

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Engineering Division  
Honolulu, Hawaii 96813

November 9, 2017

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

REQUEST AUTHORIZATION FOR THE CHAIRPERSON TO ENTER INTO AN AGREEMENT WITH THE CITY & COUNTY OF HONOLULU TO ENTER AND CONSTRUCT WITHIN CITY & COUNTY OF HONOLULU PROPERTY, A USE & OCCUPANCY AGREEMENT WITH THE UNIVERSITY OF HAWAII FOR CONSTRUCTION STAGING AND STORAGE, ENTER INTO A TRI-PARTY LETTER AGREEMENT TO CONSTRUCT IMPROVEMENTS IN BOTH UNIVERSITY OF HAWAII PROPERTY AND CITY & COUNTY OF HONOLULU EASEMENT, AND AUTHORIZE THE CHAIRPERSON TO ENTER INTO ANY OTHER AGREEMENTS FOR THE MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE, MANOA, O'AHU, HAWAI'I, TAX MAP KEY: (1) 2-9-26:01; (1) 2-9-26:02; (1) 2-9-26:46.

**BACKGROUND:**

Over a period of time Manoa Stream at the Woodlawn Drive Bridge has accumulated sediment material both under the bridge and downstream of the bridge. The sediment buildup minimizes the flow capacity under the bridge and could potentially cause flooding to occur in the surrounding area. The reason for the sediment buildup is the concrete lined structure under the bridge is lower in elevation than the grouted riprap (GRP) structures upstream and downstream of the bridge, thus creating a bowl-effect under the bridge where sediment can rapidly build up and decrease the flow both under the bridge and downstream.

The Department of Land and Natural Resources (DLNR), Engineering Division (ENG) proposes to modify the existing GRP structures upstream and downstream of the bridge to eliminate the bowl-effect under the bridge and alleviate the sediment buildup. Sediment will also be removed under the bridge and approximately 400 feet downstream of the bridge to improve flow capacity within the stream.

**ITEM L-2**

### PROJECT DESCRIPTION AND LOCATION:

The project is located in Manoa Valley. It starts at the Woodlawn Drive Bridge and extends approximately 400 linear feet downstream of the bridge. The project is within four different parcels which includes the City & County of Honolulu (C&CH) right-of-way along Woodlawn Drive Bridge, TMK (1) 2-9-26: 46 owned by C&CH, TMK (1) 2-9-26:02 owned by the State of Hawaii and maintained by DLNR, and TMK (1) 2-9-26:01 owned by the University of Hawaii (UH). The contractor will use an area of the UH parcel for construction staging and access to the Manoa Stream. Most of the existing

GRP structure 20 feet upstream and downstream of the bridge, where the project improvements will be made, is in DLNR property but was built and is maintained by the C&CH. Currently, there is no easement in favor of the C&CH to own and maintain these existing GRP structures. These areas are shown in Exhibits A and B.

There is a 300-square foot portion of the existing GRP wall that is owned and maintained by the C&CH but is within UH property. There is an easement in favor of the C&CH that includes this portion of the rip-rap wall. This GRP wall will be reconstructed for this project. This is shown in Exhibit C.

The project scope of work consists of modifying the existing GRP structures upstream and downstream of the Woodlawn Drive Bridge and removing sediment, rocks, boulders, and vegetation from Manoa Stream under the bridge and approximately 400 feet downstream of the bridge. The modifications to the GRP structures at the bridge entail constructing a shallow drop structure upstream of the bridge and flattening the GRP apron downstream of the bridge. These modifications will remove the bowl-effect under the bridge which should improve downstream flow, minimize the sediment buildup under and downstream of the bridge, and reduce the maintenance within the stream.

### INTERGOVERNMENTAL AND DEPARTMENTAL AGREEMENTS:

Because this project involves several different properties where construction staging and work will be done three intergovernmental and departmental agreements have been developed for the project. One agreement is between the C&CH and DLNR. This agreement grants DLNR and its contractor access under the Woodlawn Drive Bridge to remove the sediment and debris, and to make improvements to the existing GRP structures 20 feet upstream and downstream of the bridge, which was built by the C&CH. It also grants the C&CH access to the GRP structures 40 feet upstream and downstream of the bridge, and upon inspection and acceptance of the improvements maintain the GRP structures upstream and downstream of the bridge. A draft of this agreement is attached as Exhibit D. A future easement will be developed in favor of C&CH to grant permanent

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access for maintenance of these GRP structures 40 feet upstream and downstream of the bridge, which are currently in DLNR property.

A second Use and Occupancy Agreement will be between DLNR and UH. This agreement grants DLNR and its contractor access to use UH property of construction staging and access to the Manoa Stream. A draft of this agreement is attached as Exhibit E.

A third letter agreement between DLNR, UH and C&CH will allow DLNR and its contractor to construct improvements to the 300-square foot portion of the existing GRP wall within UH property. Once the project is completed the C&CH will resume maintenance of this

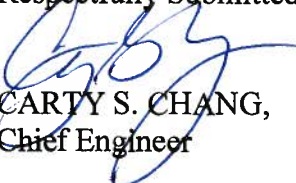
portion of the wall. This memo is currently being drafted and will be finalized by the start of construction.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Authorize the Chairperson, subject to review and approval as to form by the Department of the Attorney General, to enter into an agreement between DLNR and C&CH, as needed, to carry out the intent of the project scope of work.
2. Authorize the Chairperson, subject to review and approval as to form by the Department of the Attorney General, to enter into an agreement between DLNR and UH, as needed, to carry out the intent of the project scope of work.
3. Authorize the Chairperson, subject to review and approval as to form by the Department of the Attorney General, to enter into a letter agreement between DLNR, UH, and the C&CH as needed, to carry out the intent of the project scope of work.
4. Authorize the Chairperson to enter into any other agreement between DLNR and C&CH, or between DLNR and UH, that is related to this project, subject to review and approval as to form by the Department of the Attorney General.

