC and termination of LE-K1201 by ~~January~~ December 31, 2025. ~~If HIDEO and ADC are unable to agree upon terms and conditions acceptable to both parties for the transfer of the Improvements to ADC and termination of LE-K1201 by the January 31, 2025, the parties agree that the deadline may be extended upon request by either party.~~
- c. ~~Subject to satisfaction of section 2.b. above, ADC shall be entitled to take possession of the 10-acre parcel and Improvements upon~~ termination of LE-K1201, ADC shall be entitled to take possession of the 10-acre parcel and Improvements and HIDEO shall no longer be responsible for the upkeep, management, and maintenance costs associated with the Premises and Improvements.
- d. The 10-acre parcel and Improvements will thereafter be dedicated to agricultural production and processing, which may involve the use of heavy machinery and exposure to crop management techniques (i.e. pesticide application) ~~that could pose a safety risk to children.~~
- e. ~~Throughout the term of this MOA, if required to provide~~ ADC will provide HIDEO ~~HIDEO~~ access to the Premises and Improvements, during each school year and each summer session, for K-12 students and staff ~~access to engage in agricultural education, professional development and work-based training opportunities. HIDEO shall be provided learning opportunities within an agricultural district located in Kekaha, Waimea, Kauai. HIDEO will apply for and obtain a special use permit from Kauai County Planning Commission for purposes of allowing students and teachers to engage in agricultural education and~~

Commented [RR1]: As discussed on 11/14/24, this date may not be realistic given that there is only 6 weeks left in the year.

Commented [MOU2]: DO we need to say subject to 2.b.- I want to emphasize it is by mutual agreement.

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Commented [RR3]: HRS 205-6(a) allows only the owner of the land to apply for a special permit.



~~work-based learning on the Premises, in a space(s) and/or area(s) appropriate for students and educators to prepare for and debrief the learning enabled by ADC, and for presentations by agricultural industry professionals to HIDOE students and educators. Work-based learning opportunities for students include, but are not limited to, school field trips, problem-based learning projects, job shadowing, and student internships. Professional development for educators includes, but are not limited to, training in topics related to agricultural products, food distribution, and externships.~~

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- ~~f. If a special use permit is deemed necessary, pursuant to section 15-15-95(a) and (e), *Hawaii Administrative Rules*, ADC will support the application for a special use permit before the Kauai County Planning Commission.~~
- ~~g. Being mindful of the Worker Protection Standards established by the Environmental Protection Agency under 40 CFR Part 170, Subpart E, and the Hawaii Occupational Safety and Health laws, whose intended purpose is to reduce the risks of illness and injury due to exposure to pesticides used in the production of agricultural plants on agricultural establishments, ADC will provide HIDOE access to work-based learning opportunities for students in grades 9K to 12 and professional development for educators on the Premises. Work-based learning opportunities for students include, but are not limited to, school field trips, problem-based learning projects, job shadowing, and student internships. Professional development for educators includes, but are not limited to, training in topics related to agricultural products, food distribution, and externships.~~
- ~~fh. HIDOE and ADC will collaborate on the development of a long-term plan for work-force development, use of the Premises and Improvements for learning opportunities for K-12 students and to build a workforce pipeline to the agricultural and food distribution industry for students in grades 9K-12, who are able to demonstrate an understanding of hazardous materials warnings and appropriate safety measures.~~
- ~~gi. ADC will coordinate with local agricultural industry members to provide educational training opportunities in connection with HIDOE sponsored programs for students in grades 9K-12.~~
- ~~hj. ADC will partner with HIDOE and local industry to develop or expand facilities necessary to provide training opportunities for next generation entrepreneurs on the innovation and production of value-added products including agricultural products to reduce the state's reliance on imported agricultural products for local and export markets and contribute to HIDOE's goal of thirty percent of the food served consisting of locally sourced products.~~

### 3. INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communications between HDOE and ADC, each Party shall designate a Principal Responsible Party to serve as the central point of contact and communications on matters relating to activities to be provided through this MOA.

HDOE PRINCIPAL RESPONSIBLE PARTY:

NAME  
TITLE  
ADDRESS  
Telephone number  
Email address

ADC PRINCIPAL RESPONSIBLE PARTY:

Wendy L. Gady  
Executive Director  
235 S. Beretania St., Suite 205  
Honolulu, HI 96813  
(808) 586-0186  
wendy.l.gady@hawaii.gov

4. AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the Parties. ~~Either Party may terminate this MOA by providing written notice to the other Party. The termination shall be effective thirty calendar days following written notice unless a later date is set forth by written mutual agreement.~~

5. EFFECTIVE DATE and TERM

This MOA shall be effective from the effective date as set forth above and shall remain effective ~~throughout July 15, 2047~~, 2025 (no longer than one year U) unless sooner terminated in accordance with paragraph 4 above. This MOA may be extended by written agreement of the Parties.

Commented [MOU4]: I made this term similar to the lease ter.

6. COUNTERPARTS.

The MOA may be executed by the Parties in one or more counterparts, each of which shall be deemed an original, and said counterparts will together constitute one and the same agreement and shall be binding on each of the Parties notwithstanding that all of the Parties are not signatory to the original or the same counterpart. The submission of a signature page by facsimile transmission, or similar electronic submission facility (e.g., e-mail or electronic signature) shall be deemed to constitute and "original" signature page for all purposes, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

[The remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed by their duly authorized representatives by their signatures below.

FOR THE HAWAII DEPARTMENT  
OF EDUCATION

By:

\_\_\_\_\_  
Keith T. Hayashi  
Superintendent  
Date:

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Ryan W. Roylo  
Deputy Attorney General

FOR THE AGRIBUSINESS DEVELOPMENT  
CORPORATION

By:

\_\_\_\_\_  
Wendy L. Gady  
Executive Director  
Date:

APPROVED AS TO FORM

By:

\_\_\_\_\_  
Delanie Prescott-Tate  
Deputy Attorney General



STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

**E-2**

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request for approval to issue a new land license agreement to State of Hawaii, Department of Education for 4.8 acres, more or less, of land for the purpose of building a centralized kitchen facility in Whitmore Village, City and County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.); :004 (por.)

Applicant: State of Hawaii, Department of Education

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

Area: 4.8 acres, more or less (Premises); 24.09 acres, more or less (Property)

Field No(s): Non-designated

Tax Map Key: (1) 7-1-002:009; :004 (por.) (Property) (Exhibit B)

Land Status: Acquired in fee by the Agribusiness Development Corporation in 2013 and 2015

Trust Land Status: Section \_\_\_ lands of the Hawaii Admission Act  
Yes  No   
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution?  
Yes  No

Zoning: SLUD: Agricultural  
CZO: AG-1

Character of Use: Centralized kitchen facility for the commercial processing of agricultural products

Land Doc. Type: License

Term: 35 years

Rental Rate \$1/year

*Request for approval to issue a new land license agreement to State of Hawaii, Department of Education for 4.8 acres, more or less, of land for the purpose of building a centralized kitchen facility in Whitmore Village, City and County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.); :004 (por.)*  
December 5, 2024

**BACKGROUND:**

The Hawaii Legislature provided appropriations to the State of Hawaii, Department of Education (HDOE) to construct a centralized kitchen facility (Kitchen) which is anticipated to be located on the subject Agribusiness Development Corporation (ADC) Property (Exhibit B) in Whitmore Village. Following extended negotiations, ADC and HDOE have tentatively agreed to terms for a land license (License) (Exhibit “A”) for land, upon which HDOE may construct the Kitchen.

**REQUEST:**

That the ADC Board of Directors (Board) approve the License for 4.8 acres, more or less, of land upon which HDOE may construct the Kitchen, subject to the Recommendation(s) below.  
(Request)

**OPERATIONAL PLAN:**

The License will provide approximately 4.8 acres, more or less, upon which HDOE will construct the Kitchen which will provide ready-to-eat meals for HDOE students and stakeholders across Oahu. A more precise measurement of acreage will be determined prior to the start of construction. HDOE has not provided ADC with a construction/operations timeline.

**CONSERVATION PLAN:**

N/A

**CHAPTER 343 – ENVIRONMENTAL ASSESSMENT COMPLIANCE:**

Under section 343-5(a), Hawaii Revised Statutes, an environmental assessment shall be required for actions, that propose, among other things, the “(1) use of state land or county lands, or the use of state or county funds[.]” In this case triggers include both the use of state land and the use of state funds. For the purpose of awarding the License, the action is exempt under Exemption Class 10: No. 9, 14

However, HDOE will be required to either 1) conduct their own environmental assessment, 2) approve the project under their own exemption list, or 3) submit a letter of prior determination based on ADC’s 2019 FEA, prior to ADC issuing a Notice to Proceed with Construction.

**REMARKS & DISCUSSION:**

The Premises are to be located on a master-planned area of the Property in Whitmore Village. An environmental assessment with FONSI by ADC for the master-planned area was published in 2019<sup>1</sup>, however it will be up to HDOE to justify whether or not the construction and operation of their proposed facility was sufficiently contemplated under the 2019 environmental assessment.

In July 2024 the Board delegated authority to the Executive Director to 1) negotiate terms for the acquisition of the agricultural facility in Kekaha (Facility), which is currently leased to HDOE, and 2) negotiate terms for the License in Whitmore Village. At that time, the Board encouraged the Executive Director to consider the value of the Facility, for which HDOE paid \$5,960,000.00 in 2023, as an offset to License rents for the centralized kitchen in Whitmore.

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<sup>1</sup> [files.hawaii.gov/dbedt/erp/EA\\_EIS\\_Library/2019-05-23-OA-FEA-Whitmore-Community-Food-Hub-Complex.pdf](https://files.hawaii.gov/dbedt/erp/EA_EIS_Library/2019-05-23-OA-FEA-Whitmore-Community-Food-Hub-Complex.pdf)

Request for approval to issue a new land license agreement to State of Hawaii, Department of Education for 4.8 acres, more or less, of land for the purpose of building a centralized kitchen facility in Whitmore Village, City and County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.); :004 (por.)  
December 5, 2024

Ordinarily, staff would recommend that the rental rates be established based on market rates for the area with 2.5% escalator every 5 years<sup>2</sup>. A recent appraisal conducted for ADC properties by Medusky & Co., Inc. in July 2024 established market rents for land in Whitmore at \$3.56/ft<sup>2</sup>/year. ADC has long anticipated the opportunity to charge market rates for commercial activity in the master-planned area which will provide significant rental income to augment ADC’s operations.

Without the Facility offset, ADC calculates the value of the License to be \$28,089,771.93 over the 35-year term of the License (see Figure 1). With the Facility offset, the value of the License is \$22,129,771.93. HDOE proposes License rents of \$1/year for the term of the license (see Exhibit A)

License period (yrs)	Annual rate/square foot	Annual rate/acre	Acres	Annual rental value	Period rental value
1-5	\$ 3.56	\$ 155,073.60	4.8	\$ 744,353.28	\$ 3,721,766.40
6-10	\$ 3.65	\$ 158,950.44	4.8	\$ 762,962.11	\$ 3,814,810.56
11-15	\$ 3.74	\$ 162,924.20	4.8	\$ 782,036.16	\$ 3,910,180.82
16-20	\$ 3.83	\$ 166,997.31	4.8	\$ 801,587.07	\$ 4,007,935.34
21-25	\$ 3.93	\$ 171,172.24	4.8	\$ 821,626.75	\$ 4,108,133.73
26-30	\$ 4.03	\$ 175,451.54	4.8	\$ 842,167.41	\$ 4,210,837.07
31-35	\$ 4.13	\$ 179,837.83	4.8	\$ 863,221.60	\$ 4,316,108.00
<b>ADC Value of License over 35 years</b>					<b>\$ 28,089,771.93</b>
<b>HDOE Value of License over 35 years</b>					<b>\$ 35.00</b>

Figure 1

Additionally, HDOE shall be responsible for paying all Common Area Maintenance (CAM) fees assessed by ADC. The aforementioned appraisal report estimates CAM charges at \$0.50/ft<sup>2</sup>/mo, however, it does not take electricity charges into account (electricity charges are variable). Rent credits shall not be applicable to CAM charges.

