HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. **24-18, CD1**

RESOLUTION

APPROVING THE NON-EXCLUSIVE LICENSE AGREEMENT WITH THE UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, FOR CONTINUED USE OF LAND WITHIN PORTIONS OF KUAHELANI NEIGHBORHOOD PARK, IDENTIFIED AS TMK: 9-4-005:046 AND ANANIA DRIVE, MILILANI, HAWAIʻI, FOR ENVIRONMENTAL TEST WELL MONITORING AND A SUBSURFACE ELECTRICAL LINE.

WHEREAS, Section 38-3.1, Revised Ordinances of Honolulu 2021 ("ROH"), provides that the Director of Budget and Fiscal Services ("BFS Director" or "Director") may award contracts to lease or rent real property owned by the City and County of Honolulu ("City") on terms, conditions, and rentals approved by the Corporation Counsel as to form and legality without calling for public bids when real property and/or improvements thereon are leased or rented for the use of any political or governmental subdivision of the federal, State, or county governments; and

WHEREAS, ROH Section 38-4.1 further provides that the term of any contract to lease or rent property of the City shall not exceed five years; provided that the City Council ("Council"), by resolution, may authorize the leasing or renting of property for a longer period when deemed necessary in the public interest and property is leased or rented for the use of the State or federal government; and

WHEREAS, in September 2012, in conjunction with the Hickam Air Force Base environmental multi-phase remedial investigation project of fuel spills along the abandoned Hickam Petroleum, Oils, and Lubricants Pipeline running through Mililani Town, Hawaiʻi, the United States of America, Department of the Navy ("Navy") was granted a five-year Non-Exclusive License Agreement for use of a portion of Kuahelani Neighborhood Park, identified as TMK: 9-4-005:046, for the installation and maintenance of an environmental test well and a portion of Anania Drive for the installation and maintenance of a subsurface electrical conduit line ("Properties"); and

WHEREAS, the 2012 Non-Exclusive License Agreement, which was extended through August 31, 2022, has expired; and

WHEREAS, the Navy has requested a new five-year Non-Exclusive License Agreement ("License Agreement") to allow for its existing facilities to remain within the Properties for continued remedial investigation and environmental test well monitoring; and

WHEREAS, pursuant to ROH Section 38-4.1, the Director has requested the Council's approval of the License Agreement with the Navy for continued use of areas

within the City's Properties, as shown in yellow on the maps that are part of the proposed License Agreement, attached as Exhibit A and incorporated by reference herein; and

WHEREAS, the BFS Director, the Director of Parks and Recreation, and the Chief Engineer of the Department of Facility Maintenance have determined that entering into the License Agreement with the Navy for use of the Properties continues to serve the public interest; and

WHEREAS, in accordance with ROH Section 38-4.1, the Director has requested the Council's approval of the License Agreement with the Navy, not to exceed five years, to allow for their existing facilities to remain within the Properties at no cost; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Budget and Fiscal Services is authorized to enter into a new Non-Exclusive License Agreement ("License Agreement") with the United States Department of the Navy for continued use of land within portions of Kuahelani Neighborhood Park, identified as TMK: 9-4-005:046, and Anania Drive, Mililani, Hawai‘i, not to exceed five years, and pursuant to the terms, conditions, and provisions approved by the Corporation Counsel as being necessary, advisable, or desirable for such purposes; and

BE IT FURTHER RESOLVED that the Director of Budget and Fiscal Services is directed to follow the recommendation of the Manager and Chief Engineer of the Board of Water Supply to add three requirements to the License Agreement, as described in Departmental Communication 229 (2024), dated April 2, 2024; and

BE IT FURTHER RESOLVED that the Director of Budget and Fiscal Services, or the Director's designee, is authorized to sign the License Agreement and other necessary documents; and

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

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No. **24-18, CD1**

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Director of Budget and Fiscal Services.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