Respectfully Submitted,



CARTY S. CHANG,  
Chief Engineer

Request Acceptance of UH  
and C&C of Hon. Agreements  
Manoa, Oahu, Hawaii

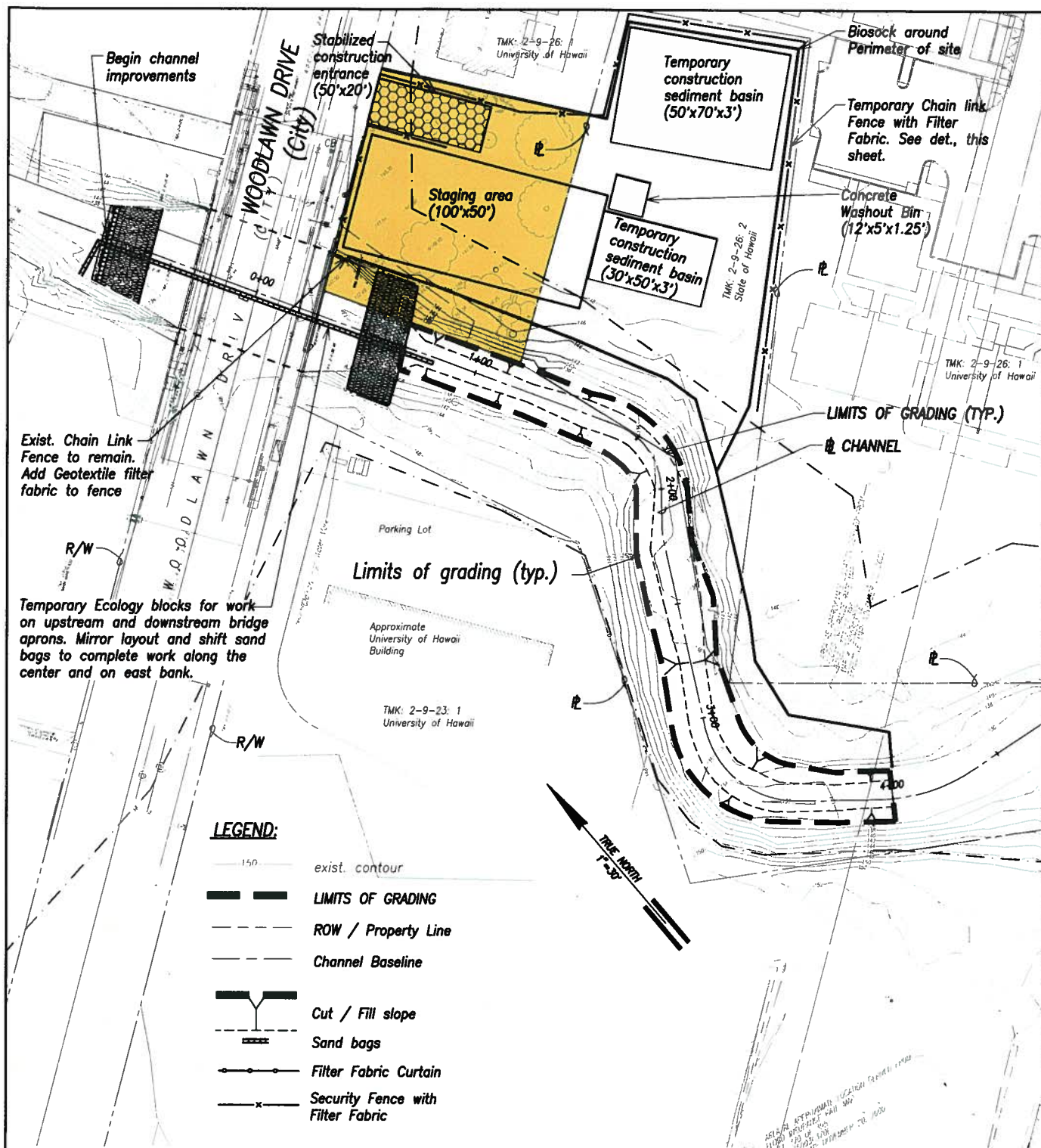
November 9, 2017

Approved for Submittal:



SUZANNE D. CASE  
Chairperson

- Exhibit(s)
- A. Site Plan - Use and Occupancy Agreement, University of Hawaii
  - B. Site Plan - Proposed Work Within City & County of Honolulu Property
  - C. Site Plan - Proposed Work Within UH Property and City Easement
  - D. Draft Agreement Between DLNR and City & County of Honolulu
  - E. Draft Use and Occupancy Agreement University of Hawaii
  - F. Draft Tri-Party Letter Agreement – Manoa Stream Improvement Project Use and Maintenance of University/City and County Easement Area



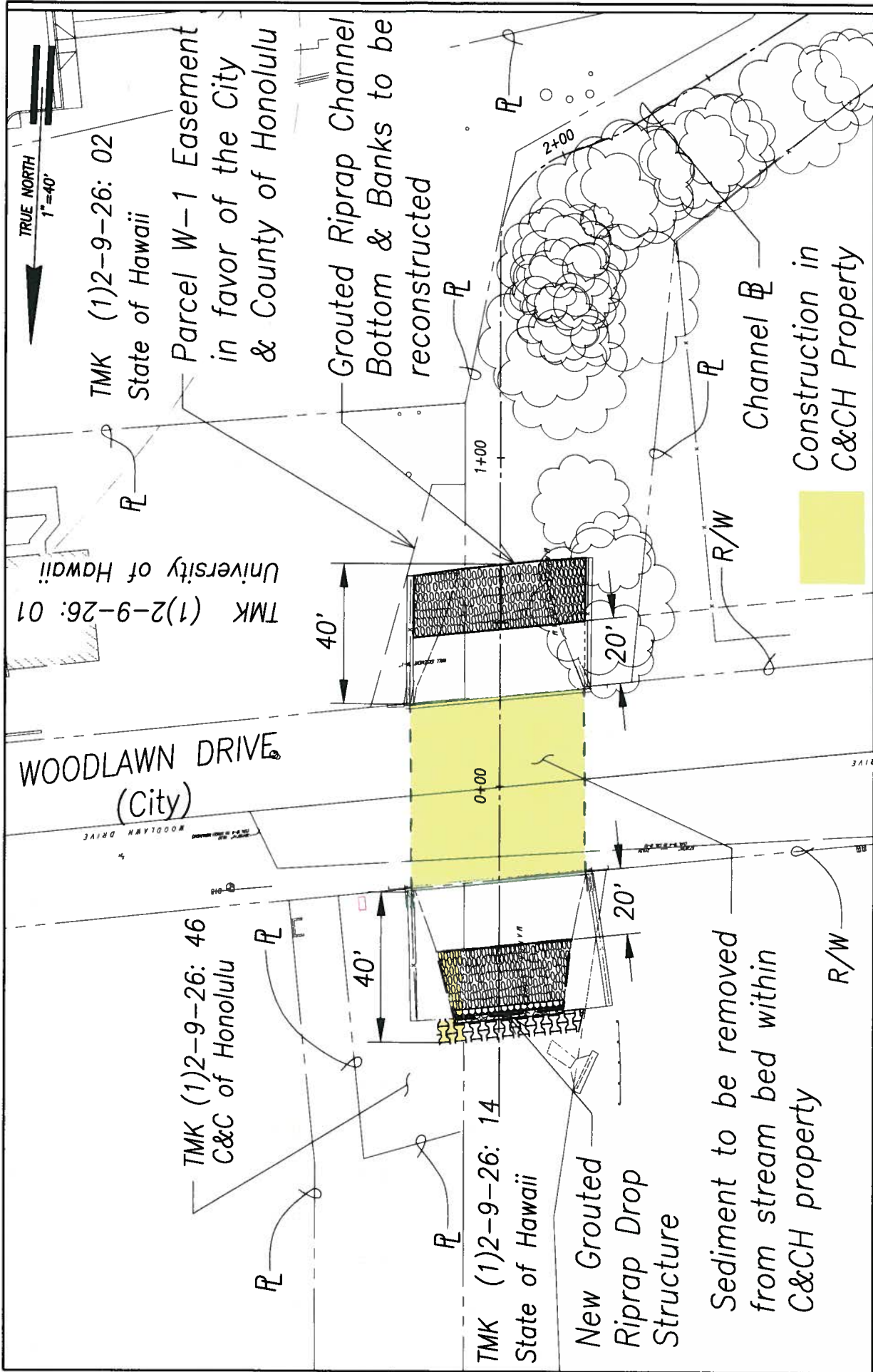
# MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE




Planning - Engineering - Environmental Services - Photogrammetry - Surveying - Construction Management  
**R. M. TOWILL CORPORATION**  
 808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-1937

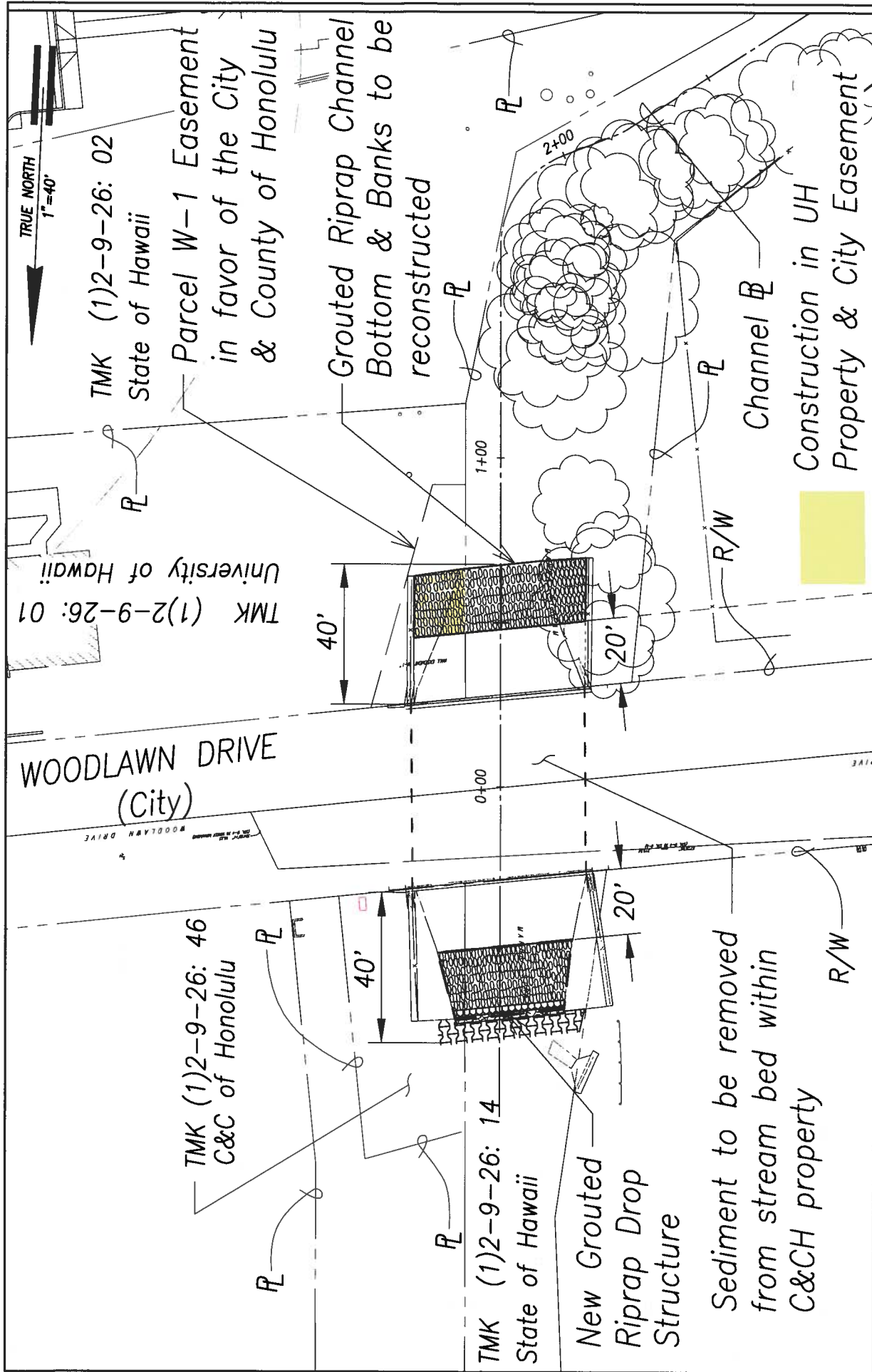
**USE AND OCCUPANCY AGREEMENT  
 UNIVERSITY OF HAWAII**


**Exhibit  
 A**



MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE	
 <b>R. M. TOWILL CORPORATION</b> 808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494	<b>PROPOSED WORK WITHIN CITY &amp; COUNTY OF HONOLULU PROPERTY</b>
<b>EXHIBIT B</b>	





MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE	
 <b>R.M. TOWILL CORPORATION</b> Planning - Engineering - Environmental Services - Photogrammetry - Surveying - Construction Management 808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494	<b>PROPOSED WORK WITHIN UH PROPERTY AND CITY EASEMENT</b>
<b>EXHIBIT C</b>	

JOB NO. J38CO56A  
MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE PROJECT  
AGREEMENT

This MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE PROJECT AGREEMENT ("AGREEMENT") is made and entered into by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 (hereinafter referred to as "STATE"), and the DEPARTMENT OF FACILITY MAINTENANCE, CITY AND COUNTY OF HONOLULU, whose principal place of business and post office address is 1000 Ulu Ohia Street, Kapolei, Hawaii 96707 (hereinafter referred to as "CITY").

WHEREAS, the STATE is the owner of the land identified in Tax Map Key Nos. (1) 2-9-26: 02 and (1) 2-9-26: 03, and is more particularly described and delineated on Exhibit "A" attached hereto and made part hereof ("STATE property"); and

WHEREAS, the CITY is the owner of the land identified in Tax Map Key No. (1) 2-9-26: 46 and identified as Woodlawn Drive, and is more particularly described and delineated on Exhibit "A" attached hereto and made part hereof ("CITY property"); and

WHEREAS, the University of Hawaii (hereinafter referred to as "UH") is the owner of the land identified in Tax Map Key Nos. (1) 2-9-26: 01 and (1) 2-9-26: 14, and is more particularly described and delineated on Exhibit "A" attached hereto and made part hereof ("UH property"); and

WHEREAS, the aforementioned real property consists of land within the Manoa Stream upstream and downstream of the Woodlawn Drive Bridge in the STATE property, the Woodlawn Drive Bridge within the CITY property and the UH property, and further identified in Exhibit A ("Property"); and



WHEREAS, the STATE, CITY, and UH have signed a letter agreement dated \_\_\_\_\_, with UH consenting to the STATE entering the UH property to construct the improvements (described below) and acknowledging that the City will maintain said improvements; and

WHEREAS, the STATE wishes to enter the Property for the purpose of removing sediment and debris on the Property, for the demolition of the existing grouted riprap structures upstream and downstream of the Woodlawn Drive Bridge and to construct new grouted riprap structures upstream and downstream of the bridge, whose location is set forth and described in Exhibit A, pursuant to the terms of this Agreement and as is described and delineated in Exhibit A; and

