

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

December 7, 2018

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

DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO ENTER INTO A
PROJECT COLLABORATION AGREEMENT WITH THE HAWAIIAN ELECTRIC
COMPANY, INC. FOR THE DREDGING AND HECO CABLE REMOVAL PROJECT
WITHIN THE HAWAIIAN ELECTRIC EASEMENT IN THE ALA WAI CANAL,
OAHU, HAWAII

BACKGROUND:

The Hawaiian Electric Company, Inc. ("HECO") has an on-going project to relocate two existing 46kV cables laying across the bottom of the Ala Wai Canal within a 200-foot wide easement in their favor with new cables installed beneath the canal by directional drilling. Upon completion, HECO will deenergize the two existing 46kV cables, allowing Department of Land and Natural Resources ("DLNR") to remove the existing 46kV cables, concrete cable protection panels and dredge this area. HECO will be responsible for these costs as stated in the Project Collaboration Agreement in Exhibit A.

In early 2019 DLNR-Engineering is anticipating to start a larger project dredging the Ala Wai Canal from Ala Moana Boulevard to Ainakea Way and the Manoa-Palolo Drainage Canal from the Ala Wai Canal to Date Street. This project consists of dredging and disposing of material within the Ala Wai Canal, and repairing portions of damaged Canal walls, walkways and stairways. This project does not include any dredging work within HECO's 200-foot wide easement. A General Plan is attached as Exhibit B.

The reasons for separating the dredging and cable removal work into separate DLNR projects are as follows:

1. Ensure the schedule for the DLNR's larger dredging project would not be adversely impacted by HECO's new cable relocation project.
2. Better accountability of funds with separate scopes of work.
3. Although there are two projects, better coordination and communication with the community could occur due to the distinctly different types of work being performed reducing the impacts to canal users than if work was done under a single contract.

PROJECT DESCRIPTION AND LOCATION:

The project is within the Ala Wai Canal and limited to the 200-foot wide HECO easement area (See Exhibit B). The work consists of removing and disposing twelve 20-foot by 8-foot precast concrete panels and two 46kV cables, dredging and disposing of material within the HECO easement in the canal, and related work.

DLNR will solicit bids for the project in early 2019 and coordinate with HECO to transfer the required funds to award the project.

CHAPTER 343, HRS, ENVIRONMENTAL IMPACT STATEMENT

The work proposed within the HECO easement area is included in the Final Environmental Impact Statement (EIS) which was accepted by the Governor on January 8, 2018 with the Acceptance of the Final EIS published in the Office of Environmental Quality Control's Environmental Notice dated February 8, 2018.

AGREEMENT:

Because this project involves DLNR to solicit, award, procure, and manage the construction contract, and HECO to pay for the contract work, the draft Project Collaboration Agreement was prepared and is attached as Exhibit A.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Delegate authority to 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 HECO, as needed, to carry out the intent of the project scope of work, collect funds from HECO, and make payment to the Contractor.
2. Delegate authority to the Chairperson to approve, award and enter into a construction contract and, if necessary, supplemental agreements, in accordance with HRS Chapter 103D for this project and authorize the Chairperson to sign the necessary documents pertaining to this project, subject to available funding, and review and approval as to form by the Department of the Attorney General.

Request Authorization for
Agreement with HECO
Oahu, Hawaii


December 7, 2018

Respectfully Submitted,



CARTY S. CHANG,
Chief Engineer

Approved for Submittal:



SUZANNE D. CASE
Chairperson

Exhibits: A. Draft Project Collaboration Agreement
 B. General Plan

DRAFT
PROJECT COLLABORATION AGREEMENT
**(DREDGING AND CABLE REMOVAL PROJECT WITHIN THE HAWAIIAN ELECTRIC
EASEMENT IN THE ALA WAI CANAL)**

THIS PROJECT COLLABORATION AGREEMENT ("AGREEMENT") is entered as of this ____ day of _____, 2019, by and between the Department of Land and Natural Resources, by its Board of Land and Natural Resources ("STATE"), whose principal place of business is 1151 Punchbowl Street, #221, Honolulu, Hawai'i 96813, and HAWAIIAN ELECTRIC COMPANY, INC. ("Hawaiian Electric"), whose principal place of business is 900 Richards Street, Honolulu, Hawai'i 96813.