Staff has provided a recommendation below; however, the Board is encouraged to bring its collective experience and expertise to bear to determine if the proposed terms are in the best interest of ADC and the State of Hawaii. This License is a state-to-state agreement that will, in all probability, help provide more local food for HDOE students. However, staff reiterate that the Premises is located within the master-planned area where ADC has long anticipated being able to charge market rents for commercial activity. This Request would encumber approximately 20% of the master-planned area, if approved.

<sup>2</sup> See Land Management Policy & Procedure Manual Section 4.4

*Request for approval to issue a new land license agreement to State of Hawaii, Department of Education for 4.8 acres, more or less, of land for the purpose of building a centralized kitchen facility in Whitmore Village, City and County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.); :004 (por.)*  
December 5, 2024

**RECOMMENDATION(S):**

Based on the foregoing, it is recommended that the Board:

1. Approve the Request, subject to the following conditions:
  - a. Lease Agreement No. LE-K1201 is terminated, and the premises revert to ADC prior to the execution of the License; and
  - b. License rent rate shall be \$1 per year for the term of the license; and
  - c. HDOE shall be subject to all properly assessed CAM charges from ADC (fixed and variable); and
  - d. HDOE shall not sublicense any portion of the premises without the express written approval of ADC, which approval may be withheld in ADC's sole discretion; and
  - e. Any rent credits approved to HDOE shall not obligate ADC beyond regularly assessed land rents for the subject premises, nor shall ADC be obligated for any unused rent credits to HDOE. Rent credits shall not be applicable to CAM charges.
  - f. HDOE shall be responsible for any land surveys which shall ensure that the Premises do no encroach upon any excluded Property, or property outside of ADC.
  - g. The Board's approval of this Request shall expire effective June 30, 2025 if the License has not been fully executed by ADC and HDOE at that time.
2. Declare that for purposes of awarding this license, pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, the issuance of the license will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to Chapter 343, Hawaii Revised Statutes. HDOE shall be responsible for demonstrating compliance with the Hawaii Environmental Review process prior to ADC issuing a Notice to Proceed with Construction.

Respectfully Submitted,



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LYLE ROE  
Asset Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director

LAND COURT	REGULAR SYSTEM
Return By <input type="checkbox"/> Pick-Up <input type="checkbox"/> To:	
Mail	

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TITLE OF DOCUMENT:

LICENSE AGREEMENT NO. LI-W-24-01, Exhibits "A" - "C"

Tax Map Key Nos. (1) 7-1-002:004 (por.); 009 (por.)

PARTIES TO DOCUMENT:

LICENSOR: AGRIBUSINESS DEVELOPMENT CORPORATION, whose address is 235 S. Beretania Street, Suite 205, Honolulu, HI 96813

LICENSEE: HAWAI'I DEPARTMENT OF EDUCATION, whose mailing address is Post Office Box 2360, Honolulu, HI 96804

LICENSE AGREEMENT NO. LI-W-24-XX

between

STATE OF HAWAI'I  
AGRIBUSINESS DEVELOPMENT CORPORATION  
as LICENSOR

and

STATE OF HAWAI'I  
DEPARTMENT OF EDUCATION  
as LICENSEE

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DEFINITIONS ..... 28

**SUMMARY OF MATERIAL TERMS**

Licensee:	State of Hawai'i Department of Education
<del>Doing Business As:</del>	<del>N/A</del>
Character of Use:	Commercial Kitchen & Warehouse
Premises Name/ID:	TMK (1) 7-1-002:004 (por.), :009 (por.)
Premises Area:	4.8 gross acres
Length of Term:	35 Years
Term Commences:	January 1, 2025
Term Expires:	December 31, <del>2059</del> 2060
Initial Base Annual Rent:	1/1/2025-12/31/203459: \$1/acre/year
<del>Scheduled Increase or Reopening Dates:</del>	<del>1/1/2035-12/31/2044: by appraisal 1/1/2045-12/31/2054: by appraisal 1/1/2055-12/31/2059: by appraisal</del>
Security Deposit:	Waived
Licensor Address:	Agribusiness Development Corp. 235 S. Beretania Street, Suite 205 Honolulu, HI 96813
Licensee Address:	State of Hawai'i Department of Education P.O. Box 2360 Honolulu, HI 96804
<del>Commercial General Liability Amount:</del>	<del>Minimum \$2,000,000.00 aggregate Minimum \$1,000,000.00 per occurrence</del>
<del>Property Insurance Amount:</del>	<del>Minimum \$1,000,000.00</del>
<del>Commercial Auto Insurance Amount:</del>	<del>Minimum \$1,000,000.00</del>
Performance Bond:	Waived

Commented [RR1]: DOE proposes \$1/yr. for life of the license/lease.

Commented [RR2]: DOE is a state agency which is self-insured. As such DOE questions the need for these terms.

STATE OF HAWAI'I  
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-W-24-01

THIS LICENSE AGREEMENT (License) made and issued DATE, 2024 and effective January 1, 2025 (effective date), by and between the State of Hawai'i AGRIBUSINESS DEVELOPMENT CORPORATION, hereinafter referred to as "LICENSOR" whose place of business and mailing address is 235 S. Beretania Street, Suite 205, Honolulu, HI 96813, and State of Hawai'i DEPARTMENT OF EDUCATION, hereinafter referred to as "LICENSEE" whose mailing address for purposes of this License is Post Office Box 2360, Honolulu, HI, 96804.

W I T N E S S E T H:

WHEREAS, LICENSOR is the fee simple owner of that certain parcel of land situated at Wahiawa, Oahu, identified by Tax Map Key (TMK) No. (1)7-1-002:004, containing a gross area of approximately 24.09 acres, more or less, and TMK No. (1) 7-1-002:009, containing a gross area of approximately 257.52 acres, more or less, hereinafter referred to as the "Property," and LICENSOR is authorized to grant licenses for use of the Property for the commercial processing of agricultural products, and other related purposes; and

WHEREAS, LICENSEE has requested a license to use 4.8 gross acres, more or less, of the Property located in Whitmore Village, Wahiawa, Oahu, more particularly described in Exhibit "A" (Premises), for construction and operation of an agricultural products processing facility, commercial kitchen, and warehouse, and other related purposes; and

WHEREAS, within TMK No. (1)7-1-002:009, there are 0.1273 acres, more or less, further identified as TMK No. (1)7-1-002:028, which was subdivided for placement of a cellular tower; and 0.2867 acres, more or less, further identified as TMK No. (1)7-1-002:023, which was subdivided for placement of infrastructure access; and 0.7670 acres, more or less, further identified as TMK No. (1)7-1-002:022, which was subdivided for placement of a sewer pump station; totaling approximately 1.181 acres, which have been withdrawn from the Property acreage and excluded from the Premises; and

WHEREAS, LICENSOR ~~and LICENSEE~~ sought and obtained approval from their respective governing boards for this License; and

WHEREAS, LICENSOR obtained approval from its Board of Directors at a meeting held on DATE; and

~~WHEREAS, LICENSEE obtained approval from the Board of Education at a meeting held on DATE;~~

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LICENSOR and LICENSEE agree to enter into this License on the following terms and conditions:

- Premises.** LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use that portion of land, TMK Nos. (1)7-1-002:004 (por.), and :009 (por.) more particularly described in Exhibit "A", containing a land area of 4.8 gross acres, more or less. The Premises shall not include any areas containing or consisting of any common area improvements serving the Premises that are under the control, operation, or management of any entity, including LICENSOR.
- Term.** The term of this License is for thirty-five years, or until such time as LICENSEE ceases to operate the agricultural products processing facility, commercial kitchen, and warehouse or other permitted use, unless this License is sooner terminated as provided herein.

LICENSOR and LICENSEE may agree to extend the term of this License for such period or periods of time as LICENSOR and LICENSEE shall determine.

- Base Annual License Fee.** ~~The~~ base annual license fee for the License shall be as outlined in the following table, shall be payable in advance, in full, for years 1 - 10, at the time of execution of this License. Beginning in year 11 and thereafter, the base annual license fee shall be payable ~~in~~ monthly installments, on or before the first of each month.

Commented [RR3]: DOE proposes \$1/yr. for life of the license/lease. State to State agency situation.

CLASS	WHEN	RENT
<u>Commercial</u>	Year 1 - last day of Year 10	\$1/acre/year
Commercial	Year 11 - last day of Year <u>2035</u>	<del>Fair Market Rent</del> determined by appraisal \$1/acre/year

Commented [RR4]: Is this class designation appropriate for DOE's purposes?



Commercial	Year <del>21</del> last day of Year <del>20</del>	Fair Market Rent determined by appraisal
Commercial	Year <del>31</del> last day of Year <del>35</del>	Fair Market Rent determined by appraisal

LICENSOR and LICENSEE agree that the Premises consist of 4.8 acres of land, more or less, suitable for commercial purposes.

4. **Determination of Annual Rental Upon Reopening.** The annual rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th years of the license term. The base annual rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the LICENSOR, and the LICENSEE shall be notified promptly of the determination; provided that should the LICENSEE disagree with the fair market rental as determined by the LICENSOR's appraiser, the LICENSEE may appoint its own appraiser, within fourteen days after written notice of the fair market rental, to prepare an independent appraisal report.

Commented [RR5]: Note: This term would not be necessary if the parties agreed to adjust the rent to \$1/yr. for life of the license/lease.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by the majority of the appraisers shall be final and binding upon both the LICENSOR and the LICENSEE, subject to chapter 658A, *Hawaii Revised Statutes* (HRS). The LICENSEE shall pay for its own appraiser. The cost of the services of the third appraiser shall be borne equally by the LICENSOR and the LICENSEE. All appraisal reports shall become part of the public record of the LICENSOR.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, the LICENSEE shall continue to pay the rent at the rate effective for the

previous rental period, but the LICENSEE shall make up any deficiency within thirty days after the new rental has been determined. The LICENSEE's or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the LICENSEE's right to contest the new fair market rental, and the LICENSEE shall pay the rental as determined by the LICENSOR's appraiser without adjustment. Alternatively, the Board may treat the failure as a breach of this License and terminate this License.

5. **Common Area.** The phrase "Common Area" as used in this Paragraph and throughout this License is defined in the definitions section of this License.

LICENSEE and LICENSEE'S employees and customers shall have the right, in common with other licensees of the Property and their respective employees and customers, to use the Common Area that may from time to time exist in connection with LICENSEE's business to be conducted upon the Premises, subject to all terms and conditions set forth in this License. The rights of Licensee hereunder in and to the Common Area, including parking areas and driveways, entrances and exits thereto and sidewalks and pedestrian passageways, shall be subject to the rights of the LICENSOR and all other licensees of LICENSOR using the same. It shall be the duty of the LICENSEE to keep all Common Area free and clear of any obstructions created or permitted by LICENSEE or resulting from LICENSEE's operations and to permit the use by LICENSEE's employees, customers, patrons, and service suppliers of any said parking, driveway, entrance, and exit areas only for normal parking and ingress to and egress from the Premises occupied by LICENSEE and such other licensees or LICENSOR.

6. **Common Area Maintenance Fee.** In addition to the base annual license fee provided in Paragraph 3 above, LICENSEE shall also pay a reasonable monthly fee established by LICENSOR for the maintenance, repair, and care of the Common Areas identified in Paragraph 5. LICENSOR reserves the right to adjust any Common Area Maintenance Fee as it deems fit upon thirty days written notice to LICENSEE. Any failure of LICENSEE to insist upon strict performance of this term, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term or option unless reduced to writing and signed by LICENSOR.