WHEREAS, the scope of work to be conducted on the Property includes removing sediment and debris within the Manoa Stream and under the Woodlawn Drive Bridge, for the demolition of the existing grouted riprap structures twenty (20) feet upstream and downstream of the bridge, and for the installation of a new grouted riprap drop structure twenty (20) feet upstream of the Woodlawn Drive Bridge and grouted riprap channel bottom and banks twenty (20) feet downstream of the bridge (Improvements), whose location is set forth and described in Exhibit A, see DLNR Job No. J38CO56A, Manoa Stream Improvements at Woodlawn Drive Bridge Project, as set forth below ("PROJECT"); and

WHEREAS, funding for the PROJECT has been authorized by Act 200, SLH 2003, as amended by Act 31, SLH 2004, Item A-5.01, for design, and Act 122, SLH 2014, Item A-26 for construction; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions contained herein, the parties hereto mutually agree as follows:

**A. RIGHT OF ENTRY TO THE STATE.**

A right of entry is granted by the CITY to the STATE over the CITY property as follows:

1. Grant of Entry. CITY hereby grants to the STATE, its designated officers, employees, consultants, contractors permission to enter upon the construction limits area located on the City property as designated on Exhibit A highlighted in \_\_\_\_\_ for the PROJECT.

CITY agrees that it shall not take any action in the Construction Limits Area that will unreasonably delay or interfere with the PROJECT and, except in the case of an emergency that requires such entry or with permission from the Contractor (as defined below), shall not enter the Construction Limits Area during the period of time that the PROJECT is under construction.

2. Utilization. This right of entry for the PROJECT shall be utilized from Monday through Friday, between the hours of 8:00 a.m and 5:00 p.m., for the duration of the PROJECT. This right of entry may be utilized on other days or at other times under urgent or emergency circumstances, in which case the STATE, its consultants, or its contractors, will make all reasonable efforts to notify CITY beforehand, giving CITY as much notification time as possible.

3. State responsibility. The State shall be responsible, to the extent permitted by law, for damage or injury caused by the State's officers and employees in the scope of their employment provided that the State's liability for such damage or injury has been determined by a court or agreed to by the State. The State shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.

4. Termination of Right of Entry. The right of entry shall terminate on the earlier occurring of (a) twelve (12) months after the date the STATE has obtained the last

discretionary permit required for the PROJECT (the "Permit Date") or (b) completed construction of the new concrete drop structure. Notwithstanding the foregoing, if completion of the PROJECT is delayed by unforeseen circumstances, the right of entry shall continue for such longer period as may be reasonably required and shall terminate with completion of the construction of the PROJECT.

**B. IMPROVEMENTS CONSTRUCTED.**

The existing grouted riprap structures twenty (20) feet upstream and downstream of the bridge that was built by the CITY on the Property shall be demolished and removed, and a new grouted riprap drop structure twenty (20) feet upstream and new grouted riprap channel bottom and banks twenty (20) feet downstream of the bridge shall be constructed on the Property as follows:

1. PROJECT. CITY agrees, subject to the provisions of this AGREEMENT, to allow the STATE to undertake the removal of sediment and debris from areas of the City property as designated and set forth in Exhibit A; to demolish the existing structure twenty (20) feet upstream and downstream of the Woodlawn Bridge that was built by the CITY and is on the Property, as designated and set forth in Exhibit A; and to construct new grouted riprap drop structure twenty (20) feet upstream and new grouted riprap channel bottom and banks twenty (20) feet downstream of the bridge as designated and set forth in Exhibit A (as may be modified by the STATE).

2. CONDITIONS TO AGREEMENT. CITY'S agreement is conditioned upon the following: STATE shall undertake the PROJECT in accordance with the STATE'S design plans as set forth in Exhibit A for the PROJECT (as may be modified by the STATE); and

a. Once the construction of the PROJECT has begun, the STATE shall complete the PROJECT within EIGHTEEN (18) months after the construction Notice to Proceed Date, provided that if the PROJECT cannot be completed within such period of time due to unforeseen circumstances, the STATE may extend the time for completion as it deems necessary. If the STATE is unable to complete the PROJECT due to unforeseen circumstances, the STATE may cancel the PROJECT upon 30 days' notice to the CITY. If the STATE is unable to complete the PROJECT, the STATE shall, as promptly as reasonably possible, restore the surface of the Construction Limits Area, including the existing structure, to the same condition the Construction Limits Area was in prior to commencement of construction and/or demolition, subject to availability of funds.

3. Review of Bids. CITY shall have no right to approve or reject or otherwise participate in the STATE's process for selecting the Contractor or awarding the contract on the PROJECT. However, STATE shall provide CITY with notice of the selected bid (including the identity of the Contractor that submitted the selected bid).

4. Grant of Use and Access by STATE to the CITY. STATE hereby grants the City the perpetual non-exclusive right to use and access the new and existing grouted riprap structures forty (40) feet upstream and downstream of the Woodlawn Drive Bridge that are within STATE property for the purposes of inspection and maintenance (including repair, restoration, and reconstruction).

5. Inspection of the new grouted riprap structures. The CITY shall, at its sole cost and expense, inspect the new grouted riprap structures and at its sole discretion maintain the new grouted riprap structures.

6. Repair and Maintenance of Improvements. Effective as of the completion of

the PROJECT, the CITY shall be solely responsible for obtaining necessary permits and approvals from appropriate agencies, at CITY'S sole cost and expense. The CITY, at its sole cost and expense, shall maintain the new grouted riprap structures, and assist in keeping the Property in a clean, safe, sanitary, and orderly condition. The CITY shall, at its sole cost and expense repair, restore, and reconstruct the new grouted riprap structures or any portion thereof so worn, damages, undermined, or destroyed, including any and all affected improvements, equipment, and appurtenances. The CITY shall not make or knowingly suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Property.

7. Indemnity by CITY. Upon STATE's completion of the PROJECT, CITY agrees on behalf of CITY and CITY'S successors and assigns, to indemnify, ~~defend~~, defend, release, and hold harmless the State of Hawaii, its officials, employees, representatives, and agents, against any claim or liability, including all loss, damages, costs, expenses, and attorneys' fees, for any damage to real or personal property, including environmental damage, or injury to or death of persons occurring on (or in connection with) the Property when such damage, injury, or death results from, arises out of, or is connected with, the City's operation and maintenance of the Improvements, occurring after STATE's completion of the PROJECT.

