

DEPARTMENT OF THE ARMY LEASE
FOR JOINT MILITARY/CIVIL USE OF THE DILLINGHAM AIRFIELD
ON THE
DILLINGHAM MILITARY RESERVATION
HONOLULU COUNTY, HAWAII
TRACT NOS. A, PAR 1, A, PAR 3, & A, PAR 5

THIS LEASE, made on behalf of the United States of America ("**Government**"), between the **SECRETARY OF THE ARMY**, acting by and through the Real Estate Contracting Officer, Real Estate Division, U.S. Army Corps of Engineers, Honolulu District, hereinafter referred to as the "**Lessor**", and the **STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION ("HDOT")**, with its principal address at 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880, hereinafter referred to as the "**Lessee**".

WITNESSETH:

That the Lessor finds that this Lease is advantageous to the Government, that the terms and conditions are considered to promote the national defense or to be in the public interest; that the Premises (as defined below) are under the control of the Lessor; that the Premises are not needed for the Term below for public use by the Lessor; and that the Premises are not excess property.

That the Lessor, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the HDOT the property identified in **EXHIBIT A**, attached hereto and made a part hereof, hereinafter referred to as the "**Premises**", for operating an airfield, parallel runways, taxiways, parking areas and various buildings and improvements for use with the Lessor as a joint Department of Defense/Civil Airport, together with other pertinent aviation facilities located thereon, excluding the entire Dillingham Public Water System and appurtenances, serving or otherwise connected to the Premises, and nonexclusive right to existing Lessor-owned roads as a means of ingress and egress and as necessary to access the Premises for the term as set forth below, occupying a portion of Tract No. A, Par 1 (208.4 acres), a portion of Tract No. A, Par 3 (3.4 acres), and a portion of Tract No. A, Par 5 (59.73 acres), consisting of approximately 271.53 acres within Dillingham Military Reservation ("**DMR**") and together with the rights granted herein granted for construction, repair, replacement, rehabilitation, removal, operation, and maintenance of structures and facilities in accordance with the terms of this Lease.

The Army currently owns and operates the DMR, which includes Dillingham

(Kawaihapai) Airfield. Kawaihapai is the State of Hawaii recognized name for the airfield at DMR.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said Premises are hereby leased for a term of fifty (50) years, beginning July 6, 2024, and ending July 5, 2074, unless earlier terminated pursuant to Condition 29. **TERMINATION.**

2. CONSIDERATION

a. The consideration for this Lease is the operation and maintenance of the Premises and the operation, maintenance, replacement, and rehabilitation of the facilities and improvements shown on the Inventory and Condition Report, **EXHIBIT B**, by the HDOT for the benefit of the Government and the general public in accordance with the conditions herein set forth. As used in this Lease, the term "**replacement**" shall be construed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. As used in this Lease, the term "**rehabilitation**" shall mean to restore in whole or in part any structure or improvement to a good and useable condition.

b. Nothing in this Lease shall cause or require HDOT to expend funds directly, or as reimbursement, in violation of State of Hawaii ("**State**") laws and regulations requiring availability of funds and appropriation of funds in accordance with State laws.

3. SUPERVISION BY THE LESSOR AND INSTALLATION COMMANDER

a. The use and occupation of the Premises incident to the exercise of the privileges and purposes hereby granted shall be subject to the general supervision and approval of the Lessor and to such general rules and regulations as the Lessor may from time to time prescribe. Such rules and regulations shall not be inconsistent with the Federal Aviation Regulations and Grant Assurances made by HDOT under the Airport and Airway Improvement Act of 1982, as amended.

b. The Premises shall be under the general supervision and subject to the approval of the Installation Commander, who is the Officer with operational control over the Premises, hereinafter referred to as "**said Officer**". The Lessee's use of the Premises shall be accomplished in such manner as not to endanger personnel or property of the said Officer or obstruct travel on any road or other thoroughfare.

c. Lessee acknowledges and recognizes that:

(1) The Premises are located on an active U.S. Army installation, which may be subject to temporary closings and identification and/or routing requirements due to military operations and/or the occurrence of unannounced events, actual or simulated, including, but not limited to: mobilization, extreme weather conditions, security, anti-terrorist force protection measures, or police, medical, or fire-related emergencies; the occurrence of a national emergency declared by the President or Congress; or due to planned military training exercises affecting the site. Lessor shall give reasonable advance written notice (which shall be no less than 30 days unless in support of an emergency) to Lessee prior to planned military training exercises affecting the Premises. Coordination regarding military use of the Premises is further discussed in Condition 44. **SITE SPECIFIC CONDITIONS.**

(2) During military training events, said Officer exercises command and control over the: (i) Premises, including traffic control, security, force protection, law enforcement, fire protection, activities performed thereon, and command and control matters, and (ii) military personnel that may be at or otherwise present on the Premises from time to time. Notwithstanding the foregoing, the parties acknowledge that the Federal Aviation Administration ("FAA") has jurisdiction over and makes determinations on the safety of civilian operations.

4. UTILITIES

a. The Lessee shall be responsible for the cost, as determined by the said Officer, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Premises for aviation purposes by the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the said Officer. In no event shall HDOT be responsible for utilities beyond the Premises or for expenditures that are not permissible uses of airport revenue under Federal law.

b. Notwithstanding the foregoing, with regard to delivery of water on the Premises; (i) Lessee shall not be obligated to operate the Dillingham Public Water System.

5. NOTICES

a. All notices and correspondence to be given pursuant to this Lease shall be addressed, if to the Lessee, to:

State of Hawaii
Director of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

With a copy to:

State of Hawaii, Deputy Director - Airports
400 Rodgers Boulevard, Suite 700
Honolulu, Hawaii 96819-1880;

and, if to the Lessor, to:

Real Estate Contracting Officer
Attention: Chief, Real Estate Division
230 Otake Street
Fort Shafter, Hawaii 96858-5440;

or as may from time to time otherwise be directed by the parties.

b. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses listed above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery. Use of an express delivery service will not substitute for this requirement.

c. Communications other than notices required under this Lease may be sent by means other than certified mail, return receipt requested, including electronic mail. Such communications include routine matters of coordination and informal exchange of information.

6. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to Secretary of the Army, Real Estate Contracting Officer, Lessor, said Officer, or Chief, Real Estate Division shall include their duly authorized representatives. Any reference to Lessee shall include assignees, transferees, successors, and their duly authorized representatives; in addition, any sublease, license, or permit of the Premises by Lessee shall be subject to

the terms of this Lease.

7. IDENTIFICATION OF GOVERNMENT AGENCIES, STATUTES, PROGRAMS, AND FORMS

Any reference in this Lease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor, amendment, or similar department, agency, statute, regulation, program, or form.

8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, State, County, and municipal laws, ordinances, and regulations wherein the Premises are located and nothing in this Lease shall require HDOT to take any action that violates HDOT's obligations to the United States of America in connection with HDOT's receipt of Federal Airport Improvement Program ("AIP") funds, including the restrictions on the use of airport revenue. In addition, Lessee shall take all appropriate actions to ensure that its contractors, subtenants, and permittees comply with all Federal, State and local requirements related to their activities on the Premises, including, but not limited to, ensuring that subtenants and permittees maintain existing facilities to current State and local building code and construction standards, and ensuring that they do not undertake any activity that could have adverse impacts on aviation, aircraft movements, or military activities on the Premises.

b. The Lessee shall be solely responsible for obtaining at its cost and expense any permits or licenses required for its operations under this Lease, independent of any existing permits or licenses held by the Lessor.

c. The Lessee understands and acknowledges that the granting of this Lease does not eliminate the necessity of obtaining any Department of the Army Permit, which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344), Section 408 (33 U.S.C. § 408), or any other Permit or License which may be required by Federal, State, interstate, or local laws, regulations, and ordinances in connection with the Lessee's use of the Premises.

d. The Lessee shall promptly report to the Lessor any incident for which the Lessee is required to notify a Federal, State, or local regulatory agency or any citation by a Federal, State, or local regulatory agency of non-compliance with any applicable law, ordinance, or regulation.

9. DISCLAIMER

This Lease is effective only insofar as the rights of the United States in the Premises are concerned; and the Lessee is responsible for obtaining any additional permission as may be required related to other existing rights and obligations.

10. TRANSFERS AND ASSIGNMENTS

Without prior written approval of the Lessor, the Lessee shall not transfer or assign this Lease, sublet the Premises or any part thereof, or grant any interest, privilege, or license whatsoever in connection with this Lease. Failure to comply with this paragraph shall constitute a breach for which the Lessor may immediately terminate the Lease. Lessor shall provide its written approval (or disapproval) of a request from Lessee under this provision within 45 calendar days from the date the request is received by Lessor. Notwithstanding the foregoing, HDOT shall not be required to secure prior approval from the Government to issue or renew any Lease, Parking Permit or Revocable Permit that would involve no new construction or new activities at Dillingham Airfield.

11. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the Premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this Lease, an Inventory and Condition Report of all personal property and real property improvements of the United States ("**United States Property**") included in this Lease and all real property improvements and personal property of Lessee ("**Lessee Property**") shall be made by the Lessor and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as **EXHIBIT B** made a part hereof. Upon the expiration, revocation, or termination of this Lease, another Inventory and Condition Report shall be similarly prepared to be used in accordance with Condition 28. **RESTORATION**. This report shall constitute the basis for settlement for United States Property damaged or destroyed. Any such property must be either replaced or restored to the condition required by Condition 14. **PROTECTION OF PROPERTY**.

12. SUBJECT TO EASEMENTS

This Lease is subject to all existing easements and other real estate instruments, whether of record or not, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or instrument will be coordinated with the Lessee, and easements or instruments will not be granted which will: (1) in the opinion of

the Lessor, interfere with the use of the Premises by the Lessee; (2) create a hazard to air navigation as determined by the FAA; or (3) cause HDOT to be in violation of any Grant Assurances or any Federal law related to the operation of a public use airport.

13. SUBJECT TO MINERAL INTERESTS

This Lease is subject to all outstanding mineral interests. As to Federally-owned mineral interests, the Lessee understands and acknowledges that such interests may be included in present or future mineral leases issued by the Bureau of Land Management ("BLM"), Department of the Interior, which has responsibility for mineral development on Federal lands. The Lessor will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

14. PROTECTION OF PROPERTY

a. For the purposes of this condition, the term Lessee shall include Lessee's employees, officers, agents, invitees, contractors and subcontractors, assigns, licensees, sublessees, permittees, subgrantees, and other affiliates.

b. The Lessee shall keep the Premises in good order and repair and in a decent, clean, sanitary, and safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this Lease and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to the Lessor, or at the election of the Lessor, reimbursement made therefore by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the Lessor.

c. The Lessee shall immediately notify the Lessor upon discovery of any hazardous conditions on the Premises that present an immediate threat to health and/or danger to life or property ("Hazardous Conditions"). The Lessor, upon discovery of any Hazardous Conditions on the Premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee. In addition to the rights of termination for noncompliance or at will (for any reason at any time), upon discovery of any Hazardous Conditions on the Premises by the Government, or upon notice of Lessee's discovery of such conditions, the Government shall close, or cause the Lessee to close the affected part or all of the Premises to the public until such Hazardous Condition is corrected and the danger to the public is eliminated. If the Hazardous Condition were caused by the Lessee and is not corrected, the Lessor will have the option to: (i) correct the Hazardous Condition(s) and collect the cost of repairs and any other resulting damages, including consequential damages and loss in value to the Premises from the Lessee; or, (ii) revoke

the Lease for noncompliance or at will (for any reason at any time) and the Lessee shall restore the Premises in accordance with Condition 28. **RESTORATION.** The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to Condition 14. **PROTECTION OF PROPERTY.** Hazardous Conditions not caused by the Lessee will be dealt with at the discretion of the Lessor, but the Lessee will nonetheless be responsible for closing the area as directed by the Lessor or complying the Lessor's closing of the area, as applicable, in accordance with this condition. For certainty, environmental contamination creating a Hazardous Condition is not subject to this subsection and is instead addressed in Condition 22. **RECORD OF ENVIRONMENTAL CONSIDERATION.**

d. For clarity, and by way of example not exclusion, Hazardous Conditions may include the discovery of munitions and explosives of concern ("MEC") and unexploded ordinance ("UXO"), sink holes, structural unsoundness of buildings or facilities that poses an immediate safety threat, or chemicals, or media contaminated with chemicals, at levels that have a high degree of acute toxicity as defined by the Occupational Safety and Health Administration or are considered "Class I" toxicity. Hazardous Conditions shall not include the discovery of soils or media contaminated with substances at concentrations that do not exceed such standards for acute exposure, or for which exposure pathways by which such toxicity could occur are not present, or facilities or structures requiring repair that does not pose an immediate safety threat or threat of damage to property.

15. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with Government purposes, to make inspections, to remove timber or other material, except property of the Lessee, and/or to make any other use of the Premises or portion(s) thereof as may be necessary in connection with Government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof. Notwithstanding the foregoing, Lessor shall provide notice of planned uses, consistent with Condition 44. **Site Specific Conditions, (b)(9),** of this Lease.

16. TITLE TO IMPROVEMENTS

Except as authorized in accordance with this Lease, the demolition, renovation, and construction of improvements by the Lessee are private undertakings, and during the term of this Lease title to all such improvements vest and remain in Lessee. The improvements shall remain real property for the duration of this Lease. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee during the term of the Lease. Upon expiration, revocation, or termination of the Lease, disposition of such improvements shall be accomplished in accordance with Condition 28. **RESTORATION.**

17. DESTRUCTION BY UNAVOIDABLE CASUALTY

If the Premises or improvements thereon shall be destroyed or be so totally damaged by fire or other unavoidable casualty so as to render the Premises untenable, wholly or in part, then, either party may forthwith terminate this Lease by written notice to that effect, notwithstanding Condition 29. **TERMINATION**. If part of the Premises or the improvements are rendered untenable, **CONSIDERATION** may be apportioned to reflect the part remaining usable to the Lessee. In the event the Lease is not terminated, the Lessor shall diligently proceed to return the Premises and improvements to operation and Lessee shall resume **CONSIDERATION** in a manner and in a timeframe satisfactory to the Lessor.