**Commented [RR6]:** The cost of the "reasonable monthly fee" for common area maintenance must be stated here for DOE budget purposes.

Also if this maintenance fee is subject to increase, the method of how increases are to be calculated should be stated.

7. **Interest on Delinquent License Fees; Service Charge.** Monthly license fees received after the first day of each month are



considered delinquent. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent per month. Additionally, a service charge of FIFTY AND NO/100 DOLLARS per month will be assessed for each delinquent payment.

8. **Holdover.** 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, subject to all the other terms, covenants, and conditions herein contained insofar as the same are applicable to a month-to-month tenancy. Both LICENSOR and LICENSEE have the right to terminate such month-to-month tenancy with at least thirty days prior written notice to the other party.

9. **Taxes, Assessments, and Utilities.** LICENSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, as required by law, and outgoings 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 to the Premises and any additional improvements now on or hereafter erected by LICENSEE thereon.

Commented [RR7]: Based on discussions, this term does not include real property taxes.

10. **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 subject to Encumbrances. LICENSEE shall use the Premises solely to construct, renovate, improve, and utilize the Premises in accordance with Paragraph 11 (Utilization of Premises) of this License. LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions and any and all recorded and unrecorded encumbrances on the Premises (collectively the "Encumbrances") existing as of the Effective date of this License. LICENSOR shall use its best efforts to inform LICENSEE of any and all Encumbrances that may affect or encumber the Property, and if possible, furnish maps and copies of the Encumbrances to LICENSEE herein.

(b) No cesspools. No cesspools shall be constructed on the Premises. However, upon approval from LICENSOR and the

State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems that do not pose a threat to the groundwater.

- (c) Reduce risk of soil erosion. LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises and to address any material increase in weeds or litter on the Premises.

- 11. **Utilization of Premises.** LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development (Development Plan), which has been approved by LICENSOR before execution of this License. A summarized version of LICENSEE's Development Plan is attached hereto as Exhibit "B" and incorporated by reference. Any material modification or deviation from LICENSEE's Development Plan without the prior written approval of LICENSOR may constitute a breach of this License and cause for the termination thereof.

Building setback lines shall be in accordance with applicable city and county ordinances and rules.

LICENSEE may renovate and improve the Premises and any Improvements thereon to adapt the Premises for LICENSEE's intended use as an agricultural products processing facility, commercial kitchen, —and warehouse (Authorized Activity). LICENSEE may proceed with the planning, design, construction and installation work relating to building or upgrading any Improvements as outlined in LICENSEE's Development Plan for the agricultural products processing facility, commercial kitchen, —and warehouse without having to obtain LICENSOR's further written approval, provided that such Authorized Activity is authorized by, and in compliance with applicable federal, state, and city and county laws, statutes, ordinances, rules, regulations, orders, and directives (collectively the "Applicable Laws").

- 12. **Sublicensing.** LICENSEE shall not sublicense or rent the whole or any portion of the Premises without first obtaining the prior 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 is neither allowed, nor shall be sought by LICENSEE.

13. **Conservation Practices.** 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 (conservation plan). The conservation program shall be in accordance with a conservation plan that shall be submitted to LICENSOR for acceptance within one year following the effective 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 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. Failure to cure or correct the contradictory or unsatisfactory condition, or failure to submit proof of such cure or correction within the time allowed may constitute a breach of this License and a cause for the termination thereof.

LICENSOR waives the conservation plan requirement unless environmental degradation is detected in the future.

Commented [RR8]: Based on discussions, it is DOE understanding that ADC is waiving the conservation plan requirement as indicated here. However, the DOE will still need to go through the design and environmental process.

14. **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.
15. **Improvements.** Except for the Development Plan referenced in Paragraph 11 (Utilization of Premises), 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, city 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.

16. **Repairs to Improvements.** LICENSEE shall, at its own 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 and damage by the elements, fire or other casualty excepted. LICENSEE will keep the Premises, including any loading or service area, in a clean, orderly, and sanitary condition, free from obstructions, insects, rodents, vermin, and other pests, and shall store all trash and refuse within the Premises or in areas designated by LICENSOR. LICENSEE shall have no obligation under this License to keep, repair, or maintain any common area improvements.
17. **Involuntary Liens** LICENSEE shall not commit or suffer any act or neglect that 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.
18. **Dwelling Restrictions.** The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, representatives, and invitees shall not use the Premises as a temporary or permanent residence.
19. **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 race,

color, national origin, sex, age, disability, or any other class as protected under applicable federal or state law. LICENSEE shall not practice any unlawful discrimination based upon race, color, national origin, sex, age, disability, or any other class as protected under applicable federal or state law

20. **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 days, or thirty days where the default involves a failure to make timely license fee payments, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail, return receipt requested, 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 LICENSOR's 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 that LICENSOR may have.
21. **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 or termination of License 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.
22. **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 have been observed and performed. This requirement may be waived or reinstated in LICENSOR's sole discretion

LICENSOR waives security deposit:  Yes  No.

23. **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.

24. **Liability Insurance.** LICENSOR and LICENSEE agree that LICENSEE, is self-insured and shall not be required to procure insurance with respect to use of the Property for LICENSEE's activities under this License. LICENSEE shall self-insure against liability and property damage to the Property as generally covered by a Commercial General Liability insurance policy, sufficient to protect against any liability for all claims for personal injury, death, and property damage that may arise out of the exercise or rights granted herein. ~~The LICENSEE shall self-insure for policy or policies shall cover the entire Premises, including all 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 \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate.~~ Except for the payment of Common Area Maintenance Fee as provided in Paragraph 6 above, LICENSEE shall have no obligation under this License to procure or maintain any commercial general liability insurance with regard to any activities of any other entity (including LICENSOR), which has control from time to time over any of the common area improvements.

Commented [RR9]: Since HIDE is a state entity and is self-insured, these insurance policy requirements do not appear to be applicable in a state to state relationship.

~~LICENSEE, prior to entry and use of the Premises or within fifteen days from the effective date of this License, whichever is sooner, LICENSEE 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) to LICENSOR 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 days written notice has been given to LICENSEE and LICENSOR, 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.~~

Commented [RR10]: Not sure that this paragraph is necessary in light of the preceding self-insured paragraph.

~~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 that 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 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 as determined by a court of law and subject to legislative approval.~~

25. **Property Insurance.** LICENSOR and LICENSEE agree that LICENSEE is self-insured and shall not be required to procure insurance with respect to any state-owned improvements located on the Premises. At all times during the term of this License, LICENSEE shall self-insure against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those state-owned improvements that are identified on Exhibit "C" by LICENSOR prior to the commencement date of this License. ~~The policy shall name LICENSOR as an additional insured.~~

~~LICENSEE shall obtain comprehensive automobile liability insurance covering all owned, hired, or non-owned vehicles, including the loading and unloading thereof on the Premises. The minimum limit of said policy or policies shall not be less than \$1,000,000.00.~~

~~LICENSEE shall furnish to LICENSOR on or before the commencement date of this 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(s) until after thirty days written notice has been given to LICENSEE and LICENSOR, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License.~~

26. **Right to Enter.** LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term of this License, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
27. **Inspection of Premises.** LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term of this License, 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.
28. **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.

~~29. **Withdrawal for Public Purpose.**  
{Not applicable.}~~

30-29. **Condemnation.** If at any time, during the term of this License, any portion of the Premises shall be condemned or required for public purposes by the Federal government

("federal condemning authority"), this License shall cease and terminate as of the date LICENSEE is required to vacate the Premises, and the rent reserved shall be apportioned and paid up to that date. All compensation and damages payable for or on account of the Property and the Improvements, except for the Licensee Improvements (such as the Commercial Kitchen) constructed or owned by LICENSEE, shall be payable from the federal condemning authority to and be the sole property of LICENSOR. LICENSEE shall not be entitled to any claim against LICENSOR for condemnation of or indemnity for the interest of LICENSEE. LICENSEE may make or assert claims directly against the federal condemning authority for any of the following: (a) any of the LICENSEE Improvements constructed or installed by LICENSEE; (b) losses or damages resulting from the interruption of LICENSEE's business on or from the Premises; (c) any moving or other relocation expenses; or (d) any other expenses, losses, or damages attributable to LICENSEE's loss of use of the Premises due to the taking or condemnation of or the threat of taking or condemnation of the Premises or any portion thereof.

**31. Partial Taking.** In case only part of the Premises shall be so taken or condemned by the federal condemning authority, the rent thereafter payable for the unexpired remainder of the License term shall be reduced in the same proportion that the area of the Premises so taken or condemned by the federal condemning authority bears to the total area of the Premises hereby licensed, provided, however, that either party has the right to terminate this License at its option in the event of a partial taking by the federal condemning authority of at least twenty-five percent of the Premises without further obligation under this License.

**32. Inspection by Prospective Bidders.** For purposes of informing and apprising any 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, 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.

33. **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.
34. **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 License term without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.
35. **Abandonment and Termination** If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises for a period of four or more consecutive months, LICENSOR shall have the right to terminate this License 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.
36. **Non-warranty.** LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is, where is" and LICENSEE assumes all risks incident to its use.
37. **LICENSEE's Risk** All personal property of any kind or description whatsoever stored on the Premises by LICENSEE shall be at LICENSEE's sole risk, and LICENSOR shall not be liable for any damage done to or loss suffered by the business or occupation of LICENSEE, including any employees, agents, tenants, sublessees or invitees, arising from any act or neglect of co-tenants or other occupants of the building or of other persons, from bursting, overflowing, or leaking of water, gas, sewer, or steam pipes or from any fixtures, appliances or devices connected to same, or from electric conduit, wires, fixtures, appliances or devices, or from chemicals or bacteria or odors, or caused in any other manner whatsoever unless caused by: (a) the negligent act or omission of LICENSOR or its authorized representatives and/or (b) a pre-existing condition for which LICENSEE had no responsibility (such as utility lines, pipelines, facilities, and equipment constructed or installed prior to LICENSEE occupying the Premises and the clean-up, remediation, and/or



disposal of hazardous materials present, released or discharged within the Premises prior to LICENSEE occupying the Premises).

**38. Governing 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 or enforceability of the other provisions shall remain unaffected

**39. LICENSEE Limitations.** Any and all LICENSEE obligations, duties, responsibilities, and liabilities under this License, including, without limitation, LICENSEE's ability and/or capability of carrying out, performing, or complying with such obligations are expressly subject to and limited by the following (collectively the "Lessee Limitations"):

(a) LICENSEE Responsibility LICENSEE shall be responsible for damage or injury caused by LICENSEE's officers and employees in the course of their employment to the extent that LICENSEE's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSEE. LICENSEE shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this License where LICENSEE is obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this paragraph 39(a) (LICENSEE Responsibility). LICENSOR acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of LICENSEE. LICENSEE's obligations under this paragraph 39(a) (LICENSEE Responsibility) shall survive the expiration or earlier termination of the License.

**40. 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 (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.

Commented [RR11]: The State should not have to indemnify itself.

41. **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.

42. **Fences.** LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises as deemed reasonable and if such fencing shall be further required by LICENSOR as negotiated 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.

Commented [RR12]: DOE wishes to be able to negotiate the extent to which the outside perimeter of the Premises is to be fenced (i.e. whole or portion, as reasonable).

43. **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 effective date of this License. The easement area(s) shall not be altered or used for any purposes that 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.

44. **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 that are necessary and appropriate for the operation and maintenance of the common area 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.