8. Hazardous Materials.

a. STATE's pre-approval required. The CITY shall not cause or permit the presence, escape, disposal, discharge, or release of any hazardous materials except as permitted by law. The CITY shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into the STATE Property any such materials except to use the ordinary course of the CITY's business, and then only after written notice is

given to the STATE of the identity of such materials and upon the STATE's consent, which consent shall not unreasonably be withheld. As used in this paragraph 8, the "presence, escape, disposal, discharge or release of hazardous materials" includes, but is not limited to oil, fuel, PCB spillage or leakage, improper waste oil disposal and pollution of any water attributed to the CITY's (a) operations and activities on or connected with the STATE Property or the Project or (b) use and access of the STATE property.

b. The CITY's responsibility. If any lender or governmental agency shall ever require testing to ascertain whether the CITY has caused or permitted the escape, disposal, discharge or release of hazardous materials, the CITY shall be responsible for the reasonable costs thereof.

c. "Hazardous materials" definition. For the purpose of this Agreement, "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Clean Water Act, all as amended, or any other federal, state or local environmental law, regulation, ordinance, rule, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

d. CITY's clean-up obligation. Except and to the extent caused by the willful misconduct or negligence of the STATE, upon the termination of this Agreement, the CITY shall, at its sole cost and expense, clean and decontaminate the STATE property and PROJECT area and remove all hazardous materials therefrom, including, without limitation, clean-up of surface and ground waters and making the soil free and clear of all such contaminants and hazardous material to the degree required by the State of Hawaii Department of Health.

**C. OTHER TERMS AND CONDITIONS**



The parties hereto further agree as follows:

1. Effective Date. This AGREEMENT shall become effective upon its execution by all of the parties to the AGREEMENT.

2. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

3. Amendment. This AGREEMENT shall not be amended except in writing signed by the parties.

4. Singular, Plural. In this AGREEMENT, the singular shall include the plural, and the plural shall include the singular, as the case may be.

5. Headings, Captions. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

6. Counterparts. This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same AGREEMENT, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

7. No Party Deemed Drafter. All signatories to this AGREEMENT and their attorneys have had the opportunity to review, comment upon, and amend this AGREEMENT.

All signatories agree that the language hereof is complete, integrated, and unambiguous. If there

is ever a dispute as to the meaning of this AGREEMENT or any part thereof, no party shall be deemed the drafter of the AGREEMENT for purposes of the canon of construction that an instrument is construed against its drafter.

[SIGNATURE PAGE TO MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE  
BRIDGE PROJECT]

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT this  
\_\_\_\_\_ day of \_\_\_\_\_, 2017.

STATE:

Approved by the Board  
of Land and Natural Resources at its  
meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Its Chairperson, Board of Land and Natural  
Resources

APPROVED AS TO FORM:

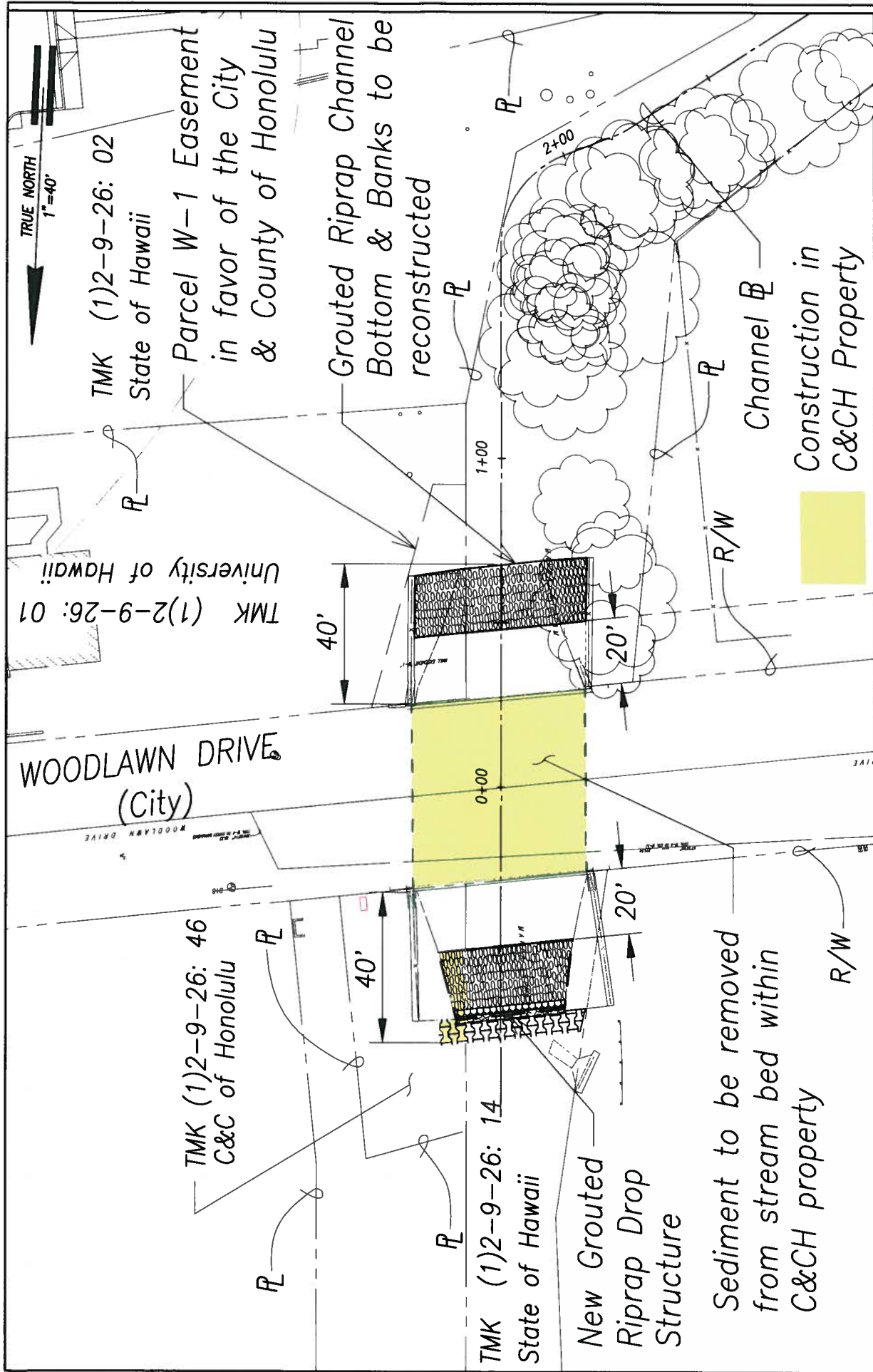
\_\_\_\_\_  
Deputy Attorney General  
STATE OF HAWAII


APPROVED AS TO FORM:

CITY:

\_\_\_\_\_  
Deputy Corporation Counsel  
CITY & COUNTY OF HONOLULU

\_\_\_\_\_  
ROSS S. SASAMURA, P.E.  
Its Director and Chief Engineer  
Department of Facility Maintenance



MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE	
 <p><b>R. M. TOWILL CORPORATION</b>        Planning - Engineering - Environmental Services - Photogrammetry - Surveying - Construction Management        808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494</p>	<p><b>PROPOSED WORK WITHIN CITY &amp; COUNTY OF HONOLULU PROPERTY</b></p>
<b>EXHIBIT A</b>	

**Use and Occupancy Agreement  
University of Hawai'i at Manoa  
UH Mānoa Campus Services**

THIS USE AND OCCUPANCY AGREEMENT ("Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017 ("Execution Date") and shall be effective from \_\_\_\_\_ ("Effective Date"), by and between the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai'i, whose business address is 2444 Dole Street, Bachman Hall, Honolulu, Hawai'i 96822 ("UH"), for the benefit of the University of Hawai'i at Mānoa, ("UHM") Campus Services, whose business address is \_\_\_\_\_, Honolulu, HI 96822 and the STATE OF HAWAII, by its Chairperson of the Department of Land and Natural Resources ("DLNR"), an agency of the State of Hawai'i, whose business and mailing address is Kalanimoku Building, Room 221, 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("User").