18. CONSIDERATION ADJUSTMENT

Any adjustment of **CONSIDERATION** shall be evidenced by a written Supplemental Agreement, executed by the Lessor and Lessee; provided, however, that none of the provisions of this condition shall apply in the event of revocation because of non-compliance by the Lessee with any of the terms and conditions of this Lease.

19. INSURANCE

a. The State self-insures its obligations under this Lease and shall not be obligated to obtain insurance from a third-party insurer under this Lease.

b. The State's insurance obligation shall be an amount not less than that which is prudent, reasonable, and consistent with sound business practices or a minimum combined single limit of \$1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the State under the terms of this Lease. The self-insurance shall provide protection appropriate for the types of facilities, services, and activities involved. The Lessor may require closure of any or all of the Premises during any period for which the Lessee does not have the required insurance coverage.

c. As to those structures and improvements on the Premises constructed by or owned by the Lessor, for such periods as the Lessee is in possession of the Premises pursuant to the terms and conditions of this Lease, the State's self-insurance obligation shall cover a standard fire and extended coverage of the leased Premises to the full insurable value thereof. The self-insurance policy shall provide that in the event of loss thereunder, the proceeds of the coverage, at the mutual agreement between Lessor and Lessee, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed. In the instance a separate insurance policy is obtained, the proceeds of coverage, at the mutual agreement between Lessor and Lessee, shall be payable to the Lessee to be used solely for repair, restoration, or

replacement of the property damaged or destroyed, and also by mutual agreement any balance of the proceeds not required for such repair, restoration, or replacement shall be paid to the Lessor. Nothing herein contained shall be construed as an obligation upon the Lessor to repair, restore, or replace the leased Premises or any part thereof.

d. Any sublessees or permittees shall provide comprehensive general liability insurance with limits set by the State of Hawaii, but no less than \$1 Million per occurrence and \$2 Million aggregate. Such sublessees or permittees shall provide a Certificate of Insurance naming the United States of America and the State of Hawaii as an additional insured.

20. PROHIBITED USES

a. The Lessee shall not permit gambling on the Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Premises.

b. Except as herein authorized, and subject to Condition 44. **SITE SPECIFIC CONDITIONS**, (f), the Lessee shall not construct or place any structure, improvement, or advertising sign on the Premises, or allow or permit such construction or placement without prior written approval of the Lessor, which approval shall not be unreasonably withheld.

21. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this Lease shall protect the Premises against pollution of its air, ground, and water. At its sole cost and expense, the Lessee shall comply with any laws, regulations, conditions, or instructions applicable to the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, State, interstate, or local governmental agency having jurisdiction to abate or prevent pollution. Except as may be done in conformance with all applicable Federal, State, and local laws and regulations: (1) the disposal of any toxic or hazardous materials within the Premises is specifically prohibited; and (2) Lessee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. Lessee shall comply with such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, State, or local governmental agency.

c. The use of any pesticides or herbicides within the Premises shall be in

conformance with all applicable Federal, State, interstate, and local laws and regulations. The Lessee must obtain approval in writing from the said Officer having operational control over the property before any pesticides or herbicides that include chemicals on the Restricted Use Pesticide EPA list are applied to the Premises. For certainty, Lessee does not require prior approval for the use of non-restricted pesticides or herbicides that do not require the hiring of certified pesticide applicators.

d. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

e. The Lessee shall not use the Premises for the storage or disposal of non-Department of Defense-owned hazardous or toxic materials, as defined by 10 U.S.C. § 2692, unless authorized under 10 U.S.C. § 2692 and properly approved by the said Officer. Notwithstanding the foregoing, this Lease expressly contemplates, and Lessor authorizes the storage, use, and disposal of limited amounts of hazardous materials consistent with normal operations and uses on an airport ("Ordinary Uses"), which materials include, but are not limited to: petroleum products used for maintenance and fueling of aircraft and for vehicle/equipment maintenance and fueling; various solvents, paints, used and virgin oil fuels. Hazardous materials authorized for Ordinary Uses must be stored and managed consistent with industry standards and best practices.

22. RECORD OF ENVIRONMENTAL CONSIDERATION

a. A Record of Environmental Consideration ("REC") documenting the known history of the property is attached hereto and made a part hereof as **EXHIBIT D**. Upon expiration, revocation, termination, or relinquishment of this Lease another REC shall be prepared by the Lessor with help from the Lessee, which will document the condition of the property at that time. A comparison of the two records will assist the Lessor in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with Condition 28. **RESTORATION**.

b. If any hazardous substances or other pollutants and contaminants are identified in the REC prepared at the expiration, revocation, termination, or relinquishment of this Lease ("Final REC") that did not appear in the REC attached hereto as **EXHIBIT D** ("Initial REC") and the initial investigation or assessment conducted in support of the Initial REC did not include testing or assessments of property conditions or uses that reasonably could have identified the presence or potential presence of such hazardous substances, or other pollutants or contaminants, the Lessor will bear the burden of demonstrating that the Lessee's activities were the source of any such hazardous substances, pollutants or contaminants that appear in the Final REC as a condition of requiring environmental restoration hereunder to address such substances.

23. EXCAVATION RESTRICTIONS AND NOTIFICATION

a. The Lessee shall not cause or allow any alterations to Government-owned land or structures, without specific approval from said Officer subsequent to compliance with historic preservation laws, including but not limited to the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), and the Archaeological Resources Protection Act (ARPA).

b. In the event that the Lessee discovers unexpected, buried debris or a foreign, potentially unsafe, or hazardous substance, the Lessee will immediately cease work in the affected area, immediately notify the said Officer, and protect the affected area and the material from further disturbance until the said Officer gives clearance to proceed. Such abeyance of activity in the affected area shall not constitute a default of the Lessee's obligation under this Lease.

24. HISTORIC PRESERVATION

a. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity without the prior approval of the Lessor. In the event such items are discovered on the Premises, the Lessee shall immediately notify the Lessor and protect the site and the material from further disturbance until the Lessor gives clearance to proceed.

b. The Lessee may identify long-term development plans in accordance with applicable laws and regulations. Such plans must be approved by said Officer and are subject to compliance with Federal historic preservation laws.

c. The Lessor is responsible for ensuring compliance with Federal historic preservation laws on the Premises. For any project on the Premises that is initiated by Lessee, the Lessee may be required to participate in those compliance processes and fund the cost of any NHPA compliance activities or requirements in accordance with 54 U.S.C. 306109.

25. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the Lessor, all soil and water conservation structures that may be in existence upon said Premises at the beginning of, or that may be constructed by the Lessee during the term of this Lease. The Lessee shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion occurring outside the Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the Lessor, at the Lessee's sole cost and expense.

26. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, or in any manner substantially change the contour or condition of the Premises except as authorized in writing by the Lessor.

27. FORCE PROTECTION STANDARDS

Any joint use facilities constructed on the Premises may be constructed using commercial standards in a manner that provides force protection safeguards appropriate to the activities conducted in, and the location of, such facilities.

28. RESTORATION

a. Upon expiration, revocation, or termination of this Lease, the Lessee shall vacate the Premises, remove its real property improvements and personal property (Lessee Property, as identified in the Inventory and Condition Report in Condition 11. **CONDITION OF PREMISES**) from the Premises unless otherwise agreed by the Lessor, and restore the Premises to a condition satisfactory to the Lessor in its reasonable discretion, normal wear and tear excepted, provided, however, that the Lessee shall be provided a reasonable time (no less than one year) following such expiration, revocation, or termination, to complete such restoration. In addition, during the course of the Lease, upon expiration of any permit or sublease, the relevant permittee or sublessee shall also be obligated to remove its real property improvements and personal property from the Premises, unless otherwise agreed by the Lessor, and restore the Premises to a condition satisfactory to the Lessor. Such restoration shall include restoration of all property of the United States on the Premises and environmental restoration as determined based on Condition 22. **RECORD OF ENVIRONMENTAL CONSIDERATION.**

b. In the event this Lease is terminated or revoked by the Lessor for any reason, the Lessor may grant the Lessee, a non-exclusive revocable license to use the Premises to vacate, remove Lessee's property therefrom, and restore the Premises to the required condition. Such license shall generally be for a period not to exceed one year.

c. If the Lessee shall fail or neglect to remove Lessee's property and restore the Premises as required in this condition, the Lessor may cause restoration work to be performed, including but not limited to removal of Lessee's property from the Premises. The Lessee shall have no claim for damages against the United States or its officers or agents related to or resulting from any removal of Lessee's property or any restoration work. The Lessee shall pay the United States on demand any sums which may be expended by the United States after expiration, revocation, or termination of the Lease to remove Lessee's property and to restore the Premises.

d. Upon written agreement by the Lessor, any or all of the Lessee's property may be surrendered to the United States in lieu of removal, with title vesting in the United States without additional consideration therefore. The Lessee grants the Lessor power of attorney to execute any deed, bill of sale, or other documents to clear title to such real property improvements or personal property which the Lessor has agreed shall not be removed from the Premises.

29. TERMINATION

a. The Lessor may terminate this Lease at any time (i) if the Lessee fails to comply with any term or condition of this Lease, (ii) if it is determined that civilian aviation operations are a threat to or inconsistent with national security, national defense, or force protection; or (iii) if additional and/or other military operations are transferred to or are to be performed out of Dillingham Airfield that require additional military aviation support by Dillingham Airfield. In order to allow Lessee and the FAA sufficient time for an orderly closure of Dillingham Airfield, Army will provide at least sixty (60) days advance notice of termination, unless a shorter time is necessary due to national security or national defense emergency, in which case Army will provide as much advance notice as practicable. In the event the termination is for breach, Lessor shall give Lessee a minimum of sixty (60) days' notice prior to termination, during which Lessee shall have the opportunity to cure the breach.

b. HDOT may terminate this Lease at any time by giving the Lessor at least thirty (30) days' notice in writing.

30. FAILURE OF LESSOR TO INSIST UPON COMPLIANCE

a. The failure of the Lessor to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of the Lessor's right to the current or future performance of any such terms, covenants, or conditions and the Lessee's obligations in respect to such performance shall continue in full force and effect.

b. No remedy herein or otherwise conferred upon or reserved to Lessor shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at or in equity, regulation, or by statute. Every power and remedy given by this Lease to Lessor may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

31. DISPUTES

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. §§ 7101-7109) (the Act), all disputes arising under or relating to this Lease shall be resolved under

this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the Lessor for a written decision. A Claim by the Government against the Lessee shall be in the form of a written decision by the Lessor.

(2) For Lessee Claims exceeding \$100,000, the Lessee shall submit with the Claim a certification that—

- (i)** the Claim is made in good faith;
- (ii)** supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
- (iii)** the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Government is liable.
- (iv)** the certifier is authorized to certify the Claim on behalf of the Lessee.

(3) The individual signing on behalf of the Lessee must be authorized to certify the Claim on behalf of the Lessee and shall be:

- (i)** If the Lessee is an individual, the certificate shall be executed by that individual.
- (ii)** If the Lessee is not an individual, the certification shall be executed by an individual authorized to certify on behalf of the entity who is —

(A) a senior company official in charge of the Lessee's

location involved; or

(B) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee Claims of \$100,000 or less, the Lessor must, if requested in writing by the Lessee, render a decision within sixty (60) days of receipt of the request. For Lessee-certified Claims over \$100,000, the Lessor must decide the claim or notify the Lessee of the date by which the decision will be made within sixty (60) days of receipt of the request.

e. The Lessor's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a Claim by the Lessee is submitted to the Lessor or a Claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the Lessor received the Claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on Claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Lessor receives the Claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the Lessor.

32. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors. Notwithstanding any other provision of this Lease, any provision that purports to assign liability to the United States Government shall be subject to and governed by Federal law, including but not

limited to the Contract Disputes Act of 1978 (41 U.S.C. Sections 7101-7109 (2012)), the Anti-Deficiency Act (31 U.S.C. Sections 1341 and 1501), and the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq.).

33. NO INDIVIDUAL LIABILITY OF UNITED STATES OFFICIALS

No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee, or representative of the United States, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute, or rule of law or by the enforcement of any assessment or penalty, or otherwise.

34. ANTI-DEFICIENCY ACT

Nothing in this Lease shall obligate the Lessor to obligate appropriated funds in violation of the Anti-Deficiency Act 31 U.S.C. §§ 1341-1351. Notwithstanding the foregoing, nothing contained in this Lease shall limit, diminish, or eliminate any rights that the Lessee or its successors or assigns may have against the Lessor under applicable statutes, rules, or regulations.

35. TAXES

If and to the extent that any taxes are imposed by the State or its political subdivisions upon the property or interest of the Lessee in the Premises, such taxes shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the Lease shall be renegotiated.

36. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Lessor shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay to the Lessor, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

37. MODIFICATIONS AND CONSENTS

a. This Lease contains the entire agreement between the parties hereto with regard to the Lease, and no modification of this agreement, or waiver, or consent

hereunder shall be valid unless the same be in writing and signed by the parties to be bound or by a duly authorized representative. This provision shall apply to this condition as well as all other conditions of this Lease.

b. The provisions of this Lease may only be superseded, modified, or repealed pursuant to a written amendment or supplemental agreement to this Lease signed by the parties to be bound or a duly authorized representative.

38. MERGER

This Lease and any other agreement shall not merge. In the event the terms and conditions of this Lease conflict with the terms and conditions of any other agreement, the terms and conditions of the Lease shall prevail.