WITNESSETH THAT:

WHEREAS, the STATE is undertaking a project for the maintenance and management of the Ala Wai Canal, which will include, but not be limited to, the dredging of the Ala Wai Canal, repairing eroded and damaged canal walls, improving and repairing walkways/stairways along the Ala Wai Canal, and other related works ("Canal Dredging Project"). The Canal Dredging Project will cover about 7,200 linear feet of the Ala Wai Canal from Ala Moana Boulevard (mauka side of canal) to near Ainakea Way and about 2,000 linear feet of the Manoa-Palolo Drainage Canal from the Ala Wai Canal to just below Date Street;

WHEREAS, Hawaiian Electric is undertaking the Ala Wai 46 kilovolt ("KV") Underground Cable Relocation project, to include installation of new 46KV underground cables between Hawaiian Electric's substation in Waikiki and poles mauka of Ala Wai Canal, and utilizing a construction method known as horizontal directional drilling under the Ala Wai Canal ("Cable Relocation Project");

WHEREAS, Hawaiian Electric is undergoing the Cable Relocation Project to avoid future interference with the STATE's efforts to periodically dredge the Ala Wai Canal;

WHEREAS, the STATE and Hawaiian Electric recognize the benefits to both the STATE and Hawaiian Electric if the parties combine work within Hawaiian Electric's easement in the Ala Wai Canal ("Easement Area"). The work will include (a) dredging, (b) removing the existing 46 KV sub-transmission cables traversing the Ala Wai Canal, and (c) removing concrete panels that were installed in 2003 to protect the cables during the STATE's prior dredging efforts. The anticipated benefits of this approach include reduction in the overall costs to both Hawaiian Electric and the STATE, and minimizing the impacts on traffic, businesses, and community along the project route. The proposed combined STATE and Hawaiian Electric project within the Hawaiian Electric easement in the Ala Wai Canal will be referred to herein as the "COMBINED PROJECT"; and

WHEREAS, the STATE and Hawaiian Electric desire to memorialize their collaboration agreement and the terms and conditions upon which both parties will agree to abide by to pursue and realize the COMBINED PROJECT.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties mutually agree to the following:

1. Purpose of Collaboration. The parties agree that the purpose of this AGREEMENT is to:

- a) Coordinate working in the public space to minimize impacts/disruption to traffic, business, and the community along the COMBINED PROJECT route; and
- b) Partner to reduce overall costs to both Hawaiian Electric and the STATE.

2. Framework for Bidding (by the STATE) of the COMBINED PROJECT.

a) The STATE will solicit bids for the following services to be performed only within the Easement Area:

- i) Maintenance dredging of the Ala Wai Canal;
- ii) Removal and disposal of cables in the Ala Wai Canal; provided that portions of cable closest to the canal walls will be abandoned in place;
- iii) In-water dredging within the Easement Area as necessary for cable removal, and associated work necessary for disposal of material;
- iv) Capping the ends of each cable within a certain distance of the walls of the canal, as specified by Hawaiian Electric;
- v) Removal and disposal of concrete panels currently covering the cables in the Ala Wai Canal;
- vi) Implementation of required erosion control/Best Management Practices as necessary for the Easement Area; and
- vii) Mobilization and demobilization within the Easement Area.

b) The parties acknowledge and agree that the COMBINED PROJECT will not start before Hawaiian Electric completes its Cable Relocation Project, and de-energizes the existing cables in the Ala Wai Canal.

