

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

June 12, 2020

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

PSF No.: 200D-030

OAHU

Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Maintenance of Erosion Control Improvement Purposes; Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-026: portions of 014 and 043.

APPLICANT:

City and County of Honolulu ("City")

LEGAL REFERENCE:

Sections 171-55 and 95, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government lands situated at Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-026: portions of 014 and 043, as shown on the maps attached as **Exhibit A1** and **A2**.

AREA:

Easement 1	1,605 square feet
<u>Easement 2</u>	<u>2,109 square feet</u>
TOTAL	3,714 square feet, more or less

ZONING:

State Land Use District:	Urban
City & County of Honolulu LUO:	R-7.5, Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered.

CHARACTER OF USE:

Right, privilege and authority to conduct, construct, use, maintain, repair, replace and remove erosion control improvement and associated structures over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," Part 1, item 40 that states, "creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Government agency.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
2. Process and obtain designation of easement approval from the Department of Planning and Permitting at Applicant's own cost.

Note: Department of Land and Natural Resources, Engineering Division ("DLNR"), is working with its consultant on this project to meet the above-mentioned requirement.

REMARKS:

On May 10, 2018 the Board, City and County of Honolulu, and the University of Hawaii signed a Triparty Agreement letter for the Manoa Stream Improvements at Woodlawn Drive Bridge Project ("Project"). The Project, with DLNR as the lead, calls for the removal of previously installed structures and installation of improvements to the stream on both

sides of the Woodland Drive Bridge. A Memorandum of Agreement (**Exhibit C**) was also signed between DLNR and the City to document the latter's agreement to maintain the improvements. Notwithstanding the executed memorandum of agreement, staff believes an easement document with the City as grantee with all relevant terms and conditions with legal description is appropriate.

In response for comments from other Government agencies, the Board of Water Supply, the Department of Design and Construction, and the Department of Facilities Maintenance had no objection/comment to the request and concurs with the proposed EA exemption. The Division of Aquatic Resources, and the Office of Hawaiian Affairs have not responded to solicitation for comment before the response deadline.

RECOMMENDATION: That the Board:

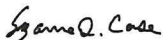
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easements to the City and County of Honolulu covering the subject area for erosion control purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