39. NOT PARTNERS

Nothing contained in this Lease will make, or will be construed to make, the Lessor and the Lessee hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Lessor and the Lessee under this Lease is that of landlord and tenant with respect to the Premises.

40. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the Premises, because of race, color, religion, sex, sexual orientation, gender identity age, handicap, or national origin pursuant to Executive Order 13672, 21 July 2014. The equal opportunity clauses set forth at 41 C.F.R. 60-1.4(a) are hereby incorporated by reference in this Lease and the Lessee shall comply with such clauses. Any reference in such clauses contractor shall mean the Lessee, any reference to contract shall mean the Lease, and any reference to subcontract shall mean any sublease or contract for services required under the Lease. If the Lessee believes it is exempt from compliance with such clauses in whole or in part pursuant to 41 C.F.R. 60-1.5, the Lessee shall provide to the Government information necessary to determine the applicability of such clauses. The Lessee shall comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

41. LABOR, MATERIAL, EQUIPMENT, AND SUPPLIES

Lessee shall bear the sole responsibility for furnishing and paying for all labor, materials, equipment, and supplies used in conjunction with the exercise by the Lessee of any right granted hereunder, unless specifically absolved from said responsibilities elsewhere within this Lease.

42. DETERMINATION REGARDING EXECUTIVE ORDER 14026

This Lease is subject to the minimum wage requirements covered by Executive Order 14026.

43. DETERMINATION REGARDING EXECUTIVE ORDER 13706

This Lease is subject to the paid sick leave requirements covered by Executive Order 13706.

44. SITE SPECIFIC CONDITIONS

a. The right is hereby reserved to the United States, its officers, agents, and employees to enter upon the said premises at all reasonable times for the purpose of inspection, and when otherwise deemed necessary for the protection of the interests of the Government, and the Lessee shall have no claim of any character thereof against the United States or any officer, agent, or employee thereof while acting on official business and in an official capacity.

b. The use of Dillingham Airfield is subject to the following operational provisions:

(1) That the primary purpose of the land and improvements within the leased area is for the operation of a joint-use airport.

(2) The priorities for use of Dillingham Airfield shall be: (a) military flight operations, (b) military ground maneuvers, and (c) civil aviation and sport parachute operations. Military ground units will be permitted access to the Premises when engaged in air mobile/aviation missions and shall be afforded exclusive access to the Premises if needed.

(3) Notwithstanding anything to the contrary in this Lease, Lessee may, and Lessor authorizes Lessee to, sublet portions of the leased area for hangar uses, parking and storage of aircraft, retail sales and service facilities associated with public aviation activities. The operation of the airfield facilities and supervision of the subleases will be the responsibility of the Lessee, whether directly or by subcontract.

(4) The Premises shall be used by and under the authority of the Lessee for the sole purpose of operating an airport, all as contained in this Lease. No other use of the said joint-use area shall be made by or under the authority of the Lessee except as authorized in writing by the said Officer.

(5) That the Government shall be under no obligation to operate or maintain the Government-owned airport facilities within the leased area, including but not limited to the runways, taxiways, navigational aids, and tower at Dillingham Airfield.

(6) Subject to the terms of this Lease and the Joint Use Agreement ("JUA"), provided as **EXHIBIT F**, Lessee may use the Premises to operate a civilian use airport and to take such actions as reasonably necessary to comply with FAA regulations.

(7) That prior to commencing activities under this Lease, the Lessee shall secure any required concurrences and/or approvals of the FAA and other Federal and State agencies having jurisdiction over the conduct of public airport facilities.

(8) That, as specified in succeeding paragraphs, Dillingham Airfield shall be subject to military flight operations and ground maneuvers for limited periods. Those operations or maneuvers may be inconsistent with or create a hazard to civil aircraft operations and civilian ground activities.

(9) To assure compatibility between military and civilian uses of the Premises:

(i) Prior to commencing military operations or maneuvers, and to the extent practicable, the Lessor shall give reasonable advance notice to the Lessee (as detailed in Condition 3. **SUPERVISION BY THE LESSOR AND INSTALLATION COMMANDER**) who will be responsible for notifying civil aviation users of any restrictions on the use of the Premises during those times.

(ii) Lessor shall provide Lessee written notices regarding planned military training exercises affecting the Premises or any other planned event, actual or simulated, which is not an emergency, affecting the Premises. Such notice shall also specify any times when nighttime aeronautical and nonaeronautical civil activities cannot occur, including without limitation, when the use of outside and/or inside lighting cannot occur due to the potential for adverse impact on military operations.

(iii) Lessee shall make notices available to its subtenants and permittees to ensure that subtenants and permittees are notified of limits on access to and use of the Premises.

c. Lessee shall, in advance, coordinate with and obtain the written approval of the said Officer before installing or adding any external lighting, electronics, and/or communication equipment at Dillingham Airfield.

d. Unless otherwise agreed in writing by said Officer, the Lessee will provide aircraft advisory services at Dillingham Airfield on frequency 123.0 (UNICOM).

e. It is understood by the parties that the Lessor is not obligated to provide any services to persons utilizing Dillingham Airfield. Specifically, the Lessor is not obligated to provide emergency, weather, communications, air traffic, or similar services.

f. A copy of the FAA-approved Airport Layout Plan for Dillingham Airfield ("ALP") in effect as of the date of execution of this Lease is attached hereto as **EXHIBIT E** made a part hereof. Should Lessee desire to proceed with any development, Lessee shall secure review and approvals from said Officer and the FAA. In any such event, Lessee shall notify Lessor in order to ensure that Lessor can coordinate its review with the FAA. So long as the development does not impair the military mission for Dillingham Airfield and is conducted in compliance with Federal law, Lessor shall not withhold approval for any development approved by the FAA. In the event that the ALP is updated during the Lease, the updated ALP shall be incorporated by reference as the current version of **Exhibit E** via Supplemental Agreement to the Lease.

(1) Repair projects/capital improvements within the boundaries of the Premises that extend the useful life of a facility by two or more years, increase the size or capacity, change the functionality, penetrate the ground surface or below paved areas, alter Government-owned land or structures, or that are new construction will be coordinated with the Lessor to ensure compliance with applicable Federal laws, regulations, and policies. In accordance with the NHPA, and to assist with streamlined review of these projects, the Lessor and Lessee may develop a Programmatic Agreement.

(2) Notwithstanding paragraph (f)(1) of this Condition 44. **SITE SPECIFIC CONDITIONS**, repair projects that do not require the coordination and concurrence by the Lessor include: runway/taxiway, and apron pavement repairs, airfield signs/markings, and projects involving a Lessee-owned facility or otherwise involving Lessee that do not expand the facility or dig below the existing surface into sediment. For clarity, repairs to any existing security fencing do not require coordination. The Lessor and Lessee may prepare a separate Memorandum of Understanding to further clarify the scope of projects that are not subject to prior coordination.

g. (1) The Government will not be responsible for any loss, liability, claim or demand for property damage, property loss, or 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 Lessee in connection with the Lessee's use of the Premises described herein.

(2) The Lessee will pay or settle claims for injury, loss or damage to personnel or property of, or under the control of, the United States arising out of, or in

conjunction with, the Lessee's occupancy under this Lease, excepting such injuries, losses or damages as a result solely from the negligence or willful misconduct of any Government personnel, or if required by the said Officer, will, in the case of property loss or damage, promptly repair or replace the same to the satisfaction of such Officer.

(3) The Government, its agencies and personnel, shall not be liable, by virtue of any custodial or bailment relationship with the Lessee, for any loss of, or damage to, any private aircraft, cargo or other property placed upon Dillingham Airfield if such liability would not attach in the absence of such custodial or bailment relationship.

h. Lessee shall at all times exercise due diligence in the protection of the demised Premises against damage or destruction by fire and other causes.

i. For such period as the Lessee is in possession of the Premises pursuant to the provisions and conditions of this Lease, the Lessee shall maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. The Lessee shall furnish either the original policy or policies or certificate of insurance or certificates of insurance to the Lessor. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Lessor, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government, and that in the event the Lessor does not elect by notice in writing to the insurer within 60 days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Lessor, provided, however, that the insurer, after payment of any proceeds to the Lessee, in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the Lessor to repair, restore, or replace the leased property, or any part thereof.

j. The Lessor agrees that it will not construct or permit construction of any obstruction which would constitute a hazard as determined under Part 77 of the Federal Aviation Regulations. The Lessor agrees that the Lessee has the authority to take appropriate actions to control any obstruction (including vegetation) which would constitute an obstruction under Part 77 of the Federal Aviation Regulation.

k. Except as herein authorized, the Lessee shall not construct any permanent structure on the said demised Premises and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the said Officer.

l. Consistent with the provisions in Condition 3. **SUPERVISION BY THE LESSOR AND INSTALLATION COMMANDER**, the use and occupation of the Premises leased

hereby shall be subject to the general supervision and approval of the said Officer and to such rules and regulations as may be prescribed by him/her from time to time. Such rules and regulations shall not be inconsistent with Federal Aviation Regulations at Title 14 of the U.S. Code of Regulations and the Grant Assurances made by HDOT under the Airport and Airway Improvement Act of 1982.

m. At the expiration or termination of this Lease, any improvements constructed by the Lessee in the joint-use area shall, at the option of the Secretary of the Army, either (i) become the property of the Government without compensation therefore, or (ii) fall within the provisions of Condition 28. **RESTORATION.**

n. Occupying any lands, building, vessels, or other facilities within the Premises for the purpose of maintaining a full or part-time residence is prohibited, except for employees residing on the Premises for security purposes, if authorized by the Lessor.

This Lease is not subject to Title 10, United States Code, Section 2662, as amended.

* * *

LEASE NO. DACA84-1-24-0025

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 1st day of July, 2024.

Erica Labeste

Erica A. Labeste
Chief, Real Estate
Real Estate Contracting Officer

THIS LEASE is also executed by the Lessee this 1st day of July, 2024

AUTHORIZED REPRESENTATIVE

Edwin H. Sniffen

Edwin H. Sniffen
Director of Transportation

APPROVED AS TO FORM:
EXCEPTIONS, AND RESERVATIONS:

Marjorie A. Lau MARJORIE A. LAU
Deputy Attorney General
State of Hawaii

EXHIBITS

- A - Map
- B - Inventory and Condition Report
- C - Legal Description
- D - Record of Environmental Consideration
- E - Dillingham Airfield Airport Layout Plan
- F - Joint Use Agreement

EXHIBIT A - Map



EXHIBIT B - Inventory and Condition Report

**DILLINGHAM AIRFIELD
REAL PROPERTY INVENTORY AND CONDITION REPORT
EXHIBIT B**

**Conducted Joint Inspection on April 18, 2024
By United States Army Garrison Hawaii Real Estate Office and
State of Hawaii Department of Transportation-Airports**

Instrument No. DACA84-1-24-0025

US Army Facility Number	Property Ownership	Facility Name	Property Condition
1111B	US Army	RUNWAY	Fair
11201	US Army	TAXIWAY	Fair
250	US Army	MAINTENANCE SHOP, GENERAL PURPOSE	Poor
89001	US Army	Grease Rack (Vehicle Ramp Next to Facility No. 250)	Poor
87101	US Army	Storm Sewer	Fair
301PA	US Army	Parking apron (State Facility No. 404)	Fair
251	US Army	Hazmat Storage Bldg. (CMU) Next to Facility No. 250A	Fair
300FEN	US Army	Boundary Fence for Dillingham Airfield	Good
300GAT1	US Army	Gate: Boundary (West Entry Gate)	Good
300GAT2	US Army	Gate: Boundary (Near West Entry Gate to Airfield)	Good
300GAT4	US Army	Gate: Boundary (Emergency Gate)	Poor
300GAT5	US Army	Gate: Boundary (East Entry Gate)	Good
300RP	US Army	Cantonment area roads, paved	Good
250CRU	US Army	Cantonment area roads, unpaved	Good
1112SD	US Army	Aircraft Pavement Shoulder	Good

**DILLINGHAM AIRFIELD
REAL PROPERTY INVENTORY AND CONDITION REPORT
EXHIBIT B**

**Conducted Joint Inspection on April 18, 2024
By United States Army Garrison Hawaii Real Estate Office and
State of Hawaii Department of Transportation-Airports**

Instrument No. DACA84-1-24-0025

US Army Facility Number	Property Ownership	Facility Name
250ST	State	Septic Tank
300GAT3	State	Gate: Boundary (Entrance to Sail-Plane Tie-Downs-State Facility No. 405)
300GAT8	State	Gate: Side Gate
301	State	Unicom Tower
301ST	State	Septic Tank
301PK	State	Vehicle Parking
91A	State	Fighter Town Hanger
201RS	State	Glider Booths (Glider/Sail Planes)
405	State	Admin Facility (Blue Bldg.) North Shore Aircraft Leasing Trailer
405PK	State	Vehicle Parking
403	State	Sail Plane Hangers
403RW	State	Fixed Wing Runway-Sail Plane
403FWP	State	Fixed Wing Taxiway
403PA	State	Parking Apron (State Facility No. 405-Sail Plane Tie-Downs)
403ST	State	Septic Tank
302	State	Utilities Bldg. (Near 301 Unicom Tower)
302GAT	State	Gate (Around Bldg. 302)
302FEN	State	Fencing (Around Bldg. 302)
250A	State	Wood Framed Storage Shed next to Bldg. 250
252POL	State	Diesel gas tank (500GAL)
252APOL	State	E80 (MOGAS) 500GAL
252PAD	State	Concrete Pad
252PTB	State	Bollards
252EXL	State	Light pole (Exterior Next to Fuel Tank)
401FWP	State	Fixed Wing Taxiway
401	State	T-Hangers
402	State	T-Hangers

**DILLINGHAM AIRFIELD
REAL PROPERTY INVENTORY AND CONDITION REPORT
EXHIBIT B**

**Conducted Joint Inspection on April 18, 2024
By United States Army Garrison Hawaii Real Estate Office and
State of Hawaii Department of Transportation-Airports**

Instrument No. DACA84-1-24-0025

US Army Facility Number	Property Ownership	Facility Name
1111FWP	State	Fixed Wing Taxiway
106	State	GoJump Hawaii Bldg. (Space No. 001-106) (Tenant)
106ST	State	Septic Tank (Tenant)
107	State	GoJump Hawaii Trailer (Tenant)
108	State	Skydive Hawaii Bldg. (Space No. 001-103) (Tenant)
108A	State	Overhead Protection (Tenant)
109ST	State	Septic Tank (Tenant)
109	State	Skydive Hawaii Bldg (Tenant)

-----End of the facility list-----

[NOTE]

For identification purpose only, U.S. Army facility numbers were issued to the State-owned real properties.