45. **Compliance with Laws.** During the term of this License, LICENSEE, LICENSEE's employees, agents, representatives, invitees, and guests shall comply with the requirements of all federal, state, and county authorities, and observe all federal, state, and county laws, ordinances, regulations, and rules that are now in force or later may be in force, while occupying and using the Premises.
46. **Environmental Regulations.** LICENSEE shall comply with all applicable federal, state, and county environmental impact rules and regulations, including but not limited to Chapter 343, HRS, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
47. **Hazardous Materials.** LICENSOR remains responsible for addressing any issue identified as having occurred prior to or during Dole Food Company, Inc.'s occupancy of the Premises as reported in the Phase II Environmental Site Assessment prepared by Enpro Environmental dated December 9, 2013 (Enpro Report) (Hazardous Materials Baseline). Any environmental issue occurring on Premises after the date of this License 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

**Commented [RR13]:** The term "Environmental issue" should be further defined (i.e. new environmental issue). DOE understands that the LICENSOR is still be responsible for any past and ongoing environmental issue that pre-existed the License.



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 (other than those already disclosed in the **Enpro Report**) that 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;

Commented [RR14]: Again, since this is a State to State transaction, no need for the State to agree to indemnify itself.

- (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

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

- 48. Level One 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 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 Premises 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.
- 49. 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 soil erosion practices recommended by the Natural Resource Conservation Service (NRCS). LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan within one year following the effective date of this License. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with the NRCS approved erosion control plan to the satisfaction of NRCS and LICENSOR. This requirement may be waived for licenses, premises, or uses with little or no apparent soil erosion problems when verified by NRCS.

LICENSOR waives the requirement of an erosion control plan unless unmanaged soil erosion is detected in the future.

50. **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 that 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.
51. **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.
52. **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.
53. **Reserved.**
54. **Reserved.**
55. **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:**

56. ~~**Commercial Operations.**~~ LICENSEE may conduct the Authorized Activity and operate the Commercial Kitchen. LICENSEE, its employees, customers, guests, agents, and/or invitees may 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, and provided that such commercial activity is authorized by, and in compliance with, Applicable Laws.
57. **Abandoned Vehicles.** LICENSEE shall not under any circumstances place or store abandoned vehicles within the Premises. Any and all vehicles that are abandoned after the Effective Date herein within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

58. **Removal of Trash.** LICENSEE shall be responsible for the proper disposal of trash generated by LICENSEE's commercial operations and the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.
59. **Prehistoric and Historic Remains.** In the event any 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, HRS, and shall notify LICENSOR of these events.
60. **Audits.** [Reserved.]
61. **Passage and Access.** LICENSEE shall not impede or restrict passage or access by other licensees to other areas of the Property or to any common area serving the Property or any part thereof (including the Premises) that may be located on the Premises.
62. **Performance Bond.** The LICENSEE shall, within ninety days of the effective date of this License, procure and deposit a copy of the performance bond with 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 the 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 written suspension of the performance bond is signed by LICENSEE and acknowledged by LICENSOR. LICENSOR reserves the right to reinstate the performance bond requirement at any time throughout the term of the License.

Performance Bond Waived:  X  Yes  No

Commented [RR15]: DOE understands that the Performance Bond requirement has been waived by ADC.



63. ~~Justification of Sureties.~~  
~~[[Not Applicable.]]~~

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First line: 0"

Commented [RR16]: DOE understands that  
recordation is optional.

64. **Recordation.** LICENSOR and LICENSEE agree that this License 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 to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.

65. **Fire or Other Casualty.** LICENSEE shall in case of fire or other casualty give immediate notice thereof to LICENSOR, and in case the Premises or Improvements thereon, including the Commercial Kitchen, are totally or partially destroyed or damaged by fire or other casualty as to render the Premises or the Improvements totally or partially inaccessible or unusable or untenable for a period exceeding one hundred twenty days then this License may be terminated at the option of LICENSEE.

[The remainder of this page intentionally left blank; Definitions follow.]



#### DEFINITIONS

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

"Authorized Activity" shall mean LICENSEE use as an agricultural products processing facility, commercial kitchen, and warehouse or other permitted use.

"Common Area" means those portions of the Property that are not encumbered by any exclusive license or other conveyance to any licensee, lessee, permittee, or other grantee and any other area of the Property that may be designated by LICENSOR from time to time for the shared use of all licensees, lessees, permittees, or other grantees, in common with such other authorized users, and shall include, but is not limited to, vehicle parking areas, roadways, service areas, driveways, and areas of ingress and egress used in connection with and for the convenience of users of the Property, sidewalks and other pedestrian ways, areas containing buildings or structures thereon, public restrooms and other common facilities from time to time provided for the convenience and common use of all licensees, lessees, permittees, or other grantees of the Property, landscaped areas, planted areas together with plants and planting thereon, and areas containing gates, signs, directories, pylons, or structures defining the locations of or the direction to various areas or advertising the common name for the Property.

"Commercial Operations" - shall mean Operations, unless otherwise specified.

"Days" shall mean calendar days, unless otherwise specified. Formatted: Indent: First line: 0.5"

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

"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" 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 materials baseline" means the extent of the hazardous materials found or discovered upon the Premises prior to the Effective Date of the License as contained and described in the Phase Two Environmental Site Assessment prepared by Enpro Environmental for LICENSOR and issued December 9, 2013.

"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, 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, HRS, 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 heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Premises" means the approximately 4.8 acres of land situated in Whitmore Village, Wahiawa, Oahu, Hawai'i, bearing Tax Map Keys: (1)7-1-002:004 (por) and 009 (por), that 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.

"Property" means the approximately 283 acres of land situated in Wahiawa, Oahu, Hawai'i, bearing Tax Map Keys: (1)7-1-002:004, 009, 022, and 023.

"Security interest" means any interest created, attached or perfected by a lien, mortgage, assignment by way of mortgage, or

financing statement and encumbering the License, the Premises, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised Premises

“Sub-licensing” includes any long-term or short-term rental or occupation of the property by or 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.

[The remainder of this page intentionally left blank, Exhibits follow ]

EXHIBIT A

Property Map

[see following pages]



EXHIBIT B

Land Utilization and Development Plan

[see following page]

EXHIBIT C

Identification of  
State Owned Improvements

STATE-OWNED IMPROVEMENTS

ID	Improvement	Valuation
1	None	

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**LICENSOR**

STATE OF HAWAI'I,  
AGRIBUSINESS DEVELOPMENT  
CORPORATION

By \_\_\_\_\_  
Wendy L. Gady  
Its Executive Director

APPROVED AS TO FORM:

By \_\_\_\_\_  
Delanie Prescott-Tate  
Its Deputy Attorney General

**LICENSEE**

STATE OF HAWAI'I  
DEPARTMENT OF EDUCATION

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

APPROVED AS TO FORM:

By \_\_\_\_\_  
Ryan W. Roylo  
Its Deputy Attorney General

STATE OF HAWAII )  
 ) ss.  
 CITY & COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared **WENDY L. GADY**, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the STATE OF HAWAI'I, AGRIBUSINESS DEVELOPMENT CORPORATION, a State Agency of the State of Hawai'i; and that said instrument was signed on behalf of said agency by authority of its Statutes; and said **WENDY L. GADY** acknowledged said instrument to be the free act and deed of said Agency of the STATE OF HAWAI'I.

\_\_\_\_\_  
 Name  
 \_\_\_\_\_  
 Notary Public, State of Hawai'i  
 My commission expires \_\_\_\_\_

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	License Agreement No. _____
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Notary Stamp or Seal)

STATE OF HAWAII )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

Notary Public, State of Hawai'i

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

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description.	License Agreement No. _____
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Notary Stamp or Seal)





ADC COAFH Property

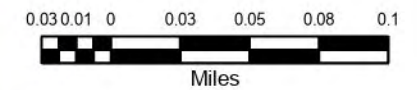
**EXHIBIT B**



STATE OF HAWAII  
**AGRIBUSINESS**  
 DEVELOPMENT CORPORATION

Central Oahu Agriculture and  
 Food Hub Property

TMK (1) 7-1-002:009, :004 (por.)



Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS, Esri Community Maps Contributors, City and County of Honolulu, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, METI/NASA, USGS, EPA, US Census Bureau, USDA, USFWS. This work is licensed under the Esri Master License Agreement. View Summary | View Terms of Use. Export: This layer is not intended to be used to export tiles for offline. Esri, USGS This map was developed by the Agribusiness Development Corporation, State of Hawaii.



STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

E-3

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request for approval the recommendations of the Land Permitted Interaction Group (PIG) findings and recommendations submitted at the 11/21/2024 regular ADC Board meeting. .

Applicant: Agribusiness Development Corporation (ADC)

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

**BACKGROUND:**

On February 15, 2024, three permitted interaction groups were formed. The groups were to assemble information to be included in the Agribusiness Plan required by HRS section 163D-5 (Strategic Plan). The Office of Planning and Sustainable Development (OPSD) will prepare the plan but the Board, through the three permitted interaction groups, were to provide guidance to OPSD on the contents of the Strategic Plan. The groups were to provide strategic direction in terms of goals, objectives, and policy recommendations to the Board.

Member Seddon and Member Hong were appointed to the Land permitted interaction group/ad hoc committee. The scope of the inquiry was to be defined at the next board meeting.

The next Board meeting was held on March 21, 2024. The Land permitted interaction group was dissolved and reestablished. Member Seddon, Member Hong, and Member Okuhama were assigned to the reestablished Land permitted interaction group.

On March 21, 2024, all the permitted interaction groups were assigned to investigate and report back to the Board with information to be incorporated into the Agribusiness Plan required by HRS section 163D-5. The groups were to report on objectives and outcomes that include metrics, timeframes, budget expectations, and annual performance goals and measures that will allow ADC to evaluate accomplishments annually. The groups were asked to consider beneficiaries, customers, problems, unique value propositions, competitive edge, key activities/solutions, impact metrics, key resources, partners and key stakeholders, cost structure, surplus, and financial stability. The report was to be presented at the June 20th meeting.

At the May 16, 2024 Board meeting, the Land permitted interaction group was dissolved and reestablished. One of the members could not devote the time necessary to serve on the group so a replacement needed to be assigned. Member Hong, Member Okuhama, and Member Cooke were assigned to the reestablished Land permitted interaction group. The Land permitted interaction group was to investigate and report back to the full board on information to be incorporated into the Agribusiness plan as required by HRS section 163D-5, which establishes the goals, objectives, policies, and priority guidelines for ADC's development strategy. The information collected should be geared toward objectives and outcomes that include metrics, timeframes, budget expectations, and annual performance goals and measures that will allow ADC to be evaluated annually. The Land permitted interaction group could also consider the items contained on page 100 of the March 21, 2024 board submittal package. The land group was asked to prepare a written report for presentation to the board that contains recommendations for inclusion in the ADC strategic plan report by the June 20th meeting. Page 100 of the March 21, 2024 submittal contained the following advice for all three permitted interaction groups. It was suggested that each group brainstorm the following:

- Beneficiaries: Who benefits from the product/service, therefore enabling our business model to thrive?
- Customers: Who do we need to "move" to make this business model work? Customers? Users? Investors/Funders?
- Problems: What are the biggest specific problems faced by our customers & beneficiaries? (From their perspective, not ours)
- Unique Value Proposition (UVP): What value are we creating? (How are we solving a problem, satisfying a need, or delivering benefits in a new way? What is the relevancy, quantified value/benefit, or unique competitive advantage. . .) Identify beneficiary UVP and customer UVP.

- Competitive Edge: How is our approach different from others?
- Key Activities/Solutions: Which activities/solutions deliver the UVPs to the different customer segments? What policies/strategies need to be changed/updated?
- Channels: What people, organizations & activities are necessary to reach our customers and beneficiaries and is scalable?
- Impact Metrics: What evidence are we gathering or looking at to show our success?
- Key Resources: What resources do we need to run our activities? People, finance, access, infrastructure, policies, strategy?
- Partners & Key Stakeholders: Who are the essential groups/entities persons we involve delivering our program? Special access or permissions? (i.e. key relationship, lease, land access, etc.)
- Cost Structure: What are our biggest expenditures? How will these change if we scale?
- Surplus: Plans on how to raise & invest surplus? Projected timeframes?
- Financial Sustainability: Revenue or funding model by %, ownership structure(s), availability of options outlined in HRS chapter 163D.

