

After Recordation Return By: Mail () Pickup () To:

Affects Tax Map Key: First Division, 9-4-008:010 & 9-6-003:044

LICENSE NO. 753

between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
as Licensor

and
THE CITY AND COUNTY OF
HONOLULU
as Licensee



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

LICENSE NO. 753

THIS LICENSE AGREEMENT ("License") made and issued this 10th day of October, 2014, by and between the State of Hawaii by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LICENSOR," and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose place of business and mailing address is 530 South King Street, Honolulu, Hawaii 96813, hereinafter called "LICENSEE." LICENSOR and LICENSEE are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

WITNESSETH:

WHEREAS, LICENSOR and LICENSEE have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange;

WHEREAS, LICENSOR is the fee simple owner of Hawaiian home lands known as the Ewa Drum site situate at Waiawa, Ewa, Oahu, identified as Tax Map Key Nos. (1) 9-4-08:010 and (1) 9-6-03:044, consisting of approximately 55.842 acres;

WHEREAS, LICENSEE is the owner of certain properties, identified as a portion of Varona Villages, situate at Kapolei, Oahu, and further



identified as first, Tax Map Key No. (1) 9-1-017:112, which consists of approximately 31.858 acres, and second, Tax Map Key No. (1) 9-1-017:101, which consists of approximately 18.808 acres;

WHEREAS, LICENSOR and LICENSEE have executed a Memorandum of Agreement dated March 10, 2010 ("MOA"), that shall guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange;

WHEREAS, the Parties have agreed to make continuous, good-faith, and diligent efforts towards finalizing the sale or exchange described in the MOA as soon as possible;

WHEREAS, LICENSOR and LICENSEE desire that pending the sale or exchange of properties between LICENSOR and LICENSEE, the Parties shall grant each other the necessary authorizations so that each may take possession of the other's property at the earliest possible moment;

WHEREAS, under Section 207(c)(1)(A) of the Hawaiian Homes Commission Act, 1920, as amended, and Section 10-4-22 of the Administrative Rules of the Department of Hawaiian Home Lands, as amended, LICENSOR is authorized to grant licenses for access to and use of Hawaiian home lands for public purposes;

WHEREAS, LICENSEE has requested a license to enter upon and use the Ewa Drum site for a maintenance and storage facility and guideway in connection with the Honolulu Rail Transit Project, formerly known as the Honolulu High-Capacity Transit Corridor Project, hereinafter referred to as the "Project"; and



WHEREAS, LICENSEE provides public transportation and related services to LICENSOR'S beneficiaries;

NOW THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR hereby grants to LICENSEE this License to enter upon, have access to and use the parcels of Hawaiian home lands shown on the map marked as Exhibit "A" and more particularly described in Exhibit "B," both of which exhibits are attached hereto and incorporated herein, and further identified by Tax Map Key Nos. (1)9-4-008:010 and (1)9-6003:044, containing a total land area of 55.842 acres, more or less, hereinafter referred to as the "premises" and situate at Waiawa, Ewa, Oahu, Hawaii.

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid rights and privileges are as follows:

1. Term. The term of this License is for seventy-five (75) years, with the effective date of October 10, 2014, or until such time as LICENSEE obtains fee simple title to the premises, whichever occurs sooner, unless this License is sooner terminated as hereinafter provided.

2. License Fee. The license fee for the term of this License, shall be the nominal sum of One Dollar (\$1.00).

3. Use. LICENSEE may use the premises for a construction staging area, a maintenance and storage facility ("MSF"), and a guideway in connection with Project purposes; in addition to other uses permitted under Section 207 of the HHCA and approved by LICENSOR, provided that such approvals shall not be unreasonably withheld.



LICENSEE is authorized to sublicense the premises to the Honolulu Authority for Rapid Transportation, a semi-autonomous agency of the City and County of Honolulu, to develop and operate the aforementioned Project.

4. Utilities. LICENSEE shall pay, when due, all charges, and other outgoings of every nature and kind whatsoever, including all charges for utility services, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or on account of the premises and the improvements hereafter erected thereon.