SIGNATURE PAGE FOLLOWS

LEASE NO. DACA84-1-24-0025

**DILLINGHAM AIRFIELD
REAL PROPERTY INVENTORY AND CONDITION REPORT
EXHIBIT B**

**Conducted Joint Inspection on April 18, 2024
By United States Army Garrison Hawaii Real Estate Office and
State of Hawaii Department of Transportation-Airports**

Instrument No. DACA84-1-24-0025

LESSOR: Secretary of the Army

LESSEE: State of Hawaii, Department of Transportation-Airports

PREMISES:

This Inventory and Condition Report which shall be attached to and become a part of the above-described lease is agreeable to both parties hereto as reflecting the property of the time custody was assumed by the lessee and as covered by said lease.



**Hyun Jin Fisher
Real Property Accountable Officer
U.S. Army Garrison Hawaii
Department of the Army (Lessor)**

Signed Date: 29th day of APRIL, 2024.



**Malcom Smith
Oahu Airports District Manager
Department of Transportation
State of Hawaii (Lessee)**

Signed Date: 29th day of APRIL, 2024.

LEASE NO. DACA84-1-24-0025

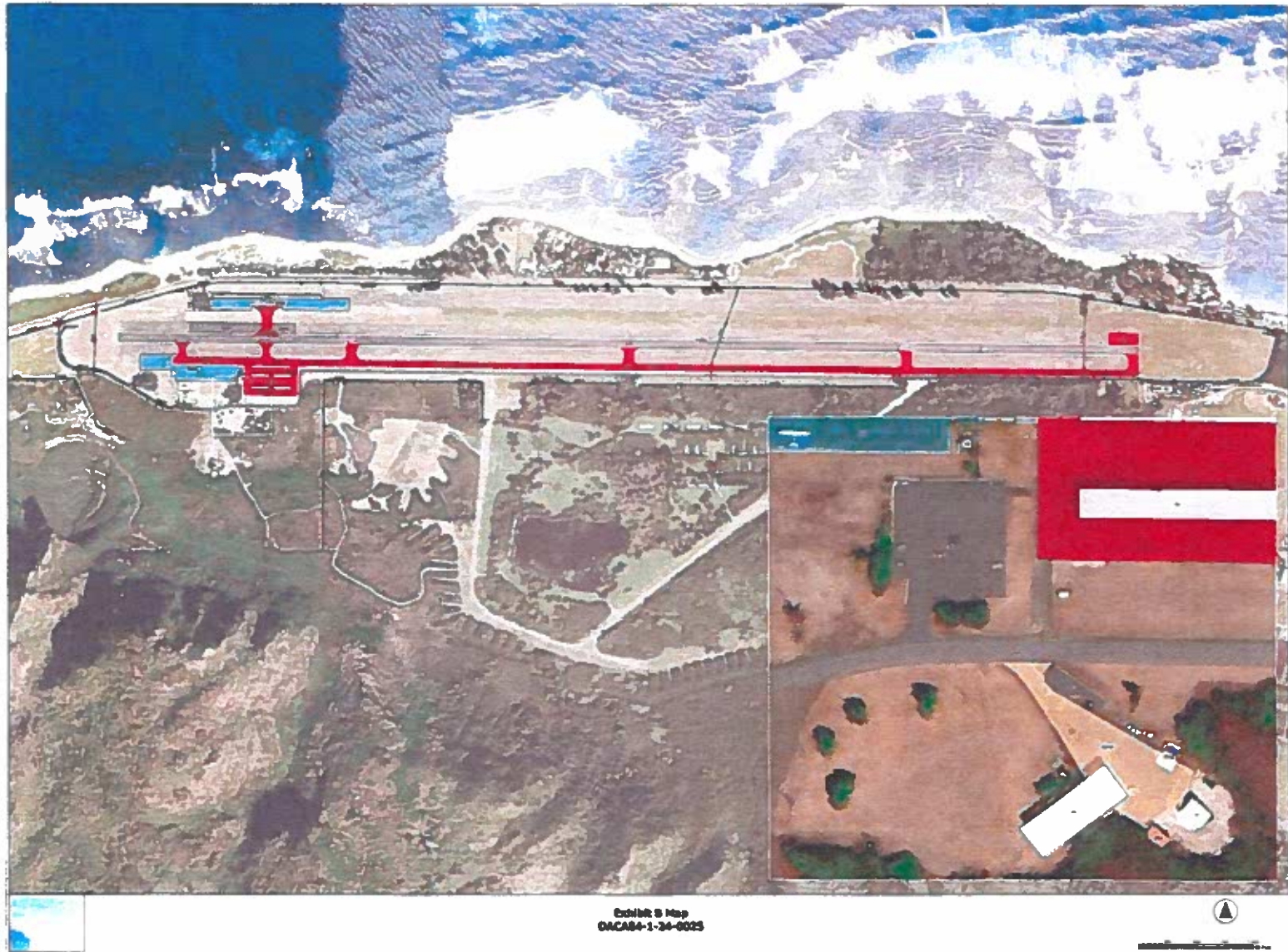


EXHIBIT C - Legal Description

A joint Department of Defense/Civil Airport, together with other pertinent aviation facilities located thereon, excluding the entire Dillingham Public Water System and appurtenances, serving or otherwise connected to the Premises, and nonexclusive right to existing Lessor-owned roads as a means of ingress and egress and as necessary to access the Premises, occupying a portion of Tract No. A, Par 1 (208.4 acres), a portion of Tract No. A, Par 3 (3.4 acres), and a portion of Tract No. A, Par 5 (59.73 acres), consisting of approximately 271.53 acres within Dillingham Military Reservation ("DMR").

EXHIBIT D - Record of Environmental Consideration

DIRECTORATE OF PUBLIC WORKS
 ENVIRONMENTAL DIVISION (IMHW-PWE)
 BLDG. 105, WHEELER ARMY AIRFIELD
 U.S. ARMY GARRISON, HAWAII
 SCHOFIELD BARRACKS, HI 96857-5013
 PHONE: (808) 656-2878, FAX: (808) 656-1039

DPW
 Environmental
 Division

Memo

To: Ford N. Fuchigami
From: Ed Hewitt
Date: 03-Oct-2023
REC #: 4431
FEWA #: n/a
Re: DMR, State of Hawaii, Department of Transportation Lease

Attached is the completed REC for the subject project. Please note compliance with the REC is contingent upon compliance with the comments from the below mentioned programs. Comments are either found in the Review and Concurrences section (page 6) or at the end of this document.

Failure to comply with these requirements may result in fines, penalties, and supplemental environmental project costs, which will be paid by the organization against which the fine or penalty has been assessed, using applicable Army appropriations unless otherwise required by law. Payments of fines and penalties will be charged to the funding account of the operation causing the violation. Contracting Officers will ensure that contracts require contractors to pay fines or penalties resulting from their operations (Army Regulation 200-1, Chapter 15-1, d.)

Please read this document and indicate your acceptance of the conditions by signing below and returning a copy to DPW Environmental.

The undersigned has read this REC and agrees to incorporate the listed environmental protective measures into the planning and execution of this project.

Proponent Signature X Ford Fuchigami Date 05/08/2024

If additional guidance is needed to meet these requirements, please contact the following personnel.

Natural Resources Program, Kapua Kawelo at 656-9189 or hilary.k.kawelo.civ@army.mil

Cultural Resources Program, Dave Crowley at 656-9707 or david.m.crowley22.civ@army.mil

Installation Restoration Program / Military Munitions Response Program, Whit Somera at 656-3317 or adam.w.somera.civ@army.mil

Clean Water Program, Michelle Ogman at 656-3316 or michelle.r.ogman.civ@army.mil

Clean Air/Safe Drinking Water Program, Jacqueline Alvarez-Martinez at 656-3107 or Jacqueline.s.alvarez-martinez.civ@army.mil

Recycling Program, Kim Welch at 656-5411 or kumberly.m.welch14.civ@army.mil

Hazardous Waste Program, Richard Blanton at 656-3106 or richard.a.blanton4.civ@army.mil

Toxic Substances Control Program, Jacqueline Alvarez-Martinez at 656-3107 or Jacqueline.s.alvarez-martinez.civ@army.mil

Underground Storage Tank Program, Whit Somera at 656-3317 or adam.w.somera.civ@army.mil

Clear Form

RECORD OF ENVIRONMENTAL CONSIDERATION

U.S. Army Garrison-Hawaii, Directorate of Public Works, Environmental Division

REC #: 4431

1. DATE: 20-Sep-2023

2. SUBMITTED BY THE PROPONENT:

Ford N. Fuchigami, Deputy Director of Transportation for Airports
Name, Organization

(808) 938-8602/email: ford.fuchigami@hawaii.gov

Phone Number

Ford Fuchigami

Signature

3. DESCRIPTION OF PROPOSED ACTION:

DMR	State of Hawaii, Department of Transportation Lease	Dillingham Airfield	n/a
Installation	Project Title	Location/Bldg No.	Ft. & R #

The State of Hawaii, through its Department of Transportation (HDOT), proposes a long-term lease under which HDOT currently operates the Kawaihapai/Dillingham Airfield (Dillingham). HDOT is requesting approval for a long-term fifty-year lease at Dillingham Airfield. Agreement DACA84-1-09-135, Supplemental Agreement No. 4 is set to expire on July 5, 2024. HDOT has let the Army know that there are three critical predicates for HDOT to be able to enter into a new lease for Dillingham following the expiration of the current lease on July 5, 2024: (1) The Army must grant a long-term lease so that HDOT can remain eligible for federal grants. Federal law requires that HDOT must be able to demonstrate its ability to operate Dillingham for 20 years after each Federal Aviation Administration (FAA) grant, a 20 or 25-year lease would not be legally sufficient, as that would only support federal grants for 1 year - or at most 5 years to that end. HDOT needs a 50-year lease. HDOT has assessed the need for long term maintenance at Dillingham; (2) Any new lease must guarantee sufficient rights and powers for HDOT to satisfy its obligations under federal law and pursuant to federal grants. (3) HDOT cannot be responsible for operation of the Dillingham Public Water System. HDOT can only spend airport revenue on the portion of the water system that directly benefits the airfield. Any expenditure of airport revenue for non-airfield portions of the water system would be an impermissible diversion of airport revenue in violation of federal law. HDOT requests the new lease both guarantees HDOT access to necessary water to operate and maintain the airfield but also confirms that HDOT has no obligation to operate and maintain Dillingham Public Water System.

HDOT is requesting the Army confirm this request for renewal by December 31, 2023.

4. ESTIMATED START DATE & DURATION OF PROPOSED ACTION: July 6, 2024 - n/a 50 Years

5. THIS ACTION HAS BEEN COORDINATED WITH THE FOLLOWING OFFICES/AGENCIES:

Office/Agency	Name(s)	Concur/Non-Concur

DPW Form 1, June 2020, Record of Environmental Consideration (REC)

This form is provided for use in DPW Form 1, Record of Environmental Consideration (REC), U.S. Army Garrison-Hawaii, Hawaii. This form is provided for use in DPW Form 1, Record of Environmental Consideration (REC), U.S. Army Garrison-Hawaii, Hawaii. This form is provided for use in DPW Form 1, Record of Environmental Consideration (REC), U.S. Army Garrison-Hawaii, Hawaii.

Page 1 of 6

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4431

ENVIRONMENTAL IMPACT ANALYSIS (by "YES" or "MAY" answers need to be explained in the "Discussion" section at the end of this checklist)

YES NO MAY

1. AIR QUALITY

- a. Will the proposal cause air emissions such as smoke, dust, suspended particles, or air pollutants during construction or operations? ☐ YES ☐ NO ☒ MAY
- b. Will the proposal involve the removal, modification, or addition of an air emitting device (e.g., boilers, generators, or refrigerant containing equipment)? ☐ YES ☒ NO ☐ MAY

2. WATER QUALITY

- a. Is the total disturbance of land over one acre? ☐ YES ☒ NO ☐ MAY
- b. Is the total area of new impervious surface over 5,000 square feet? ☐ YES ☒ NO ☐ MAY
- c. Does the project involve an individual wastewater system (e.g., septic tank) or pretreatment unit (e.g., oil-water separator or grease trap)? ☐ YES ☒ NO ☐ MAY

3. TOPOGRAPHY AND SOILS

- a. Will there be any land/ground disturbance (e.g., excavating, coring, digging, trenching, grubbing, dredging, excavation, or fence installation)? Please specify total land disturbance acreage below in "Discussion." ☐ YES ☐ NO ☒ MAY

4. NATURAL RESOURCES

- a. Will the proposal affect undeveloped areas, affect endangered or threatened species or their habitat, occur in areas with known invasive species infestations, or affect plant or animal critical habitat? ☐ YES ☒ NO ☐ MAY
- b. Will the proposal require removal or trimming of trees? Please provide map of tree location below in "Discussion." ☐ YES ☐ NO ☒ MAY
- c. Does the project involve soil importing/exporting? ☐ YES ☒ NO ☐ MAY

5. CULTURAL RESOURCES

- a. Will the proposed action involve alterations of existing buildings or structures? ☐ YES ☒ NO ☐ MAY
- b. Will the proposed action be located within or adjacent to a historic district? ☒ YES ☐ NO ☐ MAY
- c. Will the proposed action involve ground disturbance or occupancy in or near a known archaeological site? ☐ YES ☒ NO ☐ MAY
- i. If yes/may, will archaeological work be needed? (Permit required) ☐ YES ☒ NO ☐ MAY

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4431

ENVIRONMENTAL IMPACT ANALYSIS (EIS) OF "MAY" answers
need to be explained in the "Discussion" section at the end of this checklist.