**REQUEST:**

Request approval of the following reported recommendations.

Strategically:

**1. Recognize the need for faster action and implementation by ADC**

a. Policy Changes:

i. Changes in the Existing Land Management Policy & Procedure Manual (LMPPM):

1. Property Disposition & Evaluation Procedures: Amend to include "Available Lands will be kept updated on the ADC Website for Expressions of Interest & Applications. Notices of Availability or Requests for Application shall be published. . .

2. Procedure for (specific area):

- a. Add to each section:

- i. Property Manager will review applications to assess compatibility with existing licensees, distribution (power & water), and value-added needs and discuss with area ADC BOD Member, ADC Staff and Partners as needed
- ii. The Property Manager will keep a current list of Expressions of Interest, Applications, and Stakeholders for

b. Need for Additional Information/Recommendation by Staff:

- i. Revisit the ADC's 343 Exemptions and provide a recommendation for inclusions in the LMPPM
- ii. Review Hawaii Fire Mitigation Plan and recommend policies to better steward ADC Lands
- iii. Suggested Changes to the LMPPM from Staff to include but not limited to:
  1. Property Disposition and Evaluation Procedures: Adding Executive Ordered Lands and New Land Purchases Sections
  2. Application Document:

- a. Adding sections/scores for:
    - i. Currently losing license/lease (timeframe & reasons).
    - ii. Farm Visit Evaluation/criteria & points for: No animals present if produce farmer, Type of equipment, number of workers observed at the farm, If Product is lying on the ground in the field unharvested, If potable water is available, If clean boxes for packing were available, on farm toilet, farm waste disposal system, any farm refrigeration available, if GAP certified- signage, notice any burning piles/evidence
    - iii. Any Grants Awarded in the Past: Describe
    - iv. Current Conservation Plan- copy of, and who created/approved
  - b. Clarify scoring criteria for:
    - i. Financials (many farmers do not provide detailed records for fear of information breach by ADC or request by public to view application & financials)
    - ii. Farm Plan
    - iii. Balance of the Application
  - c. Recommendations by staff for other changes
3. Communication Plan: Before, during and after application process
  4. Land Document Policies:
    - a. Expand Rent Setting Policy "ADC Board may adjust rent schedules to reflect cash flow of crop type, for example, orchard crop may have lower rate as licensee establishes trees & waits for fruit."
    - b. Rent Credit: change to reflect up to 3-year rent credit instead of up to 20 years
    - c. Term of License: Is 35 years ADC's maximum
    - d. License Re-Opening:
      - i. Applicants have shared current policy limits financial backing- prefer a set rate and re-opening
  5. Soil Conservation Plan: due to the shortage of conservation planners, we recommend ADC move to get a Master Conservation Plan for each area and allow Licensees up to 2 years to get a Soil Conservation Plan. Under the Master Conservation Plan Licensees are not required to have a grading & grubbing permit and can get started while awaiting an individual plan.
  6. Termination of License Procedures:
    - a. Change Notice of Violation for Past Due Rents letter from 60 to 45 days, and "past due letter" from 30 to 10 days
    - b. Change Notice of Violation for Past due Rents & Board Hearing" letter from 90 to 60 days, and add after garnishment of bank accounts, "result in license termination"



7. Non-Financial Default:
    - a. Change the Notice of Violation letter from five business days to 24 hours; resolved from 30 to 10 days and closed after the 11<sup>th</sup> day window.
    - b. Change item b Notification to 3 instead of 6 days
  8. Section 7.3 Soil Conservation Plan- extend from one year to two years
  9. Add to 8.3 from suggestions made to (Lyle & Roger)- include if licensee attended any training
- 2. Acknowledge ADC has Commercial Property in the Asset Portfolio**
- a. Policy Changes:
    - i. Changes in the Existing Land Management Policy & Procedure Manual (LMPPM) to include Commercial Land Management Policies & Procedures
      1. Include Common Area Maintenance Fees Policy for Commercial Lands to enable upkeep and security
  - b. Need for Additional Information/Recommendation by Staff:
    - i. Draft Commercial Property Policies & Procedures based on Best Management Practices in the industry
- 3. Proactively show “dynamic and aggressive leadership” in agribusiness**
- a. Policy Changes:
    - i. Establish a Strategy for Land Use on ADC Lands in relationship to Agritourism, Ag Worker Housing, and Solar and assign to the Technical Standing Committee appointed by the Chair
    - ii. Expand Annual Reports by Licensees to honor the statute of “economic, environmental and social benefit for the people of Hawaii”
      1. Capital Improvement Projects: Implemented & Planned
      2. Staffing: Current number of FT and PT throughout the year (indicating economic impact & ag worker housing needs)
      3. Conservation Plan Update
      4. Training conducted, attended or planned
      5. Current Production Status: Gross pounds harvested & waste (potential value-add production); types of crops
      6. Federal or State Grants Awarded
      7. Recommendations to the ADC BOD for consideration
    - iii. Establish Common Area Maintenance Trust Accounts by Region to allow planning and saving for capital improvements, improving security, possibly renting toilets or trash removal services as a group
  - b. Need for Additional Information/Recommendation by Staff:
    - i. License vs. Lease: Pros & Cons and Recommendation to BOD
    - ii. Quarterly Report from Property Managers to the BOD moving forward including maps/acres licensed vs. available; executive summary of Expressions of Interest for their assigned area (County); define “unfarmable lands” and outline what/where exist; identify region’s senator and representatives

- iii. Execution of mapping report on funding & for Strategic Plan:
  - 1. Current Land Assets:
    - a. Short-Term: TMK identification, parcel size/area; address if available, flood & county zoning (ag, urban, etc.); soil type, A/B/C/D; if there is a Current Conservation Easement in place; microclimate; any CTAHR reporting of suggested crops; In Special District Designation i.e. Enterprise Zone; appraised value, if any environmental testing has been done and executive summary
    - b. Long-Term: asset in relationship to ports, HDOE Facilities or planned Regional Kitchen; irrigation & potable water sources; electricity, sewage, telecommunication lines; fire hydrants & fire code- in designated high fire zone, drainage issues, any county plans for the area, if this is ceded lands, drone mapping by ADC to verify size of property

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board accept and approve the findings and recommendations of the Land permitted interaction group.

Respectfully Submitted,



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Roger Clemente  
ADC Property Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

**E - 4**

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

**Subject:** Request to accept Land Application permitted interaction group's findings and recommendations for developing a program for small, disadvantaged farmers on Oahu

**Applicant:** Agribusiness Development Corporation (ADC)

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

### BACKGROUND:

On March 19, 2024, the ADC solicited applications from interested farmers to fill the remaining vacant farm lots on Oahu and Kauai. Using their discretion and expertise, the committee evaluated the land applications and awarded points for each of the following categories: Experience, Marketability of Products, Finances, Business Plan and Farming Practices.

In total, the ADC received 43 land applications. Of the 43 land applications received, only 7 met or exceeded the minimum score established.

On November 1, 2024, the ADC Board established a second permitted interaction group to consider a potential land opportunity project for small and disadvantaged farmers on Oahu who may be imminently displaced from their current farming operations and did not meet the minimum qualifications and/or submitted a land application after the May 3, 2024 deadline.

The permitted interaction group met with ADC staff virtually to determine the location (see Exhibit A), criteria, and eligibility requirements for the proposed project.

### FINDINGS:

#### Findings #1:

The ADC Board identified Tax Map Key 6-4-003-016 as an ideal location for this program.

- A. Size: 511 Gross Acres, approximately 385 is usable for diversified farming. Minimum size lot for diversified agriculture operation is 100 acres.
- B. Location: Paalaa Uka, Oahu, gates to the property located on Kamehameha Hwy and Paalaa Uka Rd.
- C. Water source: A pump station owned by Dole is located across Kamehameha Hwy. approx. 500 yards from the property. A possible second water source is an irrigation ditch running on the northern end of the property: Licensee will need to procure an agreement from Dole to use water from the pump station or R2 ditch water. The Licensee is also responsible for the development of the irrigation water infrastructure, including transporting water and constructing its own water storage onsite.
- D. Condition of property: The property has several abandoned vehicles on site, as well as debris and rubbish. The land is overgrown with grass and tall trees. The land will require clearing before any agricultural activities can begin and will be issued "as is." The Licensee is responsible for developing the land in accordance with applicable laws and license provisions. Access from Kamehameha Hwy on the West boundary for several hundred yards makes security a concern for the farmer.

#### Finding #2:

In total, the ADC received 43 land applications. Of the 43 land applications received, 36 did not meet the minimum qualification established. Many of these farmers are small and disadvantaged farmers on Oahu who may be imminently displaced from their current farming operations (see Exhibit B).

Finding #3:

Based on the size of TMK 6-4-003-016 and the number of applicants remaining, ADC needs to establish a selection criterion based on merit to ensure ADC selects the top applicants based on their experience, marketability of product, finances, business plan, and farming practices.

Finding #4:

A minimum and maximum size for field crops should be established so that the farmers have enough area to implement crop rotation with cover crops and other non-food crops for pest mitigation. Furthermore, the committee believes it's important to accommodate as many small, disadvantaged farmers as possible, and that the farmer has enough farmland to achieve the economies of scale.

RECOMMENDATIONS:

The discussion suggested that a selection criterion for this program to support small, disadvantaged farmers on Oahu is needed. The committee's recommendations for the Board's review and consideration are summarized below:

Recommendation #1:

ADC shall use the list of applications already received prior to October 16, 2024 and select the highest-rated applicants. The applicants shall meet the criteria of small and disadvantaged, which is defined by the United States Department of Agriculture as a socially disadvantaged farmers and ranchers (SDFRs) as those belonging to groups that have been subject to racial or ethnic prejudice. SDFRs include farmers who are Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander. For some but not all USDA programs, the SDFR category also includes women.

Recommendation #2:

The Committee suggest that ADC limits the program to truck crop farmers.

Recommendation #3:

The Committee proposes a minimum size of 10 acres and a maximum size of 100 acres for field crops.

DISCUSSION:

ADC's goal is to develop a program to support small, disadvantaged farmers and select the most qualified applicants and award land licenses to agricultural operators who can help ADC double the local food production. Establishing a program to assist small, disadvantaged farmers will help ADC address its statutory mandate to increase access to farmland for small local farmers and cooperatives. A request to adopt the recommendations of the Land Application permitted interaction group for developing a selection criterion for the small, disadvantaged farmer program shall be presented at the next ADC Board meeting.



*Presentation of the Land Application permitted interaction group's findings and recommendations for developing a program for small, disadvantaged farmers on Oahu*  
November 21, 2024

**RECOMMENDATION TO BOARD:**

Based on the foregoing, staff recommends that the Board accept recommendation and approve the findings and recommendations of the Land Application permitted interaction group for selecting applicants for the small, disadvantaged farmer program on Oahu.