3. Division of Responsibilities.

a) In connection with the COMBINED PROJECT, the STATE shall be responsible for the following:

i) Obtaining permits and approvals required for the COMBINED PROJECT;

ii) Preparing the Invitation for Bid for the COMBINED PROJECT, including inserting the project specifications, plans, and requirements for the removal of cables and concrete panels ("IFB");

iii) Providing Hawaiian Electric with an opportunity to review and comment on the IFB, and keeping Hawaiian Electric apprised during the bidding phase;

iv) Soliciting bids through the IFB, performing bid review, and awarding the contract for the COMBINED PROJECT ("Project Contract") to the successful bidder ("Contractor"), in accordance with applicable procurement regulations;

v) Providing Hawaiian Electric an opportunity to elect whether to proceed with the COMBINED PROJECT prior to issuing the award of the Project Contract;

vi) Administering the contract and managing and overseeing the performance of the Contractor during project execution for the COMBINED PROJECT subject to consultation with the construction inspector hired by Hawaiian Electric to perform quality assurance inspections;

vii) Ensuring that Hawaiian Electric's funds for the Combined Project Contract Price (defined below) are disbursed to the Contractor in accordance with the procedures agreed upon by both parties and stated in section 5 of this AGREEMENT;

viii) Keeping Hawaiian Electric apprised of the status of the COMBINED PROJECT and permitting Hawaiian Electric to attend any project meetings with the Contractor;

ix) Providing recommendations to Hawaiian Electric with respect to any change requests submitted by the Contractor; and

x) Cooperating with Hawaiian Electric's designated construction inspector assigned to consult with the STATE's project manager and perform quality assurance inspections of the Contractor's performance of the COMBINED PROJECT.

b) In connection with the COMBINED PROJECT, Hawaiian Electric shall be responsible for the following:

- i) Supporting the STATE's efforts to obtain necessary permits and approvals by providing relevant documentation with respect to the COMBINED PROJECT;
- ii) Providing input with respect to the STATE's procurement efforts;
- iii) Preparing project specifications and requirements for only those portions of the COMBINED PROJECT identified in section 2(a)(ii), (iv) and (v) in accordance with any documentation format that needs to be followed for IFBs issued by the STATE;
- iv) Providing the STATE with timely notice, upon the STATE's receipt of the bids, of Hawaiian Electric's election to proceed with the COMBINED PROJECT such that the STATE will be able to timely award the Project Contract to the Contractor ("Proceed Notice");
- v) Prior to the award of the Project Contract, depositing the Combined Project Contract Price, as defined below, to a STATE trust account ("Trust Account") for disbursement in accordance with this AGREEMENT;
- vi) Actively supporting the STATE's contract administration and project management efforts with respect only to the COMBINED PROJECT;
- vii) Engaging and participating in project meetings and providing necessary input in the management of the COMBINED PROJECT during work execution of the same by the Contractor;
- viii) Designating a construction inspector who will be assigned to consult with the STATE's project manager and perform quality assurance inspections of the Contractor's performance of the COMBINED PROJECT;
- ix) Timely funding the Trust Account with any additional contribution as necessary to fund any agreed upon and approved change orders;
- x) Coordinating with the STATE and the Contractor, and assuming responsibility, for timely cutting the cables to be removed by contractor and capping the ends of each cable as described in section 2(a)(ii) and (iv) of this AGREEMENT; and
- xi) Maintaining responsibility for cable and other Hawaiian Electric property that is left in place.

4. Allocation of Costs.

- a) Unless otherwise expressly provided herein, each party shall bear its own costs incurred in connection with the performance of their respective responsibilities under section 3 of this AGREEMENT, and neither party shall be entitled to payment or reimbursement from the other party for such costs.

b) The STATE shall be responsible for the funding and payment of all costs and fees incurred in connection with the Canal Dredging Project.

c) The STATE shall be responsible for the funding and payment of all costs and fees related to the contract administration, project management and construction management of the COMBINED PROJECT, unless otherwise mitigated by the payment and funding obligations of Hawaiian Electric, as described in section 4(d) below.

d) Hawaiian Electric shall be responsible for the payment and funding of the following items:

i) The Combined Project Contract Price;

ii) All costs related to the construction inspector Hawaiian Electric assigns to consult with the STATE's project manager and perform quality assurance inspections of the Contractor's performance of the COMBINED PROJECT; and

iii) Any increase to the Combined Project Contract Price only to the extent such increase is attributable to change orders or change requests agreed to and accepted by Hawaiian Electric for changes to the COMBINED PROJECT.