YES NO MAY

6. LAND USE

- a. Will the proposal result in a change in operations, activities, or land use occurring at the site or facility?

☐ ☒ ☐

7. NOISE ENVIRONMENT

- a. Will there be any changes to the numbers, types, and operations of aircraft, vehicles, or weapon systems that could affect noise levels?

☐ ☒ ☐

8. TRAFFIC

- a. Will the proposal generate or increase vehicular traffic?

☐ ☒ ☐

- b. Will there be a requirement to construct, reroute or alter roadways?

☐ ☒ ☐

9. HAZARDOUS MATERIALS/WASTE OR TOXIC SUBSTANCES

- a. Will the proposal result in the disturbance of lead containing paint or asbestos containing material?

☐ ☐ ☒

- b. Will the proposal result in the use, storage, or disposal of hazardous materials?

☐ ☐ ☒

- c. Will the proposal involve pesticide application (e.g., herbicide or insecticide)?

☐ ☐ ☒

10. UTILITIES SYSTEMS

- a. Will the proposal require disposal or alterations to existing utility systems or drainage systems (e.g., power, drinking water, waste water, storm water)? *Please specify type of utility affected in "Discussion."*

☐ ☒ ☐

11. FLOODPLAIN

- a. Will the proposed action take place within the 100 year floodplain?

☐ ☐ ☒

RECORD OF ENVIRONMENTAL CONSIDERATION

R/C# 4431

DISCUSSION: Immediate items answered "YES" or "NO" and provide a brief explanation of the potential impacts and mitigation measures to be implemented. Provide answers to the questions of how, much, when, where, and how. Consult the DOW Environmental Division or an appropriate agency for assistance if needed.

Required Discussion: 1a 1b 2a

3a

4b

5b

9a 9b 9c

11a

1a. There will be minimum indirect, secondary, impacts of air emissions from airfield landscaping, maintenance, and aircraft operations. An environmental assessment in 2000, for the project area states that, "The prevailing easterly winds at the site will carry emissions from aircraft operations away from populated areas and out to sea a large percentage of the time." Best management practices and following operation standards will mitigate air quality impacts. The impacts are acceptable to operations of a federal-certified airport facility.

3a. There are no plans for any ground disturbance work other than a proposed fencing project. No acreage is available, however, see attached Exhibit A, showing location of fencing at the boundary of Area 12.

4b. See attached Exhibit A and B, showing potential tree trimming sites.

5b. Dillingham Airfield is considered a historic site.

9a. General facility maintenance and internal structural maintenance work might result in disturbance of lead based paint or asbestos-containing material. Proper approvals, permits, and identified best management practices will be implemented to mitigate potential impacts from the disturbance of lead-based paint or asbestos.

9b. The usage, and disposal of hazardous materials are inherent to airport operations. Following usage guidance and disposal instructions, as well as federal regulatory and Hawaii State requirements, will mitigate this concern.

9c. There is potential of pesticide. Observing pesticide use instructions, as well as following federal and state regulations will mitigate any adverse impacts of pesticide use, this includes public notification to adjacent property owners and the neighbors.

11a. Dillingham Airfield is located within a tsunami watch zone but unsure if it is in a floodzone.

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4431

THIS SECTION TO BE COMPLETED BY ENVIRONMENTAL DIVISION:

The Environmental Impact Analysis checklist was reviewed and potential impacts on the quality of the environment have been considered. It has been concluded that this action is not segmented and no extraordinary circumstances exist that would preclude the use of the applicable categorical exclusion identified in section below.

This document does not relieve the proponent from compliance with other applicable federal, state and local environmental laws and regulations.

REASON FOR USING RECORD OF ENVIRONMENTAL CONSIDERATION:

☐ Is adequately covered in the following EA/EIS titled:

Dated: _____

The EA/EIS may be reviewed at:

Or,

☒ Is categorically excluded under Appendix B, Section II, paragraph (D)(1) of 32 CFR Part 651 for the following reason (See 32 CFR Part 651, Environmental Analysis of Army Actions):

Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use.

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4431

REVIEW AND CONCURRENCES (For Environmental Division use):

	YES	WITH CMNT	NO	
ADMINISTRATIVE NICHOLE (54819337) <small>Digitally signed by NICHOLE NICHOLE 154819337 Date: 2023.09.27 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Sep-2023 Date
Natural Resources Program				
CROWLEY DAVID M (512306469) <small>Digitally signed by CROWLEY DAVID M 512306469 Date: 2023.09.27 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Sep-2023 Date
Cultural Resources Program				
NHPA consultation and compliance will be conducted and completed after proposed lease terms and conditions are developed.				
SEMPERALL ADAM WHITTEN (59625664) <small>Digitally signed by SEMPERALL ADAM WHITTEN 59625664 Date: 2023.10.02 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	02-Oct-2023 Date
IRP/MMRP Program				
OGMAN MICHELLE ROBERT (593163357) <small>Digitally signed by OGMAN MICHELLE ROBERT 593163357 Date: 2023.09.29 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	29-Sep-2023 Date
Clean Water Program				
ALLARD MARTIN L (591625664) <small>Digitally signed by ALLARD MARTIN L 591625664 Date: 2023.10.02 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	02-Oct-2023 Date
Clean Air/Safe Drinking Water Program				
WELCH KIMBERLY MARIE (590164731) <small>Digitally signed by WELCH KIMBERLY MARIE 590164731 Date: 2023.09.27 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Sep-2023 Date
Recycling Program				
see following page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Hazardous Waste Program				
ALLARD MARTIN L (591625664) <small>Digitally signed by ALLARD MARTIN L 591625664 Date: 2023.10.02 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	02-Oct-2023 Date
TSCA/SPCC/EPCRA Program				
FORSLAND ANTHONY J (590164731) <small>Digitally signed by FORSLAND ANTHONY J 590164731 Date: 2023.09.28 17:13:41 -0500</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	28-Sep-2023 Date
Other ENV Staff as needed				

APPROVED BY:



Environmental Coordinator

3 October 2023

Date

☒ Concurrence is contingent upon compliance with comments provided.

RECORD OF ENVIRONMENTAL CONSIDERATION

RLC# 4431

REVIEW AND CONCURRENCES (For Environmental Division use):

	YES	WITH COMMENTS	NO	Date
ADINOLFI, JESSICA NICHOLE, 1140333323 <small>Printed on 09/27/2023 10:00 AM by JESSICA NICHOLE, ADINOLFI, JESSICA NICHOLE, 1140333323</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Sep-2023
Natural Resources Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
Cultural Resources Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
IRP/MMP Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
Clean Water Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
Clean Air/ Safe Drinking Water Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
Recycling Program				Date
BRANTON, ALAN ALVIN JR, 1177714145 <small>Printed on 09/27/2023 10:00 AM by ALAN ALVIN JR, BRANTON, ALAN ALVIN JR, 1177714145</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Sep-2023
Hazardous Waste Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
TSCA/SPCC/EPCRA Program				Date
see previous page	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Date
Other ENV Staff as needed				Date

APPROVED BY:

see first signature page

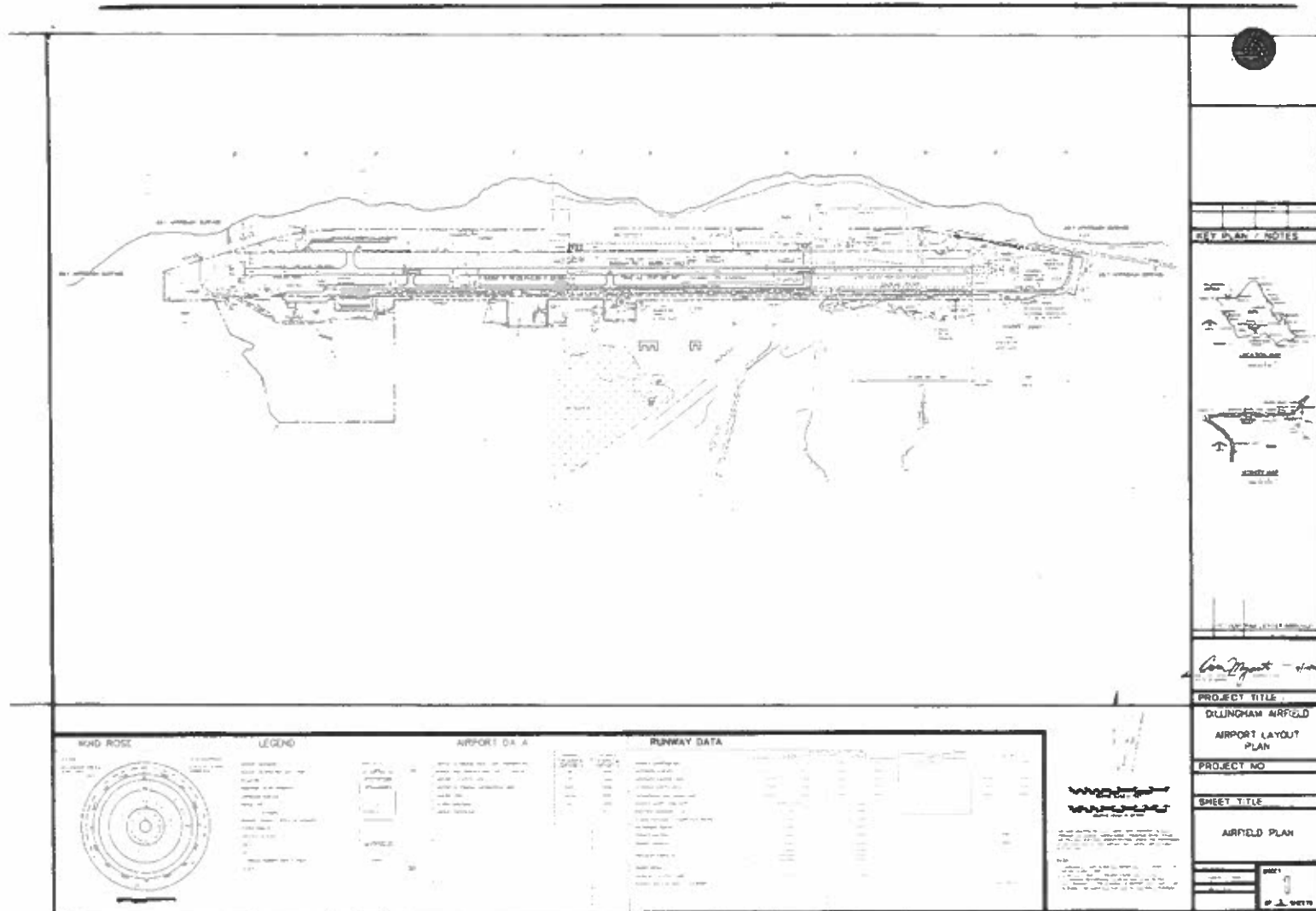
Environmental Coordinator

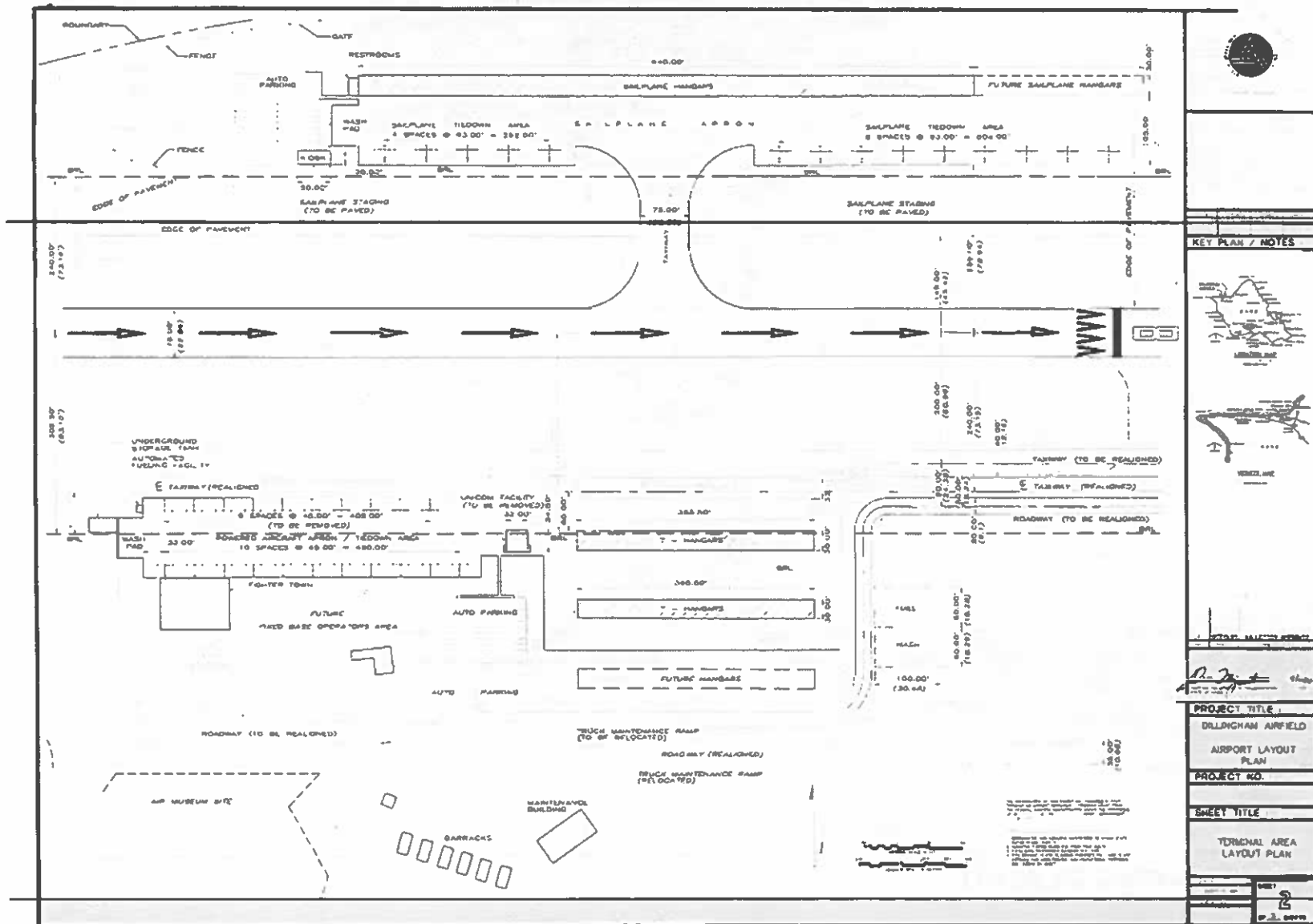
Date

☐ Concurrence is contingent upon compliance with comments provided.