Respectfully Submitted,



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ROGER CLEMENTE  
Property Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director

## Exhibit B

### ADC LAND APPLICATIONS SMALL DISADVANTAGED TRUCK CROP FARMERS

	NAME	FARMING EXPERIENCE	DEMAND/ MARKET SIZE	IMPORT REPLACE MENT	ADEQUATE FINANCING	BUSINESS PLAN	GOOD AGRICULTURE PRACTICES	TOTAL	MAX	PERCENTAGE
1	ALOUN KAUAI FARMING LLC - ALEC SOU - 1107 Acres - Kekaha, Kauai	59	40	40	146	58	9	352.00	400	88.00%
2	TENG DA INC - YIDA ZENG - 200 Acres - PU-14 & PU-04, Oahu	58	40	36	140	58	7	339.00	400	84.75%
3	XIANZHI ZHAO - 10 Acres - Galbraith, Oahu	58	40	34	137	53	6	328.00	400	82.00%
4	MAUKELE RANCH - RON DEREIS & BRIDGET NAPIER - 511 Acres, Wahiawa, Oahu	59	40	38	115	56	0	308.00	400	77.00%
5	KAUAI TARO - 95 Acres - Kekaha, Kauai	48	40	40	128	52	0	308.00	400	77.00%
6	SCOTT WONG KAUAI - 1000 Acres, Kekaha, Kauai	54	38	34	120	55	0	301.00	400	75.25%
7	SCOTT WONG OAHU - 100 Acres - Wahiawa, Oahu	54	38	34	120	55	0	301.00	400	75.25%
8	Chanchai Phoathaisong - 10 acres - Oahu	43	40	35	125	38	5	286.00	400	71.50%
9	KUNHU XIONG - 160 Acres - Parcel 14, Oahu	51	40	34	104	53	3	285.00	400	71.25%
10	LAO AQUA FARM - NORA SISOUNTHONE - 10 Acres - Wahiawa, Oahu	52	35	30	115	42	4	278.00	400	69.50%
11	THANAWAT CHAK ANO - 50 to 80 Acres - Kekaha, Kauai (Parcel 17)	56	35	35	100	47	0	273.00	400	68.25%
12	KHAJORNSAK HANPROMKITTI & SOMTHIAN ARSANOK - 30 Acres - Wahiawa, Oahu	43	40	35	120	34	0	272.00	400	68.00%
13	Suraphon Suwana - 10 acres	43	40	35	114	35	5	272.00	400	68.00%
14	SILA FARMS (CO-OP) - 30 Acres - Parcel 16 Pa'a la a uka, Oahu	47	40	32	103	45	4	271.00	400	67.75%
15	KIATTISAK KULCHARO - 30 Acres - Wahiawa, Oahu	47	40	30	97	52	4	270.00	400	67.50%
16	PHEN KHAEPHUTCHA - 40 to 80 Acres - Wahiawa, Oahu	45	40	38	95	48	3	269.00	400	67.25%
17	SANYA PANHAPHON 17B (CO-OP) - 130 Acres - Wahiawa, Oahu	45	40	37	125	20	2	269.00	400	67.25%
18	THANONGSAK & PHANNEE CHUMPHANG - 50 Acres - Parcel 16 Pa'a la a uka, Oahu	42	40	37	100	40	7	266.00	400	66.50%
19	TAWORN PANYAMEE - 20 Acres - Kekaha, Kauai	57	39	34	103	33	0	266.00	400	66.50%
20	SOPHIA NUANBUNMA - 20 Acres - Wahiawa, Oahu	48	40	35	105	37	0	265.00	400	66.25%
21	Rungnapa Haoharn - 10 acres - Oahu	41	40	35	109	32	5	262.00	400	65.50%

	NAME	FARMING EXPERIENCE	DEMAND/ MARKET SIZE	IMPORT REPLACE MENT	ADEQUATE FINANCING	BUSINESS PLAN	GOOD AGRICULTURE PRACTICES	TOTAL	MAX	PERCENTAGE
22	SUPPHASIT YASAKA - 30 Acres - Kalepa, Kauai- DECLINED	57	40	37	95	25	7	261.00	400	65.25%
23	THIRAWAT & MANREET VONGCAMMAR - 50 Acres - Parcel 16 Pa'a la a uka, Oahu	51	40	35	85	40	5	256.00	400	64.00%
24	Komkwan Moses - 10 acres - Oahu	38	39	34	108	32	5	256.00	400	64.00%
25	LONG SPOON FARMS - KALEO - 5 Acres - Waimanalo, Oahu	40	30	30	105	50	0	255.00	400	63.75%
26	ANURAT FARM LLC. - WARAWUT TRUATNOK - 40 Acres - Wahiawa, Oahu	45	40	30	100	35	2	252.00	400	63.00%
27	JANNARONG TRUATNOK & JIUNSIRI SRIHABUT - 30 Acres - Wahiawa, Oahu	43	40	35	97	37	0	252.00	400	63.00%
28	SURIWONG CHAIYACHET - 50 Acres - Parcel 16 Pa'a la a uka, Oahu	39	40	32	105	35	0	251.00	400	62.75%
29	SID PRODUCE #17D (CO-OP)	45	40	32	105	20	2	244.00	400	61.00%
30	LIU'S PLANTATION - DEHUA LIU - (PU-14) No Acres Listed, Wahiawa, Oahu	47	40	40	83	30	0	240.00	400	60.00%
31	PHIROM & THONG ON KRINSOONGNOEN - 20 Acres - Wahiawa, Oahu	41	30	30	110	29	0	240.00	400	60.00%
32	LAOS SUGAR CANE JUICE - PADTHANA HANSANA - 6 Acres - Galbraith, Oahu	39	33	33	105	25	0	235.00	400	58.75%
33	THONG DAM & PATARAWAT RATCHAM - 30 Acres - Parcel 16 Pa'a la a uka, Oahu	46	40	30	80	35	3	234.00	400	58.50%
34	WEETASAK KHOTKHAM & MALAI WAN - 20 Acres - Parcel 16 Pa'a la a uka, Oahu	46	40	30	85	27	3	231.00	400	57.75%
35	ERIK K. HORN - 5 Acres - 1938 Wilikina Drive, Oahu	39	38	25	75	45	8	230.00	400	57.50%
36	KEALA FOUNDATION - 600 Acres - Waimea, Kauai	40	30	15	110	25	2	222.00	400	55.50%
37	WILAWAN KUNDET - 5 Acres - Parcel 16 Pa'a la a uka, Oahu	39	34	29	95	24	0	221.00	400	55.25%
38	MAY K. MAHARATHE - No phone number listed -5 Acres-Wahiawa, Oahu	35	35	35	90	25	0	220.00	400	55.00%
39	VINCENT HU SINGHA NA (CO-OP)	45	35	32	75	25	2	214.00	400	53.50%
40	Samart Khotwongthong - 10 acres - Oahu	32	30	25	78	22	5	192.00	400	48.00%
41	JATURONG & BUAON JAI RUAN - Unknown Acres & Location	25	37	17	70	27	2	178.00	400	44.50%
42	HAWAII MUSHROOM FARM - MIMI LAI - 2 Acres - Wahiawa, Oahu	22	40	40	35	16	0	153.00	400	38.25%
43	JAYJAY SAGUCIO - Unknown Acres & Location - Information not on application	43	23	23	25	10	0	124.00	400	31.00%

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

E-5

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request for approval of the Distribution Services Permitted Interaction Group's (PIG) recommendation.

Applicant: N/A

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

## BACKGROUND:

On February 15, 2024, three permitted interaction groups were formed. The groups were to assemble information to be included in the Agribusiness Plan required by HRS section 163D-5 (Strategic Plan). The Office of Planning and Sustainable Development (OPSD) will prepare the plan but the Board, through the three permitted interaction groups, were to provide guidance to OPSD on the contents of the Strategic Plan. The groups were to provide direction in terms of goals, objectives, and policy recommendations to the Board.

Vice-Chair Tabata (now Chair Tabata) and Member Kanaka'ole were appointed to the Water permitted interaction group/ad hoc committee. The scope of the inquiry was to be defined at the next board meeting.

The next Board meeting was held on March 21, 2024. The Water permitted interaction group was dissolved, reestablished, and renamed the **Distribution Management Permitted Interaction Group** covering water infrastructure and electric systems. Chair Tabata, Member Kanaka'ole, Member Hurd, and Member Hong (to the extent possible) were assigned to the reestablished Distribution Management permitted interaction group.

On March 21, 2024, all the permitted interaction groups were assigned to investigate and report back to the Board with information to be incorporated into the Agribusiness Plan required by HRS section 163D-5. The groups were to report on objectives and outcomes that include metrics, timeframes, budget expectations, and annual performance goals and measures that will allow ADC to evaluate accomplishments annually. The groups were asked to consider beneficiaries, customers, problems, unique value propositions, competitive edge, key activities/solutions, impact metrics, key resources, partners and key stakeholders, cost structure, surplus, and financial stability. The report was to be presented at the June 20th meeting.

Page 100 of the March 21, 2024 submittal contained the following advice for all three permitted interaction groups. It was suggested that each group brainstorm the following:

1. Beneficiaries: Who benefits from the product/service, therefore enabling our business model to thrive?
2. Customers: Who do we need to "move" to make this business model work? Customers? Users? Investors/Funders?
3. Problems: What are the biggest specific problems faced by our customers & beneficiaries? (From their perspective, not ours)
4. Unique Value Proposition (UVP): What value are we creating? (How are we solving a problem, satisfying a need, or delivering benefits in a new way? What is the relevancy, quantified value/benefit, or unique competitive advantage. . .) Identify beneficiary UVP and customer UVP.
5. Competitive Edge: How is our approach different from others?
6. Key Activities/Solutions: Which activities/solutions deliver the UVPs to the different customer segments? What policies/strategies need to be changed/updated?
7. Channels: What people, organizations & activities are necessary to reach our customers and beneficiaries and is scalable?
8. Impact Metrics: What evidence are we gathering or looking at to show our success?



9. Key Resources: What resources do we need to run our activities? People, finance, access, infrastructure, policies, strategy?
10. Partners & Key Stakeholders: Who are the essential groups/entities persons we involve delivering our program? Special access or permissions? (i.e. key relationship, lease, land access, etc.)
11. Cost Structure: What are our biggest expenditures? How will these change if we scale?
12. Surplus: Plans on how to raise & invest surplus? Projected timeframes?
13. Financial Sustainability: Revenue or funding model by %, ownership structure(s), availability of options outlined in HRS chapter 163D.

**REQUEST:**

That the Board approve the following recommendations items reported at the 1/21/2024 regular board meeting, agenda item D-3.

**1. Recognize the strategic significance and urgency of Distribution of Water & Power as part of the ADC Statute to exist “for the economic, environmental and social benefit of the people of Hawaii”**

a. Policy Changes:

- i. Resolve to acquire the Haleiwa-Wailua-Wahiawa Irrigation System, Spillway and Dam assets expeditiously to preserve 17,000 acres of food production in central Oahu which will lose water access for 6 months/year users are wholly dependent upon the system for water.
- ii. Pursue debt relief of \$4.5M for paying off the Waiahole Irrigation System Revenue Bond. Currently 40% of the revenues are used for principal and interest payments, and users have already paid \$9.5M on the original \$8.5M bond- eventually paying \$14.5M through maturity. These costs are passed on to local consumers of food.
- iii. Advocate for Capital Improvements for ADC’s Distribution Services in this next legislative session.
- iv. Create a Distribution Services Management Policy & Procedure Manual (DSMPPM)
- v. Note that Fire Mitigation efforts on Oahu and Kauai used & needed ADC Distribution Services access for fighting fires. Maintenance of these assets should be recognized as both economic, environmental and social benefiting the people of Hawaii.
- vi. Actively pursue new users, more efficient monitoring and use of existing Distribution Services customers.
- vii. Recognize that Climate Changes are bringing both flooding and drought. Flooding necessitates the need for ADC to capture these surges through maintenance of and additional water storage facilities. Drought conditions create a need for additional efficiency and sources of water.
- viii. Establish Trust Accounts for the Common Area Maintenance of these systems.