5. Hawaiian Electric's Contribution; Disbursement of Funds.

a) Contributions of Funds by Hawaiian Electric.

i) Initial Contribution. Prior to the STATE's award of the Project Contract following its receipt of Hawaiian Electric's Proceed Notice, Hawaiian Electric shall deposit in the Trust Account an amount equal to the Contractor's price for the COMBINED PROJECT, plus an additional contingency equal to ten percent (10%) of the foregoing amount ("Combined Project Contract Price").

ii) Subsequent Contribution. Prior to initiating any change orders that are agreed to and accepted by Hawaiian Electric for changes to the COMBINED PROJECT's scope of work ("Combined Project Change Orders"), Hawaiian Electric will deposit an amount equal to any increase in the Combined Project Contract Price resulting from or attributable to such Combined Project Change Orders.

iii) Contribution Limits. Hawaiian Electric's contributions for the COMBINED PROJECT shall be subject to the limitations expressly set forth in section 6 this AGREEMENT.

b) Trust Account.

i) Hawaiian Electric will deposit to the Trust Account (A) the Combined Project Contract Price prior to the STATE's award of the Project Contract; and (B) any subsequent contribution under section 5(a)(ii) of this AGREEMENT prior to the initiation of any Combined Project Change Order.

c) Disbursement of Funds.

i) The funds contributed by Hawaiian Electric to the Trust Account shall be disbursed to the Contractor on an as-needed basis solely for purposes of fulfilling State's payment obligations to the Contractor for work performed on the COMBINED PROJECT; provided, that, within ten (10) days of the distribution or release of any funds from the Trust Account as requested by STATE, the STATE shall notify Hawaiian Electric in writing of such distribution/release of funds. In addition, the STATE shall provide to Hawaiian Electric an itemized accounting of funds deposited into and distributed from the Trust Account during a calendar quarter within ten (10) days following the end of such calendar quarter.

ii) Hawaiian Electric's funds shall be used only to fulfill the STATE's payment obligations to the Contractor, and only for work performed on the COMBINED PROJECT.

iii) All funds remaining in the Trust Account will be disbursed/returned to Hawaiian Electric following the earliest to occur of (A) the termination of this AGREEMENT or the COMBINED PROJECT; or (B) the completion of the COMBINED PROJECT.

6. Change Requests and Change Orders.

a) Hawaiian Electric retains the right to request that the State issue change orders for the COMBINED PROJECT (force account work) to the Contractor, provided that the full cost for such change orders will be the responsibility of Hawaiian Electric.

b) Change requests from the Contractor related to the COMBINED PROJECT will follow the guidelines below.

i) The STATE.

A) Upon receipt of any change request from the Contractor, the STATE shall review and provide a recommendation to Hawaiian Electric as to whether to accept or reject the change request.

B) The STATE shall retain the right to reject or accept the change request, provided that the STATE shall only be entitled to a contribution from Hawaiian Electric for any increase to the Combined Project Contract Price if Hawaiian Electric accepts the STATE's recommendation to accept the change request.

C) The STATE hereby waives any claim, including, without limitation, any claims/damages for schedule delay or impact to STATE-related work, or right to seek additional contributions from Hawaiian Electric for any increase in cost of the Canal Dredging Project arising solely out of or relating to (1) changes, claims or additional work scope in STATE-related work (and not work related to the COMBINED PROJECT) or (2) third-party conduct beyond Hawaiian Electric's control, including,

without limitation, an act or failure to act by the STATE or the Contractor (e.g., failure to obtain and maintain all necessary permits and approvals).

ii) Hawaiian Electric.

A) Upon receipt of the recommendation from the STATE to accept the change request, Hawaiian Electric shall provide written notice to the STATE within fifteen (15) working days of Hawaiian Electric's determination to accept or reject such change request.

B) If Hawaiian Electric's acceptance of the change request causes the Combined Project Contract Price to increase, Hawaiian Electric will deposit such increased amount as its contribution to the Trust Account within the time period agreed upon by the parties.