Remaining full text of REC# 4431 incorporated by reference.

EXHIBIT E - Airport Layout Plan





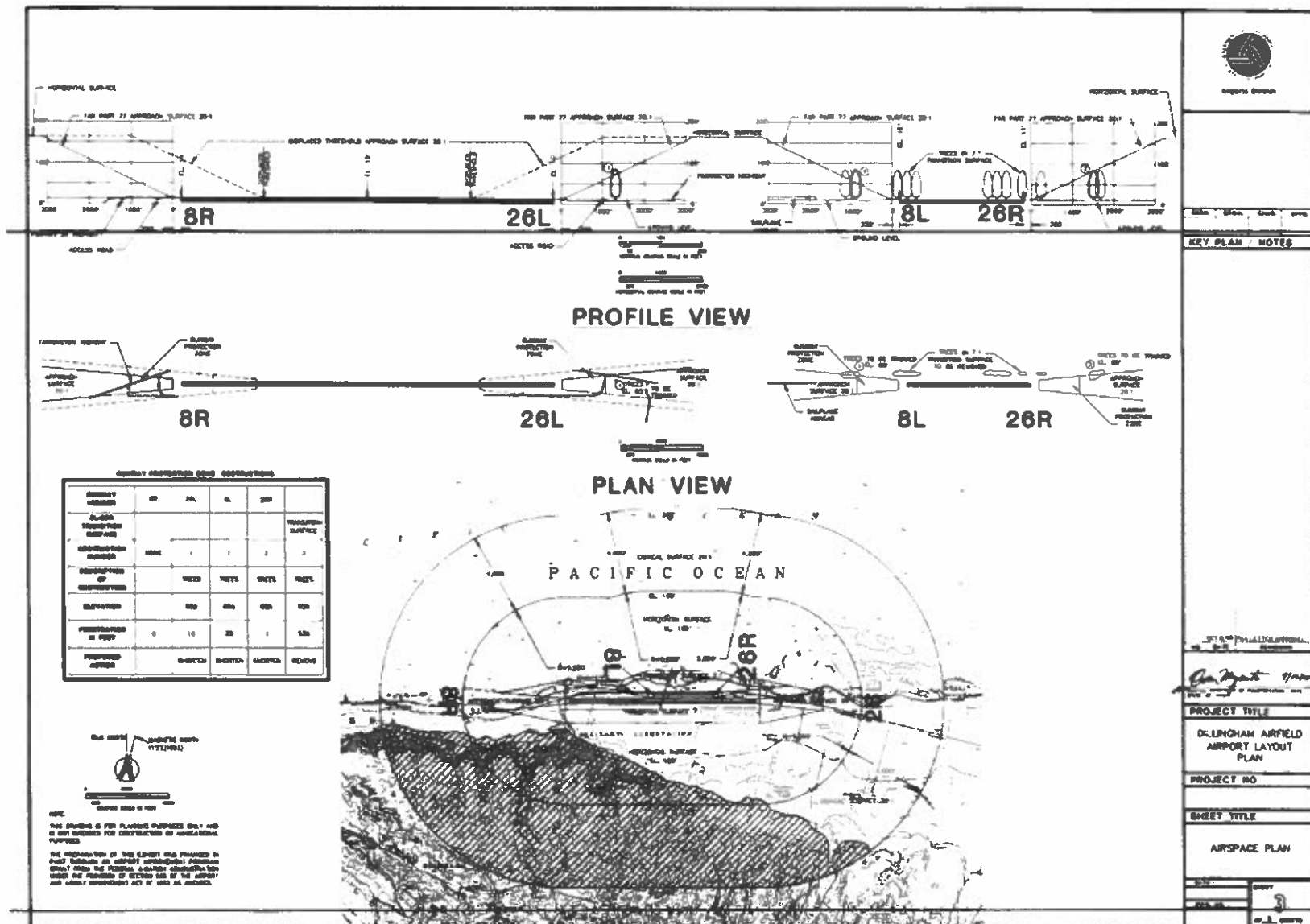


Exhibit F - Joint Use Agreement

**JOINT USE AGREEMENT
FOR
JOINT MILITARY/CIVIL USE OF DILLINGHAM AIRFIELD
ON THE
DILLINGHAM MILITARY RESERVATION HAWAII
BETWEEN THE
HAWAII DEPARTMENT OF TRANSPORTATION-AIRPORTS DIVISION
AND
THE UNITED STATES ARMY**

This Joint Use Agreement ("Agreement") is made on behalf of the United States, as represented by Deputy Assistant Secretary of the Army (DASA) (Installations, Housing & Partnership) (IH&P) and the Garrison Commander, United States Army Garrison – Hawaii (hereinafter referred to as the "Army," including representation of the interests of other Department of Defense and Army-sponsored entities), and the State of Hawaii, Department of Transportation, Airports Division (hereinafter referred to as the "DOTA"). Collectively, the Army and DOTA are the "Parties" and each is individually a "Party." The Army currently owns and operates the Dillingham Military Reservation (hereinafter referred to as "DMR"), which includes Dillingham (Kawaihapai) Airfield. Kawaihapai is the State of Hawaii recognized name for the airfield at DMR.

WHEREAS, the Parties believe that the joint use of Dillingham Airfield as a military/civil airfield may include a concept plan for improvement to the existing runways and aviation facilities at Dillingham Airfield for the benefit of civilian airport operations that can be undertaken by DOTA and not negatively impact ongoing or foreseeable military aviation and training operations at Dillingham Airfield.

WHEREAS, for the reasons stated above the Parties agree that the joint use of Dillingham Airfield as both a civilian and military airfield is in the Army's and the general public's interest.

WHEREAS, the intent of this Agreement is to provide for the use of Dillingham Airfield and the operation and possible further development of a general aviation facility and to identify the Army requirements for use and access of the aviation facility within the DMR boundaries.

WHEREAS, the Army currently authorizes DOTA to use, operate, develop and maintain Dillingham Airfield under Lease No. DACA84-1-09-135 (the "Existing Lease") which has a term ending July 5, 2024.

WHEREAS, the Army, in anticipation of the expiration or sooner termination of the Existing Lease, desires to issue a future, long-term lease under Lease No. DACA84-1-

24-0025 between the parties for the use and occupancy of Dillingham Airfield (the "New Lease").

WHEREAS, upon execution of the New Lease, this Agreement is not intended to conflict with the New Lease, and, wherever conflict occurs, the terms and conditions of the New Lease will prevail.

NOW, THEREFORE, it is agreed as follows:

GENERAL PROVISIONS

- A. The Army owns Dillingham Airfield, which is located wholly within the DMR and in the City and County of Honolulu, State of Hawaii.
- B. Project grant application(s) and assurances under Title 49, United States Code, Chapter 471, "Airport Development," (49 U.S.C. §§47101-47129, including but not limited to 49 U.S.C. §47107(t)) are the sole responsibility of DOTA.
- C. In accordance with 49 U.S.C. §44502(d)(1) the Department of Defense ("DoD") controls and regulates the public use of military airfields. If conflicts arise between the Federal Aviation Administration ("FAA") rules or regulations, or other civil rules or regulations, the provisions of DoD and Army rules and regulations will apply.
- D. Nothing in this Agreement imposes on the Army any responsibility to comply with FAA requirements that apply only to civil aircraft operations.
- E. In accordance with Army Regulation ("AR") 95-2, civilian airport and aviation operations must be undertaken at no cost to the Army. Any Army obligation under this Agreement is subject to the availability of funds or appropriations. DOTA will pay any miscellaneous or associated costs to implement this Agreement and any improvements at Dillingham Airfield subject to the availability of funds or appropriations as provided below.
- F. The joint use allowed under this Agreement must not interfere with national defense requirements, degrade safety, or in any way hamper the DoD in carrying out its mission pursuant to AR 95-2, App B-1a.
- G. Nothing in this Agreement shall cause or require the Army to expend or obligate funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341 et. seq.
- H. Nothing in this Agreement shall cause or require DOTA to expend or obligate funds in violation of 49 U.S.C. §47133 or any Federal grant assurance.

- I. Nothing in this Agreement shall cause or require DOTA to expend funds directly, or as reimbursement, in violation of State of Hawaii ("Hawaii") laws and regulations requiring availability of funds and appropriation of funds in accordance with Hawaii laws.

AGREEMENT

1. DEFINITIONS

For purposes of this Agreement, "Dillingham Airfield" is the approximately 271-acre portion of the DMR (New Lease **Exhibit A - Map**), which consists of the runways, taxiways, lighting systems, navigational aids, markings, and appurtenances open to public use and use by the Army, including all improvements and facilities pertaining thereto and situated thereon, and all future additions, improvements, and facilities thereto as may be added or constructed from time to time.

2. OPERATION, MAINTENANCE, AND REPAIR OF JOINT-USE AREAS

a. General:

Subject to the terms and conditions of this Agreement, the Army shall have priority use over any and all other users, present and prospective, of Dillingham Airfield, together with all necessary and convenient rights of ingress and egress to and from any Army facilities located on or near Dillingham Airfield. Routes for ingress and egress for DOTA employees, agents, customers, and contractors shall not unduly restrict the Army in its operations. Notwithstanding the foregoing, the Army shall use its best efforts to not unduly restrict or interfere with the use of Dillingham Airfield by DOTA and its authorized users, present and prospective.

b. Major Repairs and New Construction:

(1) Repair projects/capital improvements within the boundaries of the New Lease that extend the useful life of a facility by two or more years, increase the size or capacity, changes the functionality, or that are new construction for Dillingham Airfield will be coordinated with the Army. Any Army contribution to repair or construction projects shall be the subject of separate negotiations and written agreement between DOTA and the Army at the time the work is required. Any Army participation in the costs of improvements is subject to the availability of Federal funds for such purpose at the time the work is required and only upon proper appropriation.

(2) Notwithstanding Paragraph 2(b)(1), repair projects that do not require coordination and concurrence by the Army include: runway, taxiway, and apron pavement repairs, airfield signs/markings, and projects involving a DOTA or contractor-owned facility or otherwise involving a DOTA permittee or tenant that do not expand the facility or dig below the existing surface into sediment. For clarity, repairs to any existing security fencing are not subject to Paragraph 2(b)(1) and do not require coordination. The Parties may prepare a separate Memorandum of Understanding or may draft specific language in the New Lease to further clarify the scope of projects that are not subject to prior coordination under Paragraph 2(b)(1).

(3) Construction of Dillingham Airfield improvements shall be conducted and phased in such a manner, and shall minimize any adverse impact on military or military-related aircraft movements or other activities, to allow all military units at or using Dillingham Airfield to continue to carry out their assigned operational and training missions.

(4) For any project subject to the coordination requirements of Paragraph 2(b)(1), DOTA shall notify the Army in writing ("Construction/Repair Notice") ninety (90) days in advance of any maintenance, repair, planning, or construction actions that, in DOTA's reasonable determination, may impact Army aircraft operation to the extent allowable. No work on a project subject to the coordination requirements in Paragraph 2(b)(1) will begin on Dillingham Airfield unless written authorization is given prior to construction and or repair, which authorization will not be unreasonably withheld. The Army will review the project for impacts to real property, military aircraft operations, utilities, cultural/historical, environmental compliance and permits, and land-use. The Army shall make every effort to respond to Construction/Repair Notices in writing within 45 days of receipt to avoid causing an unreasonable delay in DOTA's ability to proceed with the project; however, Army reserves the right to discuss the details of proposed construction/repair projects during the next Dillingham Joint-Use Council as outlined in paragraph 2(b)(5) before the Army provides a formal written response, provided, however, that the Army shall agree to an additional meeting prior to the next Dillingham Joint-Use Council meeting if necessary to provide for timely review of the subject project. In accordance with paragraph 2e.(1)(d), DOTA shall obtain the Army's written approval prior to beginning any construction plan and award of contract, of any project subject to Paragraph 2b.(1) of this Joint-Use Agreement.

(5) The Parties will establish a Dillingham Joint-Use Council to identify and discuss all requests for construction/repair projects subject to Paragraph 2(b)(1). The goal of this forum is to ensure the coordination and understanding of the submitted request. Members of the Dillingham Joint-Use Council include USAG-HI Garrison Commander or Deputy, Director of the State of Hawaii Department of Transportation or his or her designee, the Dillingham Airport Manager, Directorate of Public Works Environmental, USACE-Honolulu District, and Wheeler Airfield Division Chief. Additional subject matter experts may be added to the meeting as necessary to discuss specific issues. Wheeler Airfield Division will coordinate and send an agenda to all parties prior to the meeting and take the minutes. The Joint-Use Council will meet quarterly, but either Party may also request additional meetings as necessary to ensure timely reviews of projects subject to coordination requirements under Paragraph 2(b)(1) or any other pressing matters of business.