- ix. Proactive action through the addition of a System Engineer and Environmental Compliance staff position is critical and should be sought in this next legislative session.
  - x. Potential for adding a Constitutional Right to Land & Water to Farm.
  - xi. Recognize the need for more comprehensive regional water strategies- for drinking, farming, other uses
  - xii. ADC currently complies with ongoing Environmental Monitoring through (lawsuits).
  - xiii. Department of Hawaiian Home Lands is a potential strategic partner for jointly pursuing or maintaining Distribution Services for food production.
  - xiv. Department of Land and Natural Resources is a potential strategic partner for grants to maintain dams and reservoirs.
- b. Need for Additional Information/Recommendation by Staff:
- i. Draft a DSMPPM for ADC BOD review, feedback & strategic implementation. Include but not limited to: Operation, Maintenance and Management of each asset; identify cross-training and development of associated ADC staff; Process for Evaluation of Potential Assets for Acquisition and Energy Generation; Process for Evaluation of Potential Acquisitions; Best Management Practices during the Acquisition or Transfer; Policy regarding collection for services rendered (other suggestions?)
  - ii. Draft recommendations from ADC Staff of potential distribution services acquisitions for food (and energy?) production, including any assets that are potential for decommissioning across the state & would impact food production.
  - iii. Review Hawaii Fire Mitigation Plan and recommend policies to better steward ADC Lands
- 2. Actively protect the need for water in food production.**
- a. Policy Changes:
- i. Proactively plan for better Management and Maintenance of the current systems.
  - ii. Design a comprehensive plan for each Distribution Services Asset- requiring ADC BOD to advocate for a Systems Engineer Position or Funding to Develop this plan.
  - iii. Work with a variety of stakeholders to look for Reuse Water Opportunities: existing with the WWTP of Wahiawa, Schoefield and Lihue.
  - iv. Sugar and Pineapple had irrigation systems in place with fields and distribution lines that are still being used. Identify and support the digitization of the Sugar and Pineapple systems for access on the ADC Website.
  - v. Request in land applications projected water usage by month for strategic planning.
  - vi. Request in the annual report from licensees' additional needs for water and power distribution.
  - vii. Recognize the Talent Shortage in Distribution Services and strategically plan to address starting with a Salary Survey. Talent stability means consistent Distribution, and consistent Distribution Services increase food production.

- b. Need for Additional Information/Recommendation by Staff:
  - i. Draft a comprehensive Capital Improvement Plan for the Distribution Services of ADC.
  - ii. Provide a report of the gap in food production due to insufficient water in ADC Lands or Distribution Service areas.
  - iii. Conduct a Salary Survey for Distribution Services staffing.
  
- 3. **Proactively show “dynamic and aggressive leadership” in agribusiness around Distribution Services**
  - a. Policy Changes:
    - i. Advocate for Economic Impact Studies for the Haleiwa-Wailua-Wahiawa System (last done in 2007); Waiahole System (last done in 2006); East Kauai Irrigation System; and Kekaha Systems
    - ii. Establish Common Area Maintenance Trust Accounts by Region to allow planning and saving for capital improvements, and execution of routine maintenance
    - iii. Demonstrate the need for data in monitoring use and efficiency using technology.
  - b. Need for Additional Information/Recommendation by Staff:
    - i. Execution of mapping report using Strategic Plan funding for:
      - 1. Current Distribution Services Assets:
        - a. Short-Term: size/area served; type of water being distributed through the asset, address if available, flood & county zoning (ag, urban, etc.); soil type, A/B/C/D served; appraised value, if any environmental testing has been done and executive summary, executive summary highlights from last economic impact study; past 5 years CIP
        - b. Long-Term: projected 5-year CIP Schedule; potential fire mitigation use-- fire hydrants, fire code, designated high fire zone, drainage issues, any county plans for the area, pictures of the asset and staff working on it
    - ii. Identify Distribution Services monitoring technology for inclusion in future grant and CIP requests.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board:

1. Approve the Request noted above.

Respectfully Submitted,

*Mark Takemoto*

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Mark Takemoto  
Senior Executive Assistant

*Approved for Submission:*



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Wendy Gady, Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

E-6

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request for approval of the Capital Improvement (CIP) Permitted Interaction Group's (PIG) recommendation.

Applicant: N/A

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



## BACKGROUND:

Each year, the State budget process anticipates the submission of state departmental and agency budget requests for consideration by the legislature and the Governor. The purpose of the PIG is to receive input from the ADC Board of Directors (Board) regarding CIP. The CIP, PIG was established during the July 18, 2024 regular ADC board meeting and was assigned to “promulgate, review, evaluate, and prioritize CIP, in coordination with the executive director, and provide guidance and recommendations to the full Board regarding FY26 CIP requests”. The PIG was not able to meet before the CIP requests were due to DBEDT for review, therefore the first meeting of the CIP PIG on 10/21/24, was a review of what ADC staff submitted to DBEDT on 10/7/24, (See Exhibit A).

## REQUEST:

That the Board approve the following recommendation reported at the 11/21/2024 regular board meeting, agenda item D-2.

- Recommend starting the CIP planning process much earlier with the following suggested timeline:
  - 5/2025: Appoint CIP PIG for FY27
  - 6/2025-7/2025: Timeframe Governor can veto FY26 items
  - 7/2025: Recommendations of CIP to ADC BOD for FY27
  - 8/2025: Board approves CIP recommendations
  - 9/2025: Submit requests to DBEDT Director’s Office for consideration for the Administrative CIP Request
- Continue to update the CIP throughout the year, expanding to include:
  - Which projects are shovel ready?
  - What projects support the ADC's HRS163D?
  - Does the CIP request fit with ADC, DBEDT, Leg. vision?
  - What projects are requested/directed by the Legislature?
  - Phase & cost breakdown of projects
    - Detail any recycled water projects
  - Additional resources needed
  - What projects must happen vs. would be good to happen
  - Include region (Galbraith, Kalepa, Kekaha, Hilo, etc.)
- Update FY25 budget changes to include changes caused by the Maui wildfire, cost details of the requests, & Legislative districts of the projects (completed).

## DISCUSSION:

The recommended timeline is based on the information available at the end of the legislative session and provides time to make recommendations to the board before the typical DBEDT deadline for administrative requests.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board:

1. Approve the Request noted above. If approved the ADC staff will calendar the recommendations to ensure the Board will have input into subsequent CIP requests. The ADC will update the board on the CIP request progress through the legislative session.

Respectfully Submitted,

*Mark Takemoto*

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Mark Takemoto

Senior Executive Assistant

*Approved for Submission:*



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Wendy Gady, Executive Director

Exhibit A

## Draft CIP ADC

Project Name	Prior App. Bill or CIP	DBEDT	Directed	priority		\$ in 1,000	eCIP project number
Food And Product Innovation Network, Statewide	Yes	yes	Yes	High	1	9,500	ADC005
State Postharvest Facility, Oahu (HPP project)	Yes	Yes	Yes	High	2	6,300	ADC007
Wahiawa Reservoir And Spillway Purchase	No, new	Yes	Yes	High	3	5,600	202603
Commercial Land Purchase (Whitmore store)	No, new	Yes	Yes	High	4	5,000	202404
Slaughterhouse Facility, Oahu	Yes	Yes	Yes	High	5	4,000	ADC003
Agricultural Lands, Waialua, Oahu (155 acres Dole, with water)	No	Yes	No	Med	6	9,100	181615
Purchase Of Land Locked Between State Owned Land (parcel of land surrounded by ADC)	Yes	Yes	No	Med	7	3,000	202407
Agricultural Infrastructure Improvements, Oahu (511 acre water project)	No	Yes	No	Med/High	8	9,200	221611
Kekaha Irrigation System Improvements, Kekaha, Kauai (Mauka water)	Yes	No	Yes	Med/High	9	6,470	181618
Wastewater Reclaimed Water Irrigation System, Wahiawa, Oahu (Wahiawa wastewater)	Yes	Yes	No	Med	10	6,620	P15003
Galbraith Agricultural Lands Improvements, Oahu (soil remediation)	No	Yes	No	Med/High	11	500	ADC008
Agricultural Lands, Waimea, Kauai (Waimea (3) parcels)	No	Yes	Yes	High	12	1,300	181616

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

E-7

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request to establish a permitted interaction group to take public testimony and develop a policy regarding solar energy production on ADC lands; appointment of members thereto

Applicant: Agribusiness Development Corporation

Authority: Section 163D-4(a)(15), Hawaii Revised Statutes

*Request to establish a permitted interaction group to take public testimony and develop a policy regarding solar energy production on ADC lands; appointment of members thereto*

October 24, 2024

#### BACKGROUND:

The Agribusiness Development Corporation (ADC) was established in 1994, upon the demise of plantation operations and jobs within the state, to facilitate the conversion of some of those lands to diversified agricultural farming and crops. In the intervening years, ADC has acquired land, both fee-owned and ceded, and have licensed much of that land for diversified agriculture and aquaculture operations. Many of those operations require energy to operate.

Through the expression of various ADC Board members at various times, it has been the unofficial and unapproved position of ADC to permit solar production for tenants' on-premises uses but to prohibit the export of energy for use by external client (e.g. energy companies, non-ADC tenants). The exception to this unofficial position was the 2017 approval of Kauai Island Utility Cooperative's now defunct West Kauai Energy Project, which included hundreds of acres for solar panels for the pumped-storage hydroelectric project.

#### REQUEST:

That the Board approve the establishment of the permitted interaction group (PIG) to accomplish the following: 1) consider solar needs for ADC and ADC tenant activity across fee-owned and ceded lands, 2) the appropriateness of solar activity on ADC lands relative to ADC's mission; 3) hold meetings to accept testimony from the public and ADC stakeholders regarding ADC's policy for solar activity; 4) develop a proposed policy for solar energy production on ADC lands to present to the full Board for consideration; and 5) the Board Chairperson appoint three (3) Board members to the PIG. (Request)

#### OPERATIONAL PLAN:

Upon approval of the Request and appointment of members to the PIG, a staff member will be appointed to coordinate and schedule meetings of the PIG. The PIG shall also hold meeting(s) at which the public and ADC stakeholders may provide testimony to the PIG regarding the proposed policy.

#### CONSERVATION PLAN:

N/A

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT COMPLIANCE:

Under section 343-5(a), Hawaii Revised Statutes, an environmental assessment shall be required for actions, that propose, among other things, the "(1) use of state land or county lands, or the use of state or county funds[.]" This Request does not trigger the environmental review process.

#### REMARKS & DISCUSSION:

There is no fiscal impact associated with the Request beyond staff time. Staff notes that there are currently requests before the Board requesting access to ADC lands to conduct due diligence for proposed future solar energy projects (see agenda items E-9, F-1); as such, the development of a board-approved policy is timely.

In recent years, request for agricultural land for non-agricultural uses have proliferated, for projects such as shooting ranges, landfills, and solar energy production. Development of a policy

*Request to establish a permitted interaction group to take public testimony and develop a policy regarding solar energy production on ADC lands; appointment of members thereto*  
October 24, 2024

regarding solar energy production on ADC lands would help guide staff in responding to such requests.

**RECOMMENDATION:**

Based on the foregoing, it is recommended that the Board:

1. Approve the Request; and
2. The PIG shall automatically dissolve upon presentation of their report to the Board; and
3. Declare that, pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, the proposed disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to Chapter 343, Hawaii Revised Statutes

Respectfully Submitted,



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LYLE ROE  
Asset Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director



STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT  
CORPORATION**

E-9

STAFF SUBMITTAL TO THE BOARD OF DIRECTORS  
December 5, 2024

Subject: Request for approval to issue a Right of Entry to Mana Solar + Storage, LLC (a subsidiary of AES Corporation) to Fields 218, 219, 220 and 321 to conduct due diligence activities for a proposed solar energy production project in Kekaha, County of Kauai, State of Hawaii, Tax Map Key (4) 1-2-002:001 (por.)