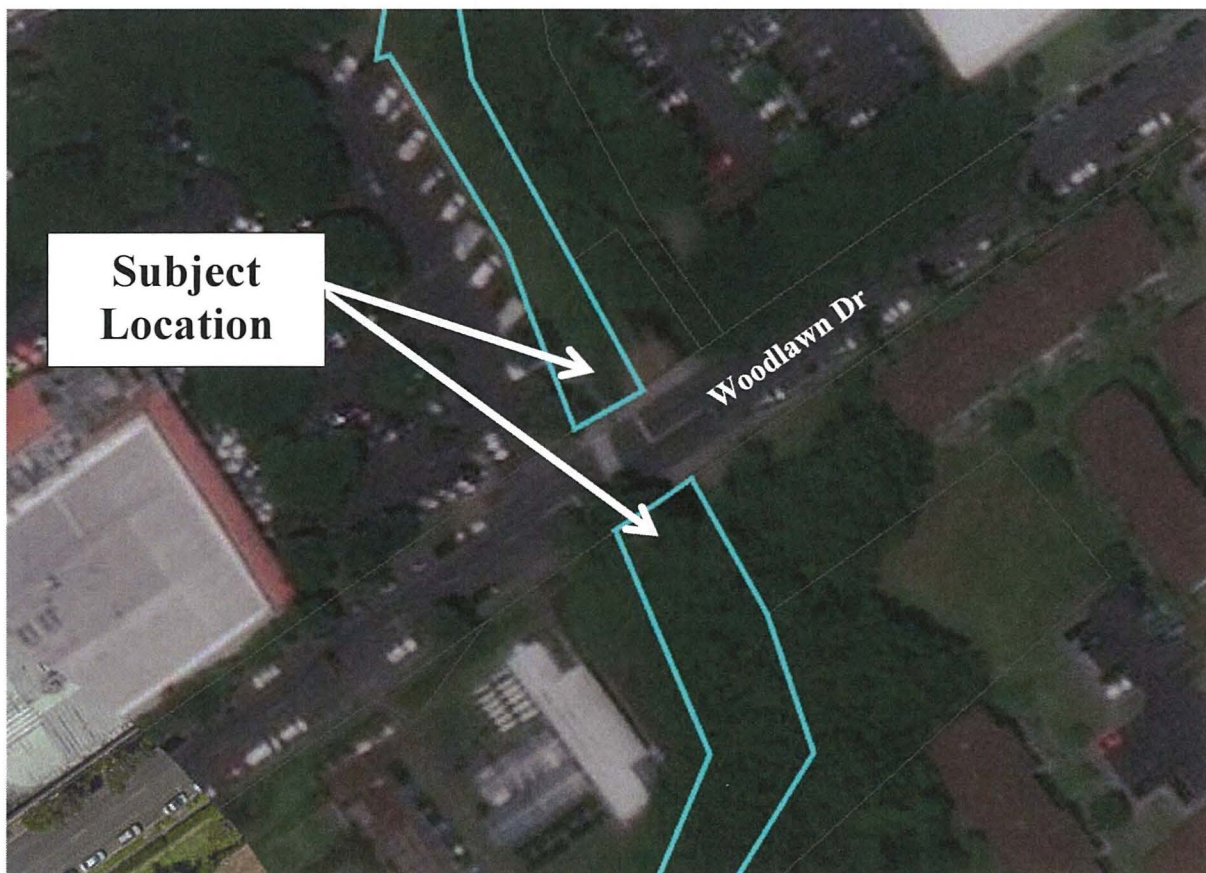
Darlene Bryant-Takamatsu
Land Agent

APPROVED FOR SUBMITTAL:



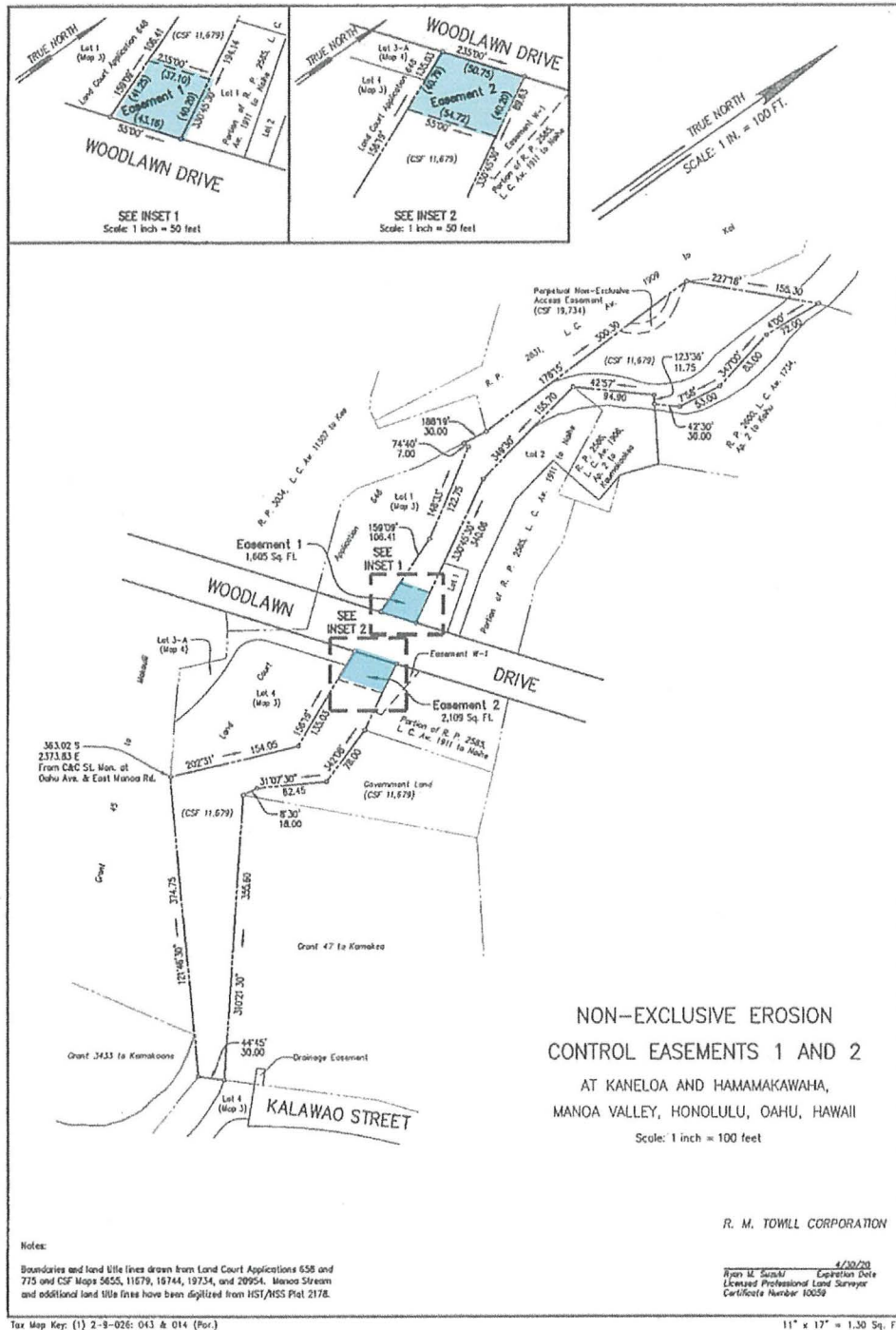


Suzanne D. Case, Chairperson



TMK (1) 2-9-026: Portions of 014 and 043

Exhibit A1



TMK (1) 2-9-026: Portions of 014 and 043

Exhibit A2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, Hawaii Administrative Rules.

Project Title:	Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Erosion Control Purposes
Project / Reference No.:	PSF 200D-030
Project Location:	Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-026: portions of 014 and 043
Project Description:	Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Erosion Control Purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with Hawaii Administrative Rule Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," Part 1, item 40 that states, "creation or termination of easement, covenants, or other rights in structures or land."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. The area contains previously installed structures and is maintained as such.
Action May Have Significant Impact on Particularly Sensitive Environment:	No. Staff is not aware of any particularly sensitive environmental issues.
Consulted Parties	Agencies as noted in the submittal.
Analysis:	Based on the above mentioned, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Exhibit B

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

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 CITY AND COUNTY OF HONOLULU, whose principal place of business and post office address is 530 South King Street, Honolulu, Hawaii 96813 (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: 14, and is 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 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 is delineated on Exhibit "A" attached hereto and made part hereof ("UH property"); and

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

WHEREAS, the STATE, CITY, and UH have signed a Triparty Agreement letter dated MAY 10 2018, with UH consenting to the STATE entering the UH property to construct the

EXHIBIT C

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 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 of the upstream edge of the Woodlawn Drive Bridge and twenty (20) feet downstream of the downstream edge of the Woodlawn Drive Bridge, and for the installation of a new grouted riprap drop structure twenty (20) feet upstream of the upstream edge of the Woodlawn Drive Bridge and a new grouted riprap channel bottom and banks twenty (20) feet downstream of the downstream edge of the Woodlawn Drive 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, and contractors permission to enter upon the construction limits area located on the City property as designated on Exhibit A highlighted in yellow for the PROJECT ("Construction Limits Area"). 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 upon providing notice to 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 upon the

completion of the Project, as is set forth in Section B herein. 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 Woodlawn Drive 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 downstream of the upstream and downstream edges of the Woodlawn Drive 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 of the upstream edge of the Woodlawn Drive Bridge and new grouted riprap channel bottom and banks twenty (20) feet downstream of the downstream edge of the Woodlawn Drive 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 grouted riprap structure twenty (20) feet upstream of the upstream edge of the Woodlawn Drive Bridge and twenty (20) feet downstream of the downstream edge of the Woodlawn Drive Bridge that was built by the CITY and is on the Property, as designated and set forth in Exhibit A; and to construct a new grouted riprap drop structure twenty (20) feet upstream of the upstream edge of the Woodlawn Drive Bridge and to construct a new grouted riprap channel bottom and banks twenty (