(6) Prior to expiration/termination of the New Lease, DOTA shall complete an Environmental Condition of Property report (ECP) / Phase I Environmental Site Assessment that fully characterizes the environmental conditions of the lands subject to the lease and compares the findings to those of an environmental site assessment prepared prior to the onset of the renewal Lease in order to identify any contamination that may have resulted from DOTA's use of the land during the term of the New Lease. In the event of a release of a hazardous waste/substance, DOTA shall, in accordance applicable Federal and/or State law, be responsible for the costs of remediation proportional to its contribution or action as determined in accordance with paragraph 10e. The Army may withhold acceptance of return of the lands that are subject to the New Lease upon expiration/termination of the lease until the Army is satisfied that all required environmental remediation has been completed and that DOTA has paid its proportional share of the remediation. Upon expiration/termination of the New Lease, title to all real property improvements shall pass to the Army, unless the Army makes a determination that the improvements are not in a suitable condition for the Army to accept. In the event Army does not accept title to certain real property improvements, DOTA shall remove those improvements and restore the property to a condition suitable for Army acceptance of the land. In addition, as-built design drawings of any new structures approved under the New Lease will also be provided to Army at termination of the New Lease.

c. The priorities for use of Dillingham Airfield shall be (a) military flight operations, (b) military ground maneuvers, and (c) civil aviation and sport parachute operations. Military flight operations and ground maneuvers may be inconsistent with, or create a hazard to, civil aircraft operations.

d. The primary purpose of the land and improvements within the leased area is for the operation of a joint military/civil airfield. Military aviation will utilize the Dillingham Airfield both day and night and the airfield will be closed to civil aircraft 1 Apr thru 30 Sept – 1900 – 0700 and 1 Oct – 31 Mar 1800 – 0600 to support military operations.

e. DOTA RESPONSIBILITIES

(1) DOTA will be responsible for the following services and functions:

(a) Maintaining an up to date Airport Layout Plan consistent with its obligations under 49 U.S.C. § 47107(a)(16).

(b) Adhering to current design standards in the relevant FAA Advisory Circular ("AC") for any new construction. Due to the differences between the Army and the FAA airfield design criteria, all projects affecting the runway, taxiway, and apron will also require review by the U.S. Army Corps of Engineers, Transportation Systems Center (TSC), Omaha, Nebraska and USACE-Honolulu except for simple repairs. DOTA will pay any applicable fees associated with the review of any DOTA-sponsored projects, subject to funding availability.

(c) Securing any required concurrences and/or approvals of the FAA and other Federal and State agencies having jurisdiction over the conduct of public airport facilities, in writing, prior to commencing activities under this Agreement.

(d) Constructing civil aircraft support facilities, if and as necessary as determined by DOTA, to support operations as outlined in the most current Airport Layout Plan, subject to funding availability and the ability to secure any necessary State and Federal approvals. Prior to beginning any construction plan and award of contract, of any project subject to Paragraph 2(b)(1) of this Joint-Use Agreement obtain the Army's approval for the construction plans, in writing, which approval shall not be unreasonably withheld.

(e) Furnishing all personnel, materials, and equipment required in the rendering of the services to be provided under this Agreement.

(f) Unless otherwise agreed in writing, providing aircraft advisory services at Dillingham Airfield on frequency 123.0 (UNICOM).

(g) Performing any and all maintenance (if and as necessary as determined by DOTA) at Dillingham Airfield, including but not limited to:

- (i) Performing joint sealing, crack repair, surface repairs, airfield markings, and repair or replacement of damaged sections of airfield pavement;**
- (ii) Maintaining runway, taxiway, and approach lighting, and the regulators and controls therefore;**
- (iii) Maintaining beacons, obstruction lights, wind indicators, and other navigational aids;**
- (iv) Performing grass cutting and grounds care, drainage maintenance, and dust and erosion control of unpaved areas, adjacent to runways and taxiways, sweeping runways and taxiways;**
- (v) Controlling insects, pests, wildlife, and birds;**
- (vi) Removing hazards from runways and taxiways within a reasonable time after such runways and taxiways have been so encumbered;**
- (vii) Furnishing additional utilities necessary to operate Dillingham Airfield;**
- (viii) Removing disabled non-Army aircraft as expeditiously as possible, subject to the rules and regulations of the National Transportation Safety Board, in order to minimize the time Dillingham Airfield, or any part thereof, would be closed because of such aircraft; and**
- (ix) Coordinating in advance, and obtaining the written approval of the Army before installing or adding any external lighting, electronics, and communication equipment at Dillingham Airfield, which includes both outside and inside lighting that may have adverse impact on military flight operations conducted at night, and ensuring an ability to turn off or adequately subdue lighting.**
- (x) Obtaining any permits required by local, State or Federal laws.**

(h) Taking appropriate actions to control any obstruction (including vegetation) which would constitute an obstruction under 14 Code of Federal Regulations (CFR) Part 77 of the Federal Aviation Regulation.

(i) Taking all appropriate actions to ensure that DOTA contractors, lessees and/or tenants, and permittees comply with all Federal, State, and local requirements related to their activities at Dillingham Airfield, including but not limited to ensuring that lessees and/or tenants and

permittees maintain facilities at Dillingham Airfield to current Federal, State and local building code, construction standards and environmental compliance requirements and ensuring that lessees and/or tenants and permittees do not undertake any activity that could have adverse impacts on aviation, aircraft movements, and military activities.

f. ARMY RESPONSIBILITIES

(1) The Army will be responsible for the following:

(a) Giving reasonable advance written notice (which shall be no less than 30 days unless in support of an emergency) to DOTA prior to commencing any Army exercises (operations or maneuvers) at Dillingham Airfield. The Army's hours of use of Dillingham Airfield will be included in the written notice to DOTA. During these periods of military exercises Dillingham Airfield runway may be utilized for 24 hours a day operations. Upon receipt of such written notice, DOTA will be responsible for notifying civil aviation users.

(b) Removing disabled Army aircraft as expeditiously as possible in order to minimize the time Dillingham Airfield, or any part thereof, would be closed because of such aircraft.

(c) Repairing damage to Dillingham Airfield to the extent that such damage is caused solely by military aircraft operations and is in excess of the fair wear and tear resulting from the military use contemplated under this Agreement. This will be done within a reasonable amount of time and subject to availability of appropriations. This does not include any damage caused by force majeure.

(2) The Army will cooperate to the extent necessary to ensure that DOTA remains compliant with its Federal grant assurances and Federal law relating to the operation of a public use airport.

3. MILITARY INSTALLATION SUPPORT REQUIRED

No Army installation support will be provided, except as identified in this Agreement.

4. UTILITY SERVICES PROVIDED (ALONG WITH POINTS OF DEMARCATION)

a. DOTA will provide utilities, including but not limited to gas, electricity, sewer, and waste disposal to Dillingham Airfield and associated facilities within its leasehold at no cost to the Army.

b. DOTA may need water service under the New Lease. However, the Parties expressly agree that DOTA shall not be obligated to operate and maintain the current Dillingham Public Water System ("PWS") under the New Lease. The Army shall notify DOTA regarding the Army's decisions regarding the future of the current Dillingham PWS.

c. DOTA will not be responsible for the cost of any utilities (including water) beyond the extent of the leased Premises or that otherwise do not benefit DOTA's use of Dillingham Airfield.

5. JOINT USE OPERATIONS

DOTA will have the right to collect and retain landing fees or assess other charges for civil aircraft using Dillingham Airfield or DOTA-provided facilities. DOTA may not charge any fees or assess any charges for military-owned, operated, or contracted aircraft or for any other airfield designated as "exempt user" in accordance with AR 95-2, para. 9-14, or any successor regulation, or any U.S. military mission, for the use of Dillingham Airfield. DOTA may collect fees for parking at or hangar space in DOTA-provided facilities or for other goods and services.

6. DOTA SERVICES AND FACILITIES PROVIDED TO THE ARMY AND PUBLIC

a. DOTA agrees that maintenance of Dillingham Airfield shall, at all times, be in accordance with FAA standards for the operation of a general aviation airport.

b. DOTA agrees that it will not close the runway on Dillingham Airfield without prior notice to and coordination, consultation and agreement with the Army except in an emergency situation. Planned closures shall be addressed at the Dillingham Joint-Use Council meetings.

7. SECURITY PLAN AND REQUIREMENTS FOR SECURITY/ACCESS CONTROL

a. If necessary, DOTA will develop plans to secure any construction activities and the safety/security of personnel and the airfield. Such plans must provide for security during both the construction and operating phases by DOTA at Dillingham Airfield. Security Plans will be coordinated and provided to the Army.

b. DOTA will secure the airfield and its facilities at no cost to the Army.

c. Dillingham Airfield will have fencing if required by the FAA to secure the airfield or as may otherwise be required by the State to protect facilities in the leasehold.

8. COMMUNICATION AVAILABLE FOR AIRCRAFT AND OPERATORS

DOTA will provide a Common Traffic Advisory Frequency ("CTAF") for all air traffic operating at Dillingham Airfield.

9. RISK OF LOSS, INSURANCE, AND INDEMNIFICATION

a. To the extent permitted and authorized by law and regulations DOTA and the Army each shall be responsible for the repair cost of any damage to the facilities or equipment caused by their own respective operations.

b. The Army shall not be responsible for damages to property or injuries to personnel which may arise from or be incident to DOTA's exercise of privileges herein granted, or for damages to DOTA's property that may arise from or be incident to DOTA's exercise of the privileges granted herein or for damages to the property or injuries to the person of DOTA officers, agents, lessees and/or tenants, permittees, guests, employees, contractors, or others who may be on the Premises, and to the extent of available insurance proceeds and to the extent permitted and authorized by law, DOTA shall indemnify, defend, and hold the Army, DoD, or the United States, harmless from any and all such claims.

c. The Army shall not be responsible for the control of wildlife that might contribute to bird strikes or other hazards except to the extent provided herein. However, the Army agrees to act in good faith to avoid engaging in any activity near the runway that could reasonably be expected to increase the probability of bird strikes or other wildlife hazards. DOTA agrees, to the extent permitted and authorized by law, to release, acquit, and forever discharge the Army, its officers, agents, and employees from any and all liability arising out of bird strikes, endangered, vulnerable, or threatened species, or control of wildlife unless it is shown that the Army engaged in activity near the runway that could reasonably be expected to increase the probability of bird strikes or other wildlife hazards.

d. To the extent of available insurance proceeds and to the extent permitted and authorized by law, DOTA shall indemnify and hold harmless the Army against and shall defend, at DOTA expense, all claims for loss, damage, injury, or death sustained by any individual or corporation, including attorney costs and fees, and arising out of or in any way connected with DOTA's use of Dillingham Airfield under or in connection with this Agreement. DOTA further agrees, to the extent of available insurance proceeds and to the extent permitted and authorized by law, to indemnify and hold harmless the Army and to defend, at DOTA expense, against all claims for damage or injury to persons or property or actions for injunctive relief or declaratory judgment, by whatever style, arising from ground

or flight operations by civil aircraft to include hearing loss claims, noise or vibrations damage, economic losses to farms, business, etc., nuisance actions, and inverse condemnation, or similar claims of a taking or other diminution in value or enjoyment of property associated with civil aircraft movements at, to, near, or from the airfield or civil airport areas.

e. If applicable, DOTA will provide the Installation Commander with a certificate(s) of insurance and the full insurance document evidencing such coverage as is reasonably required not later than 120 days before start of any New Lease. The insurance shall also name the Army and DoD as a party to the coverage. The required amount of insurance coverage shall be reconsidered at the time of any major expansion of or change in civil aviation operations, including but not limited to a significant change in the number of flights or a significant change to the type of aircraft involved. Notwithstanding anything to the contrary contained in this Agreement, DOTA self-insures its obligations under this Agreement and shall not be obligated to obtain insurance from a third-party insurer under this Agreement.

f. DOTA shall not be responsible for loss, damage, or injury, to persons or property arising out of the Army's use or activities on Dillingham Airfield or military use of the civil air facilities outside the boundaries of Dillingham Airfield, and, to the extent permitted by law, the Army releases DOTA and its contractors, and the officers, agents, and employees of any of them from all claims by the Army arising out of such use.