January 26, 2024
Honolulu, Hawai'i

Councilmembers

NON-EXCLUSIVE LICENSE AGREEMENT

THIS NON-EXCLUSIVE LICENSE AGREEMENT "Agreement" made this _____ day of _____, _____, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, whose business and post office address is 530 South King Street, Room 208, Honolulu, Hawai'i 96813, hereinafter called the "Licensor", and the UNITED STATES OF AMERICA acting by and through the Department of the Navy, whose address is 400 Marshall Road, Joint Base Pearl Harbor-Hickam, Hawai'i 96860-3139, hereinafter called the "Licensee";

WHEREAS, the Licensor and Licensee executed a Non-Exclusive License Agreement dated September 20, 2012 to use a portion of Kuahelani Neighborhood Park and a portion of Anania Drive, both of which are owned by the City, in conjunction with Phase 3 of the Joint Base Pearl Harbor-Hickam environmental multi-phase remedial investigation project of fuel spills along the abandoned Hickam Petroleum, Oils, and Lubricants (POL) Pipeline running through Mililani Town; and

WHEREAS, an Amendment to the Non-Exclusive License Agreement dated September 25, 2017 extending the license period for five (5) years expired on August 31, 2022; and

WHEREAS, the Licensee desires to continue the use of a portion of the Kuahelani Neighborhood Park for a temporary environmental test well and a portion of Anania Drive for a temporary subsurface electrical line to continue necessary remedial investigation and test well monitoring; and

NOW, THEREFORE, the Licensee does hereby covenant with the Licensor as follows:

1. The Licensee shall have the right to use the following properties, on non-exclusive and temporary basis, for the purposes described below:

   A. A portion of the Kuahelani Neighborhood Park, as shown highlighted in pink on the attached Exhibit "A", which is by reference hereby

EXHIBIT A

incorporated into this Agreement for the continued use and maintenance of a temporary environmental test well; and

B. A portion of Anania Drive, identified as a yellow line crossing Anania Drive, as shown on the attached Exhibit "B", which is by reference hereby incorporated into this Agreement, for the continued use and maintenance of a temporary subsurface electrical conduit.

The two use areas shall be together referred to herein as the "subject properties".

2. This Agreement shall be effective on _____ and terminate on _____. This agreement may be terminated without cause by the Licensor, provided that the Licensee shall be given a minimum six months advance notice prior to the termination. The Licensee may terminate this agreement prior to the end of the term if the Licensee no longer requires use of the subject properties, provided that the subject properties have first been restored to a condition satisfactory to the Licensor.

3. The Licensee shall maintain proper safeguards upon said subject properties for the protection and welfare of the public and pedestrians.

4. Licensee's use shall not unreasonably interfere with use of the subject properties by the City or the public.

5. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, and municipal governments affecting the subject properties.

6. The Licensee shall obtain the proper permits, licenses and approvals for any construction and repairs made in association with the improvements located within the subject properties.

7. The environmental monitoring well located within a portion of the Kuahelani Neighborhood Park and the subsurface electrical line located beneath a portion of Anania Drive, shall remain the properties of the Licensee, and the Licensee shall, upon termination of this Agreement, remove such improvements from subject properties. If any action of the Licensee's employees or agents in the exercise of this Agreement results in damage to the real property, the Licensee will, in its sole discretion, either repair such damage to the satisfaction of the Licensor or make an appropriate settlement with the City. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The Licensee's liability under this clause may not exceed appropriations available for such payment and nothing contained in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Licensor may have to make claim under applicable laws for any other damages than provided herein. No additional improvements will be constructed within the subject properties.

8. The Licensee shall not make, permit, or suffer, any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the subject properties.

9. Any rights granted by this Agreement are not intended to be and shall not be used to assert any permanent rights, ownership rights, title or easement in the subject properties.

10. The Licensee shall at all times with respect to the subject properties, use due care and diligence for public safety and in such manner as to occasion as little interference as reasonably possible with the use of the subject properties by the Licensor or the public. That the Licensee shall require its contractor or its

authorized agent to procure and maintain, during the life of this Agreement and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than $1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under this Agreement; and (2) products and completed operations coverage; and all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Licensor, its elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the Licensor.