5. Maintenance and Repair. During the term of this License, LICENSEE shall at its expense repair and maintain any facility including water, gas, plumbing, piping, electrical wiring, and glass and any improvement installed or constructed by LICENSEE in or on the premises; shall keep the premises and all improvements thereon in a strictly clean and sanitary condition and shall comply with all laws, ordinances, rules and regulations of the Federal, State, or County governments that are applicable to the premises and improvements; and shall allow LICENSOR or its agents, at all reasonable times, free access to the premises for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good, or commence to make good, at its own cost and expense all repairs or maintenance within sixty (60) days after the mailing of written notice by registered or certified mail to the last known address of LICENSEE.



6. Right and Approval of Construction. LICENSOR grants to LICENSEE the right to construct, operate and maintain the MSF and guideway on, within, under, over, and across the premises provided all plans and specifications for building meet all Federal, State and County requirements and standards.

7. Construction Standards. Any new construction must be in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County governments.

8. Ownership/Right to Remove Improvements. All buildings or structures or other major improvements of whatever kind that LICENSEE constructs or erects on the premises shall remain the property of LICENSEE during the term of the License. LICENSEE shall have the right, prior to the termination of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that in the event LICENSEE shall fail to so remove such property within one hundred eighty (180) days after written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE. Upon request by LICENSEE, LICENSOR shall diligently support LICENSEE'S efforts to remedy and remove the causes of delay in the removal of LICENSEE's property, provided that LICENSOR shall not be required to expend any funds in the effort. All insurance and condemnation proceeds pertaining to improvements on the premises shall be the sole property of LICENSEE.

9. Waste; Unlawful 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, or any unlawful or improper use of the premises.

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

11. Default of Licensee. It is expressly agreed that this License is contingent upon the continuing condition that if LICENSEE after a thirty (30) day demand, fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by certified mail to LICENSEE; or if LICENSEE becomes bankrupt, 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 Act seeking readjustment, rearrangement, postponement, composition or reduction of LICENSEE'S debts, liabilities or obligations; then in any such event LICENSOR may at its option cancel this License and thereupon take immediate possession of the premises, after the passage of a reasonable amount of time for any right of action which LICENSOR may have. LICENSEE shall have the right, prior to any cancellation of this License, or within such additional period as LICENSOR in its reasonable



discretion may allow, to remove LICENSEE'S property from the premises; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

12. 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 hereafter erected on the premises without the prior written consent of LICENSOR, which consent will not be withheld unreasonably.

13. Insurance. LICENSEE is self-insured and shall not be required to maintain separate insurance.

14. Indemnity. LICENSEE shall release, defend, indemnify, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of LICENSEE or LICENSEE's employees, officers, agents, contractors, sublicensees, or assigns under this License. Further, any sublicensee shall release, defend, indemnify, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of sublicensee or sublicensee's employees, officers, agents, contractors, or permitted assigns.



15. Hazardous Materials. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials on the premises. LICENSEE shall not allow the storage or use of such materials on the premises 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 the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, 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.

LICENSEE shall agree to indemnify and hold harmless LICENSOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from any use or release of hazardous materials on the Premises occurring while LICENSEE is in possession, or elsewhere, if caused by LICENSEE or persons acting under LICENSEE. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present



or future Federal, State or County statute, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Clean Water Act, as amended, and also including but not limited to petroleum, petroleum-based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by Federal, State or County regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of this License, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health and LICENSOR.

16. Surrender. Upon the expiration of this License, or its sooner termination as herein provided, LICENSEE shall peaceably and quietly leave, surrender and deliver to LICENSOR possession of the premises. Without limiting LICENSEE'S rights to insurance and condemnation proceeds, LICENSEE shall have the option to surrender this License where the portion damaged through no fault of LICENSEE or taken renders the remainder unsuitable for the use or uses for which the premises were licensed. LICENSEE shall have the right, prior to the expiration, surrender or sooner termination of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.



17. Native Hawaiian Rights. LICENSOR warrants that it has made a good faith effort to determine whether native Hawaiian traditional and customary rights have been exercised on the property and has found no evidence of such exercise.

18. Costs of Litigation. In case either Party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the Party at fault shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the other. The prevailing Party in any dispute between the Parties shall be entitled to recover its attorneys' fees.

19. Abandonment. In the event this License shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE will remove its facilities, equipment and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, if any, LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its facilities, equipment and improvements and/or to restore the land within 180 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR may remove LICENSEE'S facilities, equipment and improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation or construction of its improvements and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.



20. Definition of Premises. The word "premises" when it appears herein includes and shall be deemed to include LICENSOR'S lands described above and all facilities, buildings and improvements wherever erected or placed thereon.