1. Property. This Agreement covers User's use of certain designated lands owned by UH that are a part of the UHM faculty housing project known as Kauaiokahaloa Nui Apartments, designated as TMK No. 1-2-9-26: 01 and 03 (por.), having an address of 3029 Lowrey Avenue, Honolulu, Hawai'i 96822 and consisting of approximately 383,662 square feet or 8.8 acres (collectively the "Property").
2. Use Area. The portion of the Property that User will be authorized to use under this Agreement, from and after \_\_\_\_\_, consists of a total of approximately 10,000 square feet and is designated and marked on the map attached hereto as Exhibit A and incorporated herein by reference (the "Use Area"). The User shall not use any other portion of the Property outside of the Use Area without obtaining UH's prior written approval.
3. Purpose of use. User and UH acknowledge and agree that User is being permitted to use the Use Area in connection with User's construction of improvements to the Mānoa Stream which is under the jurisdiction of User and the City and County of Honolulu ("City"), consisting of installation of a concrete channel and associated improvements designed to: (a) improve stream flow within Mānoa Stream and drainage in the area and (b) prevent Mānoa Stream from overflowing its banks and causing flooding in adjacent and nearby areas (collectively the "Project"). UH shall not have any responsibility with respect to the construction or completion of the Project or any costs relating thereto, including, without limitation, any costs relating to User's use of the Use Area.
4. Grant of use and occupancy. UH hereby grants User and User's officers and employees the non-exclusive right to enter, use, and occupy the Use Area for the purposes of (a) accessing the Project area, (b) establishing work areas supporting the Project work, (c) collecting and storing material dredged or removed from Mānoa Stream, (d) transporting such material to and from the Use Area, (e) removing vegetation and brush to create work areas, (f) parking and securing vehicles and equipment, and (g) removing certain trees as may be mutually agreed upon between the parties (collectively the "Authorized Activity"). UH hereby grants User access to the Use Area and the Property to conduct the Authorized Activity in accordance with the schedules to be approved by UH. User's access and use of the Use Area shall not unreasonably interfere with UH's operation of the Property, including any access to the Use Area or the Property by UH or others authorized by UH. UH shall not unreasonably interfere with User's Authorized Activity.
5. Use Time. User is hereby authorized to access and use the Use Area for the Authorized Activity beginning on \_\_\_\_\_, and ending on \_\_\_\_\_, unless this Agreement is extended by mutual written agreement or sooner terminated. User is authorized to conduct the construction portion of the Project work only on weekdays, Monday through Friday, from 8 a.m. to 5 p.m. ("Authorized Times") but not on Saturdays, Sundays, or State of Hawai'i holidays, unless User obtains UH's prior written consent before conducting any construction work at any time other than the Authorized Times.
6. Use fees. UH will not require User to pay a rent or use charge to UH for use of the Use Area.
7. User obligation to maintain. At all times herein, User shall, at User's sole cost, maintain and keep and shall require the User Agents to maintain and keep the Use Area in a strictly clean, sanitary and orderly condition.
8. User to comply with all laws. At its or their sole cost and at no cost to UH, User shall and shall require the User Agents to, comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to this Agreement or the Use Area, now in force or which may hereafter be in force.
9. User responsibility. User shall be responsible for damages or injury caused by User's officers and employees in the course of their employment under this Agreement to the extent that User's liability for such damage or injury has been determined by a court or otherwise agreed to by User, and User shall pay for such damages and injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this Agreement where User is obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to

perform, or pay monies, such obligation shall be subject to and limited by the provisions of this paragraph 9 (User responsibility). UH acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of User. User's obligations under this paragraph 9 shall survive the expiration or earlier termination of this Agreement.

10. User's hazmat obligations. User shall not, and shall require that the UH Agents do not, cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. User shall not, and shall require that the UH Agents do not, allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Property or the Use Area any such materials except to use in the ordinary course of business for User or the User Agents and then only after written notice is given to UH of the identity of such materials and upon UH's consent which consent may be withheld at UH's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by User or the User Agents, then User or the User Agents shall be responsible for the cost thereof. In addition, User shall, and shall require the User Agents to, execute affidavits, representations and the like from time to time at UH's request concerning the best knowledge and belief of User or the User Agents regarding the presence of hazardous materials on or within the Use Area placed or released by User and/or the User Agents
11. User's requirements of its consultants and contractors.
  - a. Separate agreement with UH. User shall require its consultants, contractors, and other third parties involved with the Project on User's behalf (collectively the "User Agents") to execute separate use agreements with UH to access and use the Use Area in connection with the Project.
  - b. User Agents insurance required. User acknowledges that UH will be requiring the User Agents to procure, at their own cost and expense, and maintain during the entire period of this Agreement, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage and policy terms acceptable to UH. User confirms that it has no objection to: (1) UH requiring the User Agents to obtain such insurance or (2) the terms of such required insurance.
  - c. User Agents to indemnify, defend. User shall require the User Agents to indemnify, defend, and hold harmless UH from and against any demand, claim, action or suit for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of User Agents, (2) any failure on the part of the User Agents to perform obligations required under this Agreement and/or a separate use agreement with UH, (3) any failure on the part of User Agents to maintain and keep the Use Area and areas adjacent thereto in good and safe condition and repair, (4) any accident, fire, casualty or nuisance, growing out of or caused by any failure on the part of User Agents, and (5) the non-observance or non-performance of any of the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
  - d. User Agents hazmat indemnity. User shall require the User Agents to indemnify, defend and hold harmless UH from any damages and claims resulting from the release of hazardous materials on, within, or from the Use Area occurring while User or the User Agents is/are in possession, or elsewhere if caused by or attributable to the User Agents. These covenants shall survive the expiration or earlier termination of this Agreement and/or any separate use agreement between the User Agents and UH. For purposes of this Agreement, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
12. User shall implement precautions. In its use and occupancy of the Use Area, User shall and shall require the User Agents to use and implement appropriate precautions and measures to minimize inconveniences to surrounding properties, residents, landowners, and the public in general.
13. User responsible for Project costs. All costs associated with the Project construction and User's use of the Use Area shall be the responsibility of User and/or the User's Agents. UH shall not be responsible for any of such costs.