C) Hawaiian Electric shall not be liable to the STATE for any delays in the performance of the Canal Dredging Project or the COMBINED PROJECT caused by or attributable to third-party conduct beyond Hawaiian Electric's control, including, without limitation, an act or failure to act by the STATE or the Contractor (e.g., failure to obtain and maintain all necessary permits and approvals), or Hawaiian Electric's failure to timely decide whether to proceed with the COMBINED PROJECT and/or any change orders or change requests to the scope of the COMBINED WORK as recommended or requested by the STATE or the Contractor.

c) Differing Site Condition. If the change request is due to a legitimate differing site condition claim such that the Contractor will be entitled to increase its contract price, and only if such differing site condition is within Hawaiian Electric's areas of responsibility, as outlined in section 3(b) of this AGREEMENT, Hawaiian Electric will be required to accept the STATE's recommendation to accept the Contractor's change request with respect to the differing site conditions claim.

d) Change Order Cap. Hawaiian Electric's obligation to contribute funds to the Trust Account for a change request from the Contractor or a change order issued by the STATE to the Contractor shall be limited to, in the aggregate, \$_____ ("Change Order Cap"), provided however, that such cap shall be automatically increased for any change orders resulting from a differing site condition claim within the Easement Area or change orders specifically requested by Hawaiian Electric (force account work). The Change Order Cap may be revised upon mutual agreement by both parties if deemed necessary for the completion of the COMBINED PROJECT.

7. Termination Rights.

a) Prior to Award. Hawaiian Electric has the right not to proceed with the COMBINED PROJECT and to terminate this AGREEMENT prior to the award of the Project Contract upon delivery of written notice to the STATE of such election to terminate. Upon its election of this right to terminate, Hawaiian Electric will have no obligation to make any contributions to the Trust Account in connection with or with respect to the COMBINED PROJECT. Notwithstanding the foregoing, if Hawaiian

Electric desires to terminate the COMBINED PROJECT, Hawaiian Electric will nonetheless be responsible for removing their improvements within the Easement Area pursuant to the terms of the easement.

b) Following Award.

i) Hawaiian Electric has the right to terminate the COMBINED PROJECT and this AGREEMENT for convenience at any time after the award of the Project Contract upon delivery of written notice to the STATE of such election to terminate. Upon Hawaiian Electric's election of this right to terminate: (A) the STATE will have the right to use Hawaiian Electric's contribution to pay for the cost of work performed by the Contractor for the COMBINED PROJECT up to the point of termination and for reasonable termination costs incurred by the Contractor; and (B) Hawaiian Electric shall nonetheless be required to complete the COMBINED PROJECT's removal of cables and concrete panels scope of work at its own cost.

ii) The STATE has the right to terminate this AGREEMENT for convenience at any time after the award of the Project Contract upon delivery of written notice to Hawaiian Electric of such election to terminate. Upon the STATE's election of this right to terminate, Hawaiian Electric will be relieved of any obligation to remove its improvements within the Easement Area.

8. Disputes. If any dispute arises between Hawaiian Electric and the STATE concerning any aspect of this AGREEMENT and its execution including agreement on the amount of additional contribution by Hawaiian Electric, Hawaiian Electric and the STATE will use their best efforts to address and resolve such disputes with in-person discussions. Both parties hereby commit to meet face-to-face within five (5) working days of receipt of a letter from the other party describing the nature of the dispute and referencing this section of this AGREEMENT, and attempt in good faith to resolve the dispute (the "Management Meeting"). Party representatives attending the Management Meeting shall be individuals with full authority to settle such dispute and shall take place in Honolulu, Hawai'i, at the place of business of the party issuing the letter unless the parties mutually agree to meet at another place. If such dispute is not resolved by agreement pursuant to this section, either party may commence an action in a court of competent jurisdiction in the State of Hawai'i.

9. Severability. If any provision of this AGREEMENT shall be judged by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable for any reason, the same shall in no way affect, to the maximum extent permissible by law, any other provisions of this AGREEMENT, the application of such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this AGREEMENT as a whole, and to the extent necessary, this AGREEMENT shall be construed as if the void, invalid, illegal, or unenforceable provision had never been contained herein.

10. Waiver. Any waiver of the terms, conditions, or provisions of this AGREEMENT or a party's right 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 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 available under this AGREEMENT or by law.