21. Miscellaneous.

- a. Consents. Whenever under the terms of this License the consent or approval of either Party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the Party receiving any request or consent or approval shall fail to act upon such request within sixty-five (65) days after receipt of written request therefor, such consent or approval shall be presumed to have been given.
- b. Bind and Inure. This License shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and their respective successors and assigns.
- c. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
- d. Paragraph Headings. The headings of paragraphs in this License are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this License.



- e. Licensee Accepts Premises "as is", "where is".
LICENSEE accepts the premises "as is," "where is", without any warranties or representations of any kind by LICENSOR, expressed or implied, as to the condition, merchantability or state of repair of the premises or fitness of the premises for any particular purpose.
- f. Counterparts. The Parties hereto agree that this License may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. In making proof of this License, it shall not be necessary to produce or account for more than one such counterpart. For all purposes, including, without limitation, recordation and delivery of this License, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

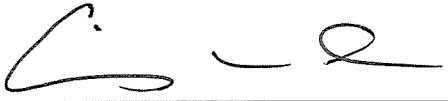


IN WITNESS WHEREOF, the Parties hereto have caused these presents
to be duly executed the day and year first above written.

Approved by the HHC
at its meeting held on
October 20, 2009

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:



Deputy Attorney General
State of Hawaii

By 

Its Chairman
Hawaiian Homes Commission

LICENSOR

APPROVED AS TO
FORM AND LEGALITY:

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF FACILITY MAINTENANCE

Deputy Corporation Counsel

By _____
Its Director and Chief Engineer

LICENSEE

APPROVED AS TO CONTENTS:

Executive Director and CEO
Honolulu Authority for
Rapid Transportation



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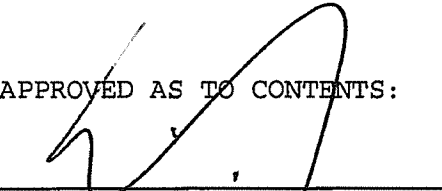


Deputy Corporation Counsel


By _____
Its Director and Chief Engineer

LICENSEE

APPROVED AS TO CONTENTS:



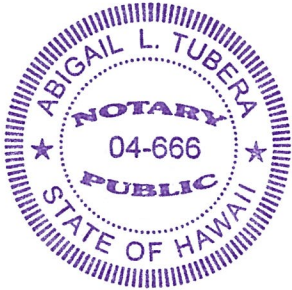
Executive Director and CEO
Honolulu Authority for
Rapid Transportation

STATE OF HAWAII

CITY & COUNTY OF HONOLULU

)
) SS.
)

On this 10th day of October, 2014, before me appeared JOBIE M.K. MASAGATANI, to me personally known, who, being by me duly sworn, did say that she is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera
Notary Public, State of Hawaii

Printed Name: ABIGAIL L. TUBERA
My commission expires: 11.27.14

NOTARY CERTIFICATION STATEMENT

Document identification or Description: license No. 753

Doc. Date: _____ or ☒ Undated at time of
Notarization.

No. of Pages: 16 Jurisdiction: 1st Circuit
(in which notarial act is performed)

Abigail L. Tubera

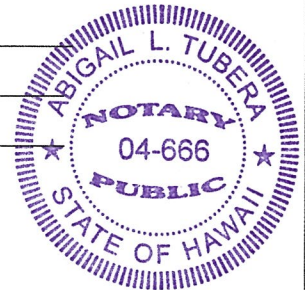
10.10.14

Signature of Notary

Date of Notarization and
Certification Statement

ABIGAIL L. TUBERA

Printed Name of Notary



STATE OF HAWAII

CITY & COUNTY OF HONOLULU

) SS.

On this 7th day of October, 2014, before me appeared Ross S. Sasamura to me personally known, who, being by me duly sworn, did say that he is the Director & Chief Engineer of the City & County of Honolulu and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Sharon T. Emoto

Notary Public, State of Hawaii

Printed Name: Sharon T. Emoto

My commission expires: 3/26/15

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: State of Hawaii

Department of Hawaiian Home Lands

License No. 753

Doc. Date: _____ or ☒ Undated at time
notarization.

No. of Pages: 16 Jurisdiction: First Circuit

(in which notarial act is performed)

Sharon T. Emoto 10/7/14
Signature of Notary Date of Notarization and
Certification Statement

Sharon T. Emoto
Printed Name of Notary