14. User responsible for pollution control. At its or their sole cost and at no cost to UH, User shall, and shall require the User Agents to, maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from Project construction and/or the User's use and occupancy of the Use Area and shall take, and shall require the User Agents to take, immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean and shall require the User Agents to immediately clean the Use Area, the Property, Mānoa Stream, and its surrounding waters of such pollutant or contaminant and shall and shall require the User Agents to, restore to UH's satisfaction the areas affected by such pollution or contamination, including, without limitation, the Use Area, all at the cost and expense of User and/or the User Agents and at no cost to UH.
15. User to employ BMPs. At its or their sole cost, User shall and shall require the User Agents to employ best management practices during Project construction and its use and occupancy of the Use Area to avoid having silt or dirt enter the Mānoa Stream, waterways, the ocean, or other bodies of water.
16. User discovery of historic properties. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on or within the Use Area, User shall and shall require the User Agents to, comply with Chapter 6E, Hawai'i Revised Statutes, and immediately stop all land utilization or work or both, including Project construction in the area of the discovery and contact and obtain clearance from the DLNR's Historic Preservation Office before continuing land utilization or work, including Project construction in the area of discovery.
17. User may be subject to additional conditions. UH reserves the right to impose additional, but reasonable terms and conditions as UH deems necessary in connection with this Agreement, the Project construction, and User's use and occupancy of the Use Area.
18. User's use may be terminated. This Agreement and User's right to use and occupy the Use Area is revocable and terminable by UH at any time, with or without cause, all at UH's sole discretion, upon sixty (60) days prior written notice, provided that:
  - a. Termination without cause. If such termination is not based on a breach of the terms and conditions herein by User or the User Agents, UH and User will work together to identify a mutually agreeable alternative site that User may use for the Project work and the Authorized Activity that is within the reasonable vicinity of the Use Area.
  - b. Termination for cause. If UH's termination is based on a breach of terms and conditions herein by User or the User Agents, UH will allow User and the User Agents sixty (60) days to cure any such breach to UH's reasonable satisfaction, provided further that if User or User Agents are unable to complete or effect the cure within said sixty (60) day period, UH may, at UH's sole discretion, accept the efforts of User and/or the User Agents to complete or effect such cure if User or the User Agents commence such cure within the first thirty (30) days of receiving UH's written notice and diligently continue said efforts and make progress toward completion satisfactory to UH.
  - c. Surviving obligations. Upon such termination, whether with or without cause, User shall continue to be responsible to comply with User's obligations that are intended to or otherwise survive such termination, particularly with respect to incidents or events occurring or taking place during the time this Agreement remained in effect.
19. User may not assign without UH consent. User may not sell, assign, convey, lease, mortgage, or otherwise transfer or dispose of any of User's rights or obligations under this Agreement, including its right to use and occupy the Use Area, without first obtaining UH's prior written consent, which consent may be withheld or conditioned as UH deems necessary.
20. Disputes. If any disputes arise between UH and User concerning any aspect of this Agreement, UH and User will use their best efforts to address and resolve such disputes and the parties agree to negotiate face-to-face within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of this Agreement. The meeting will be held on the island of Oahu, Hawai'i, at the place of business of the party receiving the letter unless the parties mutually agree to meet at another place. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, and the dispute cannot be resolved between the staffs of UH and the User, the parties agree that the UH President and User's Chairperson will together address and attempt to resolve the dispute. If the UH President and User's Chairperson are unable to resolve the dispute, the dispute will be submitted to the Governor of Hawai'i for resolution. The decision of the Governor on any dispute under this Agreement shall be final and binding upon the parties.



21. Withdrawal or Relocation. UH shall have the option at any time to withdraw all or portions of the Use Area upon giving sixty (60) days prior written notice to User and UH will make reasonable efforts to relocate User to another site within the same vicinity of the Use Area. UH shall not be obligated to reimburse User for any costs incurred by User in such relocation. Upon receipt of UH's written notice to vacate, User shall vacate and surrender all or any portion of the Use Area so requested by UH within thirty (30) days of said receipt unless User notifies UH that User requires additional time to effect or implement the relocation.
22. Cooperation. User shall be responsible for obtaining, at User's sole cost and expense and at no cost to UH, all governmental approvals necessary to construct the Project and use and occupy the Use Area, including, without limitation, dredging, removing, and storing material from the Project area on or within the Use Area and cutting and removing any trees from the Use Area. User will fully cooperate with UH in the preparation and processing of any applications for governmental approvals which UH may be required to submit in connection with the use and operation of the Property. User shall be obligated to promptly and timely join in and execute appropriate applications, requests, and other similar documents.
23. Binding effect. The term "UH" as used herein shall mean the UNIVERSITY OF HAWAI'I, and the term "User" as used herein shall mean the STATE OF HAWAI'I and DLNR and this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors, and assigns.
24. Amendment. This Agreement shall not be amended except in writing signed by the parties.
25. Counterparts; facsimile signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. The submission of a signature page transmitted by email or facsimile (or similar electronic transmission facility) shall be considered as an "original" signature page for purposes of this Agreement.
26. Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid, void, or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the full extent permitted by law.
27. Governing Law. This Agreement shall be governed by, interpreted, construed, and enforced in accordance the laws of the State of Hawai'i.
28. Waiver. Any waiver of the terms, conditions, or provisions of this Agreement or a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the terms, conditions, or provisions of this Agreement or such party's rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take any subsequent action. No exercise or enforcement by any party of that party's rights or remedies under this Agreement will preclude the enforcement by such party of any of its other rights or remedies that are available under this Agreement or by law.
29. No property interest transferred. User understands and agrees that User is not acquiring any property interest of any kind in the Use Area and/or the Property or the right to use or occupy Use Area beyond that which is specifically permitted hereunder with respect to the Authorized Activity within the Use Area during the term of this Agreement. User is not entitled to, and UH is not obligated to grant to User, any rights to use the Use Area beyond the term of this Agreement.

[Remainder of page intentionally left blank]

[Signature page to follow]

IN WITNESS, WHEREOF, User and UH have, by their duly authorized officers, duly executed and entered into this Agreement on the day and year first above written.

USER:

STATE OF HAWAI'I,  
:

By \_\_\_\_\_  
Suzanne Case  
Chairperson  
  
Board of Land and Natural Resources  
Department of Land and Natural Resources

Approved as to Form:

\_\_\_\_\_  
Cindy Young  
Deputy Attorney General

UH:

UNIVERSITY OF HAWAI'I, the state university and a body  
corporate of the State of Hawai'i

By \_\_\_\_\_  
Duff Zwald  
Its Director of the Office of Procurement and Real  
Property Management