10. ENVIRONMENTAL

a. DOTA shall comply with, and shall require any contractors, lessees and/or tenants or permittees to comply with, applicable current or subsequently enacted requirements established by Federal, State, and local entities with respect to control of air, water, or noise pollution, and hazardous and solid waste disposal, and any other applicable environmental laws.

b. The Army and DOTA shall comply with applicable current or subsequently enacted requirements of the Endangered Species Act. To the extent that any DOTA-proposed action at Dillingham Airfield triggers the need for a biological opinion, DOTA shall bear the cost and responsibility for preparation of the biological opinion and implementation of any mitigation required by the United States Fish and Wildlife Service.

c. The Army and DOTA shall comply with applicable current or subsequently enacted requirements of the National Historic Preservation Act ("NHPA") and

the Native Hawaiian Graves Protection and Repatriation Act ("NAGPRA"). To the extent that any DOTA proposed action triggers the need for NHPA or NAGPRA consultation and compliance, the Army shall be responsible for conducting consultation with the State of Hawaii Historic Preservation Officer and Native Hawaiian Organizations as appropriate and DOTA shall participate in the consultation and shall bear the cost and responsibility for preparation of the supporting information and implementation of any mitigation requirements resulting from the consultation.

d. The Army and DOTA shall comply with applicable current or subsequently enacted requirements of the National Environmental Policy Act ("NEPA"). To the extent that any DOTA-proposed action triggers the need for NEPA analysis or impact assessment, DOTA shall bear the cost and responsibility for preparation of the supporting information and implementation of any mitigation requirements resulting from completion of the NEPA process and the FAA, in consultation with the Army, shall be responsible Federal agency to render a determination on the NEPA document.

e. Should a hazardous material, archeological site, endangered species, or other regulated environmental condition be discovered at Dillingham Airfield during construction of civil facilities (not otherwise under the direction of the Army), DOTA agrees not to file a claim against the Army for lost revenues due to construction delays or for any other costs associated with such delay including, but not limited to increased contract costs or increased material costs. The Army has no funds programmed, budgeted, or appropriated for removal or remediation actions at such locations on or contiguous to Dillingham Airfield, as may result from discoveries made during construction. Any requests for Army removal and remedial actions will proceed in accordance with established DoD priorities and policies and availability of funds and appropriations. The Army will not be required to accelerate such actions solely to accommodate DOTA's construction needs. DOTA agrees that to whatever extent it desires to engage in expedited removal or remedial actions, or to whatever extent it is required to do so to fulfill its other obligations under this Agreement, DOTA will accomplish removal or remedial actions at its own expense and will not seek reimbursement from the Army, and that all actions must be accomplished to the reasonable satisfaction of the Army. Notwithstanding the foregoing, in no event shall any such delay be a basis for default on the part of DOTA under this Agreement.

f. DOTA shall not install any underground fuel storage tanks.

g. In the event of any remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") the Resource Conservation and Recovery Act ("RCRA"), or other applicable

statutes, required in connection with DOTA's civil aircraft use of Army property, DOTA will be responsible for the costs proportional to its contribution or action as determined by the Phase I Environmental Site Assessment described below.

h. If DOTA makes any required notification to any environmental regulatory agency, DOTA will provide concurrent notification to the U.S. Army Hawaii, Department of Public Works, Environmental Division.

i. DOTA shall maintain all records, permits, reports, and documents required by Federal, State and local environmental regulations.

11. SPILL PREVENTION PLAN AND IDENTIFICATION OF STORAGE OF ANY HAZARDOUS MATERIAL

a. As is typical for an operating airport, there are hazardous materials present at Dillingham Airfield. The most recent assessment identifying on-site hazardous materials is the Phase I Environmental Site Assessment, which was completed in February 2021, and incorporated herein by reference.

b. DOTA, its subcontractors, lessees and/or tenants, and permittees shall follow the DOTA environmental best management practices ("BMPs"). In particular, secondary containment shall be used for all drum storage of 25-gallons or more. All petroleum and hazardous materials shall be stored under cover. DOTA subcontractors, lessees and/or tenants, and permittees shall be obligated to clean up spills properly and immediately and to report any such spills using the DOTA spill reporting fact sheet. DOTA shall conduct routine inspections based on risk ranking of all lessees and/or tenant and permittee spaces and other DOTA facilities.

12. FIRE PROTECTION AND CRASH RESCUE

a. DOTA has a mutual aid agreement with the Honolulu Fire Department to support fire protection and crash rescue needs at Dillingham Airfield.

b. The Army shall have no obligation to maintain any firefighting and crash rescue organization or to provide any increase in firefighting and crash rescue equipment or personnel or to conduct any training or inspection for the purposes of this Paragraph.

13. ARMY RESERVED RIGHTS

The Army reserves the right, at its sole cost and expense, to:

a. Provide and maintain Dillingham Airfield markings required solely for military aircraft operations, if required.

b. Allow DOTA to construct projects on the installation, at no cost to the Army, approved facilities with prior written approval from the Army subject to paragraph 2(b)(1) of this Agreement.

c. Integrate the Dillingham Airport Development Plan agreed upon by the Army into the U.S. Army Garrison Hawaii Master Plan. In the event of any inconsistencies, Army will initiate discussions with DOTA and FAA to resolve any issues in a manner that is consistent with both Army and FAA standards.

d. Install, operate, and maintain in Dillingham Airfield, any and all additional equipment necessary for the safe and efficient operation of military aircraft including but not limited to arresting systems and navigational aids. Provided, however, that the Army shall coordinate any such installation, operation, and maintenance with DOTA so that DOTA's compliance with its Federal grant assurances and Federal law relating to the operation of a public use airport is not compromised.

14. RECORDS

a. DOTA shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this Agreement including showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures made in fulfilling the obligations of this Agreement.

b. The Comptroller General of the United States, or any of his or her duly authorized representatives shall, until the expiration of three (3) years after termination of this Agreement or the New Lease, whichever occurs later, have access at all times to such records and books of account during regular business hours, or to any directly pertinent books, documents, papers, and records of any of DOTA's contractors or subcontractors engaged in the performance of and involving transactions related to this Agreement subject, however, to exemptions from disclosure under applicable State and Federal statutes and regulations. DOTA further agrees that representatives of the Army Audit Agency or any other designated representative of the Army shall have the same right of access to such records, books of account, documents, and papers as is available to the Comptroller General. Nothing contained herein shall diminish, or in any way adversely affect, the United States of America's or the Army's right to discovery in any pending or future litigation.

c. DOTA also further agrees that DOTA and any representative of the State of Hawaii Comptroller or any other designated representative of the State of Hawaii designated by DOTA ("Hawaii Designee") shall have the same right of access

to such records, books of account, documents, and papers (herein after, collectively, the "Records") as are available to the Comptroller General of the United States and the Army. The Parties, any Hawaii Designee, and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of DOTA within the State of Hawaii or, if no such office is available, at a mutually agreeable and reasonable venue within the State of Hawaii, for the term specified above for the purpose of inspection, auditing and copying. DOTA and any Hawaii Designee shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under applicable State and Federal statutes provided that: (i) DOTA shall timely inform an appropriate Hawaii Designee, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempted under a statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State of Hawaii or DOTA's right to discovery in any pending or future litigation.

15. TERM

- a. This Agreement shall be effective for a term of fifty (50) years beginning July 6, 2024, and ending July 5, 2074, unless otherwise renegotiated or terminated under the provisions of the New Lease.
- b. Upon becoming effective, this Agreement shall supersede and cancel all previous agreements between the Parties concerning DOTA's use of Dillingham Airfield with the exception of the Existing Lease or New Lease if such leases are not yet terminated or expired.

16. TERMINATION

- a. The Secretary of the Army or his/her designee may, at his/her sole election, unilaterally terminate this Agreement and all or a portion of civil aviation operations at Dillingham Airfield if it is determined that civilian aviation operations are a threat to or inconsistent with national security, national defense, or force protection. If additional and/or other military operations are transferred to or are to be performed out of Dillingham Airfield that require additional military aviation support by Dillingham Airfield, the Secretary of the Army reserves the right to unilaterally terminate this Agreement and the New Lease. The decision to terminate this Agreement under this particular paragraph is not subject to judicial review in any Federal, State or local court. In exercising its rights under this Paragraph, to the extent possible, the Army agrees to work in good faith with DOTA to allow DOTA time to address and resolve any obligations it may have with the FAA as to DOTA's operations at Dillingham Airfield.

b. The Army may also terminate this Agreement and the New Lease if DOTA breaches a material term or condition contained herein. Before the Army may terminate this Agreement for a breach of a material term or condition, the Army will provide DOTA with a written notice of the alleged violation and provide a reasonable period of time for DOTA to cure, but not less than 60 days. If DOTA fails to correct the violation within the time specified, the Army may, at its election, terminate this Agreement. If the specified deadline is not met, the Army will consider any good faith and ongoing efforts by DOTA to cure the alleged violation. This provision does not limit the Army's right to temporarily suspend civilian aviation operations as outlined elsewhere in this Agreement and does not limit or expand in any manner the legal right, remedies and responsibilities of the Army or the United States as set forth in the New Lease.

c. If the Army terminates civilian aviation operations, DOTA may not conduct or permit others to conduct civilian aircraft operations at Dillingham Airfield, nor use any land or facilities at Dillingham Airfield.

d. DOTA has the right to terminate this Agreement if the Army violates any of the material terms and conditions contained herein. Before DOTA may terminate this Agreement for a breach of a material term and condition, it will provide the Army with a written notice of the alleged violation and provide a reasonable period of time for the Army to cure, but not less than 60 days. If the Army fails to correct the violation within the time specified, DOTA may, at its election, terminate this Agreement. If the specified deadline is not met, DOTA will consider any good faith ongoing efforts by the Army to cure the alleged violation.

17. TEMPORARY SUSPENSION OF OPERATIONS

a. The authority to suspend or restrict civilian operations at Dillingham Airfield under this section for periods greater than 72 hours is vested in the Secretary of the Army and delegated to the U.S. Army Hawaii (USARHAW) Commander.

b. The Army may suspend or restrict civilian aviation operations at Dillingham Airfield if such operations are inconsistent with national security, national defense, or force protection. Such suspensions or restrictions shall only be of a scope and duration necessary to meet those needs. It is anticipated that this most likely could occur at any time during any national emergency declared by the President, or the Congress of the United States, or in the event of overriding military necessity, in support of military contingencies worldwide. The DOTA shall be given as much advance notice of such actions as practicable under the circumstances.

c. The Army reserves the right to suspend civilian aviation operations in the event that: (1) DOTA's insurance is cancelled or expires, (2) civilian aviation operations are being carried out in such a way as to create an unreasonable risk of imminent harm to public health or safety, or (3) DOTA is not operating within the terms and conditions of this Agreement. Before the Army may suspend joint use civil aviation operations as a result of DOTA not operating within the terms and conditions of this Agreement, the Army will provide DOTA with a written notice of the alleged violation and provide a reasonable period of time for DOTA to cure, but not less than 60 days and the ability to request an extension. If DOTA fails to correct the violation within the time specified, the Army may, at its election, suspend operations.

d. During any national emergency declared by the President of the United States, or the Congress of the United States, the Army shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the civil aircraft associated facilities.

e. The Army assumes no responsibility for lost revenues to DOTA or its tenants, during periods of such temporary suspension or closure. In the event that such closure is of sufficient duration that it amounts to a constructive eviction, DOTA reserves the right to petition the Congress of the United States for reimbursement of its capital investment, revenue, or other losses.

18. MISCELLANEOUS PROVISIONS

a. **Compliance with Law.** DOTA shall comply with, and shall require compliance by its contractors, lessees and/or tenants, and permittees with, all Federal, State, and local laws, rules, ordinances, and regulations applicable to the activities conducted under this Agreement.

b. **Assignment.** DOTA shall neither transfer nor assign its rights and obligations under this Agreement without the prior written consent of the Secretary of the Army or his/her designee. This does not preclude DOTA's performance of its obligations hereunder by use of contracts or vendor agreements. The granting of subleases, concessions, permits, licenses or similar rights or privileges for commercial enterprises is subject to the prior written approval of the USACE-Honolulu District, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, DOTA shall not be required to secure prior approval from the Army to issue or renew any Lease, Parking Permit ("PP") or Revocable Permit ("RP") that would involve no new construction or new activities at Dillingham Airfield. In all other instances, the Army shall provide its written approval (or disapproval) of a request from DOTA under this provision within 30 days from the date the request is received by the Army. Any delays by

the Army can be discussed during the Dillingham Joint-Use Council, or discussions directly with the Army and appropriate USAG-HI personnel.

c. **Liability.** Except as otherwise provided in this Agreement, neither Party shall be liable for damages to property or injuries to persons arising from acts of the other Party in the use of Dillingham Airfield or occurring as a consequence of the performance of responsibilities under this Agreement.

d. **Entire Agreement.** It is expressly agreed that this written instrument embodies the entire Joint Use Agreement between the Parties regarding the use of Dillingham Airfield by the Army, and there are no understandings or agreements, verbal or otherwise, between the Parties in regard to it except as expressly set forth herein. Specifically, no landing fees or other fees not provided in this Agreement will be assessed by DOTA against the military in the use of Dillingham Airfield during the term of this Agreement.

e. **Modification.** This Agreement may be modified or amended only by mutual agreement of the Parties in writing and signed by each of the Parties hereto. Modifications or amendments shall be subject to the approval of Garrison Commander.

f. **Waiver.** The failure of either Party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, covenants, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, covenants, or provisions. No provision of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing signed by such Party.

g. **Counterparts.** This Agreement shall be executed in four (2) counterparts, each of which is deemed an original of equal dignity with the other, and which is deemed one and the same instrument as the other.

h. **Paragraph Headings.** The brief headings or titles preceding each paragraph and subparagraph are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Agreement.

19. NOTICES

a. No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

(1) Written communications to DOTA shall be addressed to:

Deputy Director - Airports
State of Hawaii, Department of Transportation
400 Rodgers Boulevard, Suite 700
Honolulu, Hawaii 96819-1880

(2) Written communications to the Army shall be addressed to:

To the United States of America:

Army Corps of Engineers-Hawaii
Real Estate Division (CEPOH-PP-R)
Building 230, Room 103
Fort Shafter, HI 96858-5440


- b. The designated representatives for implementing this Agreement for the Army are:

Deputy Assistant Secretary of the Army (Installations, Housing & Partnership); and U.S. Army Garrison-Hawaii (USAG-HI) Garrison Commander

- c. The designated representative for implementing this Agreement for DOTA is:

Director of the State of Hawaii, Department of Transportation

IN WITNESS WHEREOF, the respective duly authorized representatives of the Parties hereto have executed this Agreement on the date set forth opposite their respective signatures.

 Date 7/1/24

Director
State of Hawaii, Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

 Date 7/1/24

U.S. Army Garrison-Hawaii (USAG-HI) Garrison Commander
745 Wright Avenue, Building 107, Wheeler Army Airfield
Schofield Barracks, Hawaii 96857-5000