Applicant: Mana Solar + Storage, LLC (Applicant)

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

Area: 382.69 acres, more or less

Field No(s): 218, 219, 220, 321 (Premises) (see Exhibit "A")

Tax Map Key: (4) 1-2-002:001 (Property) (see Exhibit "A")

Land Status: Set aside to the Agribusiness Development Corporation under Governor's Executive Order No. 4007 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

Zoning: SLUD: Agricultural  
CZO: Agricultural

Character of Use: Due diligence for proposed future solar energy production project including surveys and studies

Land Doc. Type: Right-of-Entry Agreement (ROE)

Term: 1 year

Rental Rate \$0

*Request for approval to issue a Right of Entry to Mana Solar + Storage, LLC (a subsidiary of AES Corporation) to Fields 218, 219, 220 and 321 to conduct due diligence activities for a proposed solar energy production project in Kekaha, County of Kauai, State of Hawaii, Tax Map Key (4) 1-2-002:001 (por.)*  
December 5, 2024

**BACKGROUND:**

In 2017, the Agribusiness Development Corporation (ADC) Board of Directors (Board) approved licenses to the Kauai Island Utility Cooperative (KIUC) for both the Kokee Ditch System and Mana Reservoir for the West Kauai Energy Project (WKEP). WKEP included several hundred acres for a solar energy production component to provide energy for the hydroelectric pumped-storage component of WKEP. While the lease for the solar component of WKEP was never approved or executed, it was nevertheless anticipated and expected as part of WKEP.

In 2023, WKEP was terminated due to delays from pending litigation, and the licenses for the Mana Reservoir and Kokee Ditch System expired. However, Mana Solar + Storage, LLC (a subsidiary of AES Corporation) has taken up the solar portion of the project.

**REQUEST:**

That the Board approve a non-exclusive right-of-entry agreement to Mana Solar + Storage, LLC for the Premises and certain common infrastructure roads to conduct due diligence including surveys and studies for a proposed future solar energy production project. (Request)

**OPERATIONAL PLAN:**

The ROE will provide the applicant with permission to enter the Premises, as well as access the Premises through common infrastructure roads, for the purpose of completing due diligence for a future solar energy production project.

The ROE shall in no way grant a real property interest to the Property or the Premises.

**CONSERVATION PLAN:**

N/A

**CHAPTER 343 – ENVIRONMENTAL ASSESSMENT COMPLIANCE:**

Under section 343-5(a), Hawaii Revised Statutes, an environmental assessment shall be required for actions, that propose, among other things, the “(1) use of state land or county lands, or the use of state or county funds[.]” In this case triggers include both the use of state land and the use of state funds. For the purpose of awarding the ROE, the project is exempt from the preparation of an environmental assessment pursuant to:

Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

**REMARKS & DISCUSSION:**

The Board has previously established a permitted interaction group regarding solar energy production on ADC lands, as well as received a briefing on the future solar energy production project by Mana Solar + Storage, LLC (a subsidiary of AES Corporation). The Board has previously delegated authority to the executive director to issue non-extraordinary rights of entry to entities for access to ADC land. However, this request may be extraordinary given that 1)

*Request for approval to issue a Right of Entry to Mana Solar + Storage, LLC (a subsidiary of AES Corporation) to Fields 218, 219, 220 and 321 to conduct due diligence activities for a proposed solar energy production project in Kekaha, County of Kauai, State of Hawaii, Tax Map Key (4) 1-2-002:001 (por.)*  
December 5, 2024

there is not yet any formal Board policy regarding solar energy production on ADC lands, and 2) because the Request may fall outside of the *Agricultural and Related Use* public purpose set forth in Governor's Executive Order No. 4007. As such, staff believes the Request requires Board approval.

RECOMMENDATION:

Based on the foregoing, it is recommended that the Board:

1. Approve the Request, subject to the following conditions:
  - a. The term shall be for one year; and
  - b. Any option for additional one-year terms shall be by mutual agreement; and
  - c. The ROE shall not grant any real property interest to the Property or the Premises; and
  - d. No construction activities shall commence under this ROE
  - e. It shall be understood by all parties that granting an ROE, or any subsequent options to extend, shall in **no way** be construed as an endorsement or approval of any future solar energy production project;
2. Declare that, pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, the proposed disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to Chapter 343, Hawaii Revised Statutes

Respectfully Submitted,



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LYLE ROE  
Asset Manager

*Approved for Submittal:*



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Wendy Gady  
Executive Director



# Legend

-  ADC Property
-  Solar Project



## STATE OF HAWAII AGRIBUSINESS DEVELOPMENT CORPORATION

Proposed Solar Energy  
Production Project by Mana Solar  
+ Storage, LLC

TMK (4) 1-2-002:001 (por.)



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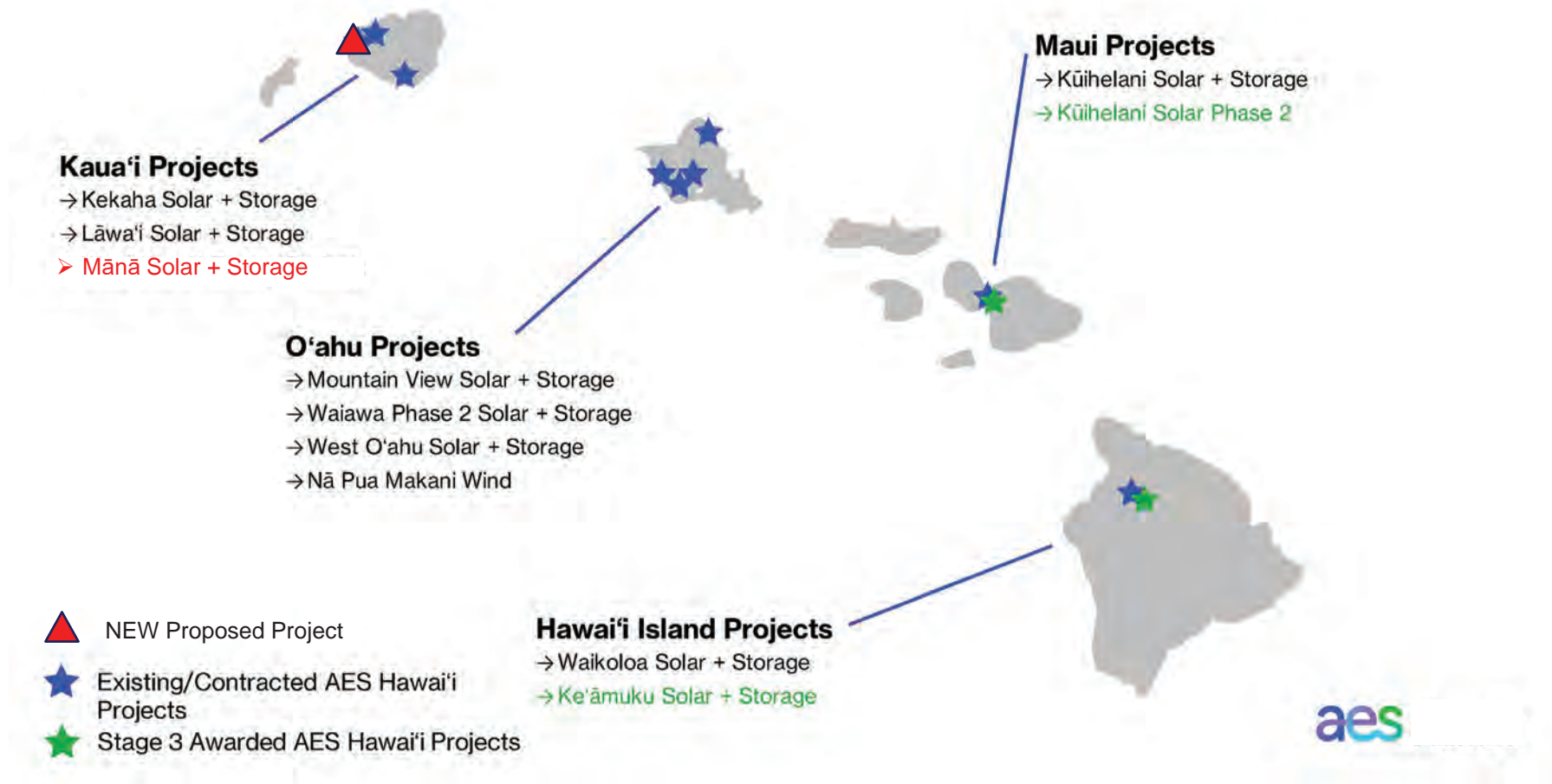
# NEW Proposed Mānā Solar + Storage Project



Agribusiness Development Corporation (ADC)  
December 5, 2024



# AES Statewide Presence





# NEW Proposed Project Overview

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- 35 MWac Solar Photovoltaic Array (PV)
- 140 MWh Battery Energy Storage System (BESS)
- Mānā Solar + Storage, LLC (AES Affiliate) to Develop/Operate
- Up to ~375 Acres of State ADC Land
- Federal Loan - U.S. Department of Agriculture (USDA), Rural Utilities Service (RUS)
- 25-year Power Purchase Agreement (PPA)
- Q1 2029 Commercial Operation Date (COD)
- Supports Hawaii's Clean Energy Initiative (HCEI): 100% Renewable Energy renewable by 2045 - HRS §269

# Proposed Project Location

- State ADC Lands
- Kekaha, Kauaʻi



# Proposed Project Area

- Up to ~375 acres
- TMK: (4) 1-2-002:001 (portion)
- Lots 218, 219, 220 and 321







# Regulatory Considerations

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- Power Purchase Agreement (PPA)
  - Hawaii State Public Utilities Commission (PUC) Approval
  - PPA Between KIUC and Mānā Solar + Storage, LLC (AES Affiliate)
- HRS §343 – Hawaii Environmental Policy Act (HEPA)
  - Trigger: Use of State land(s)
  - Accepting Agency: Kaua‘i County Planning Department
- National Environmental Policy Act (NEPA)
  - Trigger: Use of Federal funds – U.S. Department of Agriculture (USDA), Rural Utilities Service (RUS) Loan
- State and County Special Use Permit
  - Agriculture – State Land Use District, Land Use Commission
  - Agriculture – County Zoning, Kaua‘i County Planning Commission
- “B” Soil Classification – Land Study Bureau
  - Requires Compatible Agricultural Activities
  - Requires Decommissioning – Removing All Project Components, Restoring Land to Existing Condition or Comparable

# WITHDRAWN – West Kaua‘i Energy Project

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- KIUC previously proposed a renewable energy project on State ADC land(s)
  - West Kaua‘i Energy Project (WKEP)
  - Joint KIUC and AES Development
  - Included Solar, Pumped Hydro Storage, Flow-Through Hydro
  - Lawsuit Filed
- KIUC withdrew the project due to litigation regarding HRS §343
- KIUC subsequently awarded AES the opportunity to independently develop a NEW project, subject to PUC and KIUC approval
- NEW Proposed Project:
  - Mānā Solar + Storage



# ADC Action – Right-Of-Entry (ROE)

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- AES Respectfully Requests Approval for a Right-of-Entry (ROE)
- Assignee: Mānā Solar + Storage, LLC (AES Affiliate), Consistent with Entity Assignments for:
  - PPA
  - Land Use Permits/Entitlements
  - Financing
  - Federal Funding
- ROE Critical to Project Proceeding
  - Supports PUC approval of PPA
  - Enables site study and due diligence
  - Allows environmental review (HEPA and NEPA)
  - Allows land use permits/entitlements
- ROE Informs/Enables Subsequent Lease Negotiations with ADC/State

# Project Timeline

Milestone	Estimated Dates
ADC ROE approval	December 2024
PUC approval of PPA	January – July 2025
USDA-RUS Preliminary Loan Approval	January 2025 – June 2025
Due diligence; NEPA / HEPA	January 2025 – June 2026
ADC Agreement to Grant Lease/Easement with AES	January 2025 – December 2025
Land use permits / Entitlements	June 2026 – March 2027
Construction	September 2027 – March 2029
COD	March 2029



Mahalo!



# Appendix: Organizational Chart