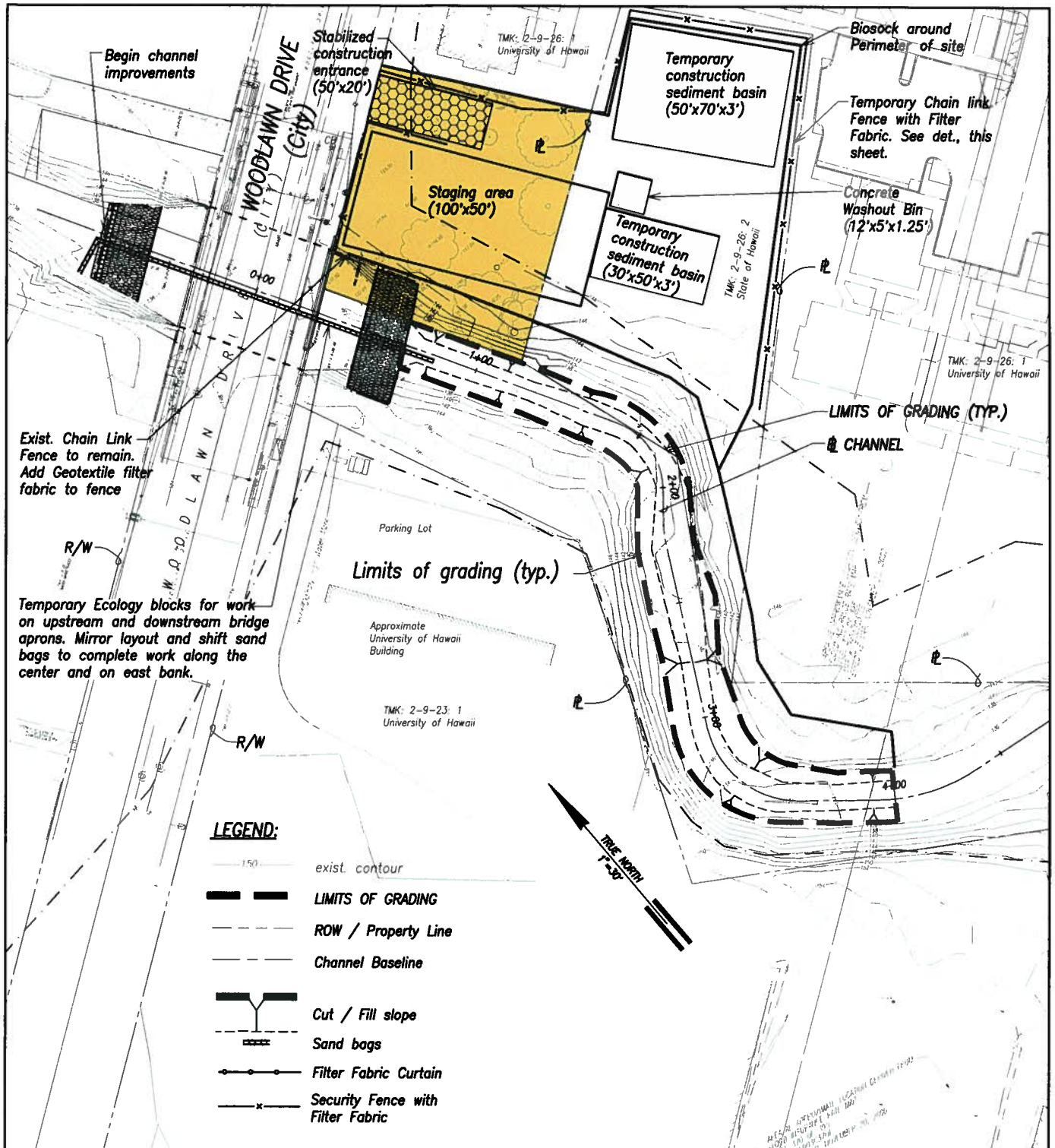
Recommend Approval:

By \_\_\_\_\_  
Kathleen Cutshaw  
Vice Chancellor for Administration, Finance, and  
Operations  
University of Hawai'i at Manoa

Approved as to Form:

Office of University General Counsel:

\_\_\_\_\_  
Bruce Y. Matsui  
Associate General Counsel





UNIVERSITY  
of HAWAI'I  
SYSTEM

Office of the Vice President for Legal Affairs and  
University General Counsel

October 27, 2017

**Via E-Mail** (\_\_\_\_\_)

Office of the Chairperson  
Department of Land and Natural Resources  
State of Hawai'i  
Attention: Engineering Division Chief Carty Chang  
Land Division Chief Russell Tsuji  
Kalanimoku Building  
1151 Punchbowl Street, Room \_\_\_\_  
Honolulu, Hawaii 96813

**Via E-Mail** (\_\_\_\_\_)

Office of the Director  
Department of Design and Construction  
City and County of Honolulu  
Attention: Director Robert J. Kroning, P.E.  
650 South King Street, 11<sup>th</sup> Floor  
Honolulu, Hawaii 96813

**RE: Tri-Party Letter Agreement – Mānoa Stream Improvement Project  
Use and Maintenance of University/City and County Easement Area**

Dear Division Chiefs Chang and Tsuji and Director Kroning:

The State of Hawai'i, by its Department of Land and Natural Resources ("DLNR"), will be commencing its Mānoa Stream Improvement project ("Project") within the next few weeks. The Project work will involve using a portion of the easement area ("Work area") covered by that Grant of Wall Easement between the University of Hawai'i ("UH"), as grantor, and the City and County of Honolulu ("City") dated September 26, 1994, recorded in the State Bureau of Conveyances on October 18, 1994, as Document No. 94-170589, and located at or adjacent to the Mānoa Stream ("Easement").

The purpose of this letter is to confirm an understanding between DLNR, the City, and UH under which the DLNR's contractor, Frank Collucio Construction Company ("FCCC") would be permitted to use the Work area to complete the Project work ("Stream Improvements") and the City would thereafter be responsible for maintaining and keeping in good repair and condition the Stream Improvements.

Under the Easement, the City is required to obtain UH's approval before doing any work or allowing work to be done in the area covered by the Easement ("Easement Area") which

Office of the Chairperson,  
State Department of Land and Natural Resources  
Office of the Director  
City and County Department of Design and Construction  
October 27, 2017  
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includes the Work area. UH and the City hereby approve the Project work and the Stream Improvements to be constructed and completed by DLNR and FCCC within the Work area. DLNR and FCCC are hereby granted the right to enter into the Easement Area and construct and complete the Project work and the Stream Improvements within the Work area, to the extent that such Project work does not unreasonably interfere with the City's use and maintenance of the Easement Area and subject to the terms of the Easement and that certain Use and Occupancy Agreement between UH and FCCC dated \_\_\_\_\_.

Upon completion of the Project work and the Stream Improvements, DLNR will notify the City and UH in writing of the project completion and the City will thereafter be responsible for the maintenance and repair of the Stream Improvements as part of the City's obligation under the Easement to keep and maintain the Easement Area and all improvements thereon in good repair and condition.

If the terms of this letter agreement are consistent with your understanding, please have it executed in the space provided below and return the same to our office. We have enclosed three originals for your signature. Each party could thereafter have one original.

If you have any questions or concerns, feel free to contact me by phone (956-\_\_\_\_) or by email (\_\_\_\_@hawaii.edu).

Very truly yours,

Carleton Ching  
Land Development Director  
University of Hawai'i

Agreed and Accepted this \_\_\_\_ day of \_\_\_\_\_, 2017:

State of Hawai'i, by its Department of Land  
And Natural Resources

By \_\_\_\_\_  
Suzanne Case, Chairperson  
Department of Land and Natural Resources

Agreed and Accepted this \_\_\_\_ day of \_\_\_\_\_, 2017:

Office of the Chairperson,  
State Department of Land and Natural Resources  
Office of the Director  
City and County Department of Design and Construction  
October 27, 2017  
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City and County of Honolulu, by its Department of  
Design and Construction

By \_\_\_\_\_  
Robert J. Kroning  
Its Director

cc: Jan Gouveia, Vice President for Administration  
Kalbert Young, Vice President for Budget & Finance/CFO

DRAFT