11. The Licensee shall be allowed to use the subject properties subject to the condition that the subject properties are accepted by the Licensee in "as is" condition, without warranty or representation, express or implied, as to the condition or fitness for any purpose whatsoever, the Licensee hereby affirming to the Licensor that the Licensee has had the opportunity to inspect the subject properties and accepts the same "as is".

12. The Licensee will provide final, validated laboratory reports of future groundwater samples collected from Monitoring Well ST03-B65 in the monitoring reports that are provided to the City and County of Honolulu Department of Parks and Recreation (DPR) and City and County of Honolulu Department of Budget and Fiscal Services (BFS).

13. At the direction and request of the Licensor, Licensee shall provide split samples to the Licensor or their designee for like to like testing. Groundwater samples are to be collected in bottles provided by the laboratory and half of the sample inventory shall be handed over to the Licensor or their designee to be sent to an

Environmental Laboratory Approval Program (ELAP)-certified analytical laboratory. The split samples shall be tested for only the following analytes, as approved by the Department of Health and using the most current EPA Methods for the ST03 groundwater monitoring program: Total Petroleum Hydrocarbons (TPH) as gasoline, TPH as diesel, Benzene, Ethylbenzene, Toluene, m,p-Xylene, o-Xylene, 1,2-DCA, 1-Methylnaphthalene, 2-Methlnaphthalene, Naphthalene, alkalinity, nitrate/nitrite, sulfate, and methane. This monitoring well was designed and constructed for the purpose of monitoring the presence of fuel in groundwater. As such, analysis of non-fuel-related analytes from groundwater samples drawn from this monitoring well may be inaccurate or limited.

14. The Licensee shall provide copies of future reports, studies, groundwater data, geological bore logs and laboratory testing reports related to Monitoring Well ST03-B65 and Hickam Petroleum, Oils, and Lubricants (POL) Site ST03 to DPR and BFS.

15. This Agreement shall not be sold, assigned, conveyed, leased, or otherwise transferred or disposed of by the Licensee; provided, however, that the Licensee is allowed to have its contractors or its authorized agents use the subject properties for the purposes described here and in compliance with the Agreement.

16. Upon termination of this Agreement, the Licensee shall peaceably surrender and deliver up possession of the subject properties in good order and condition. The Licensee shall remove all of its improvements, tools, equipment, and other personal property upon termination or expiration hereof.

17. That the Licensor will not be responsible for any loss, liability, claim or demand for property damage, property loss, personal injury, including, but not limited to death arising out of any injury or damage caused by or resulting from any act or

omission of the Licensee or their contractors or its authorized agents in connection with the Licensee's entry onto, use and occupancy of the subject properties described herein. The Licensee's liability for claims for damage or loss of property, personal injury or death caused by the acts or omissions of Licensee its Officers, Employees, and Agents acting within the scope of their employment with the United States Government shall be governed by the Federal Tort Claims Act, 28 U.S.C. §§ 2670-2680.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers duly authorized on the day and year first above written.

APPROVED AS TO CONTENTS:

_____
Its
Department of Facility Maintenance

APPROVED AS TO CONTENTS:

_____
Its
Department of Parks and Recreation

APPROVED AS TO FORM
AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU

By_____
Director, Department of Budget
and Fiscal Services

LICENSOR

UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY

By_____
Its

LICENSEE

EXHIBIT A



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Figure 2. Site Features
Annual 2021 Long-Term Maintenance and Monitoring Report for Site ST03
Hickam POL Pipeline at JBPHH, Oahu, Hawaii

EXHIBIT B



Figure 2. Site Features

Annual 2021 Long-Term Maintenance and Monitoring Report for Site ST03
Hickam POL Pipeline at JBPHH, Oahu, Hawaii

Report Title:
License; Agreement; United States; Navy; Kuahelani Neighborhood Park; Environmental Test Well; Electrical Line; Groundwater; Report; Testing

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.