11. Waiver and Release of Consequential Damages. To the extent permitted by applicable law, the STATE and Hawaiian Electric mutually waive and release the other party from all claims of consequential, incidental, indirect, special, exemplary or punitive losses or damages (including, but not limited to, loss of goodwill; loss of contracts; loss of actual or anticipated profits, revenues or product; loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital) arising out of, related to, or in connection with this AGREEMENT, or the breach thereof.

12. Hawaiian Electric to Be Afforded Certain Rights and Protection Under the STATE's Contract for the COMBINED PROJECT. As set forth below, the STATE shall include Hawaiian Electric as a beneficiary to certain rights and protections afforded by the Contractor to the STATE under the Project Contract to the same extent that such rights and protections are afforded to the STATE:

a) Hawaiian Electric will be included as an additional insured to the extent the STATE is provided such coverage by the Contractor;

b) Hawaiian Electric will be included as an indemnitee in all indemnification obligations afforded to the STATE by the Contractor; and

c) Hawaiian Electric will be granted a waiver and release of consequential damages from the Contractor to the extent that the STATE is afforded such waiver and release.

13. Governing Law. This AGREEMENT shall be construed, interpreted and applied in accordance with the internal laws of the State of Hawai'i without giving effect to doctrines relating to conflicts of laws.

14. No Third Party Beneficiaries. No term or provision of this AGREEMENT is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

15. No Partnership. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

16. Amendments. This AGREEMENT shall not be altered, amended, modified or otherwise changed, in any respect or whatsoever, except by a writing duly executed by the STATE and Hawaiian Electric. The STATE and Hawaiian Electric hereby

acknowledge and agree that they will make no claim at any time that this AGREEMENT has been orally altered or modified in any respect whatsoever. This AGREEMENT contains the entire agreement between the STATE and Hawaiian Electric and supersedes all prior oral and written agreements, representations, negotiations and correspondence concerning the COMBINED PROJECT.

17. Binding on and Inuring to Benefit of Successors and Assigns. This AGREEMENT shall be binding upon, and shall inure to the benefit of the parties, and their respective successors and assigns.

18. Notices. All notices and other communications in connection with this AGREEMENT shall be in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission or e-mail to the address as shown below. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below, or the non-receipt of any facsimile transmission sent to the facsimile number set forth in hereinbelow resulting from the non-operation of the receiving party's facsimile equipment, shall be deemed to be receipt of such notice for the purposes of this AGREEMENT.

The STATE:

State of Hawai'i
Department of Land and Natural Resources
Engineering Division, Room 221
1151 Punchbowl Street
Honolulu, Hawai'i 96813
Attention: _____
Telephone: _____
Facsimile: _____

Hawaiian Electric:

Hawaiian Electric Company, Inc.
PO Box 2750
Honolulu, Hawai'i 96840
Attention: Jayson Shibata
Telephone: (808) 543-7902
Facsimile: (808) 203-1773
Email: jayson.shibata@hawaiianelectric.com

With a copy to:
Hawaiian Electric Company, Inc.
PO Box 2750
Honolulu, Hawai'i 96840
Attention: Legal Department

Facsimile: 808 543-7302

Email: legalnotices@hawaiianelectric.com

19. Regulatory Approval. This AGREEMENT shall be subject to and contingent upon any and all required governmental and regulatory consents, approvals, and authorization, including those of the Public Utilities Commission. In the event the party that is subject to such regulatory approval is unable to obtain necessary approval, this AGREEMENT shall be deemed null and void, and each party shall bear their own costs and expenses incurred in relation to this AGREEMENT.

20. Counterparts; Facsimile Execution. The parties hereto agree that this instrument 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 upon all of the parties hereto, notwithstanding that 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 and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile shall be deemed for all purposes to be an original, executed counterpart hereof.

IN WITNESS WHEREOF, the STATE and Hawaiian Electric have executed this AGREEMENT as of the date first above written.

DEPARTMENT OF LAND AND
NATURAL RESOURCES, by the Board
of Land and Natural Resources

By: _____

Name: _____

Its: _____

APPROVED BY THE BOARD OF
LAND AND NATURAL
RESOURCES AT THEIR MEETING
HELD ON:

APPROVED AS TO FORM

Deputy Attorney General

HAWAIIAN ELECTRIC COMPANY, INC.

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Exhibit B. General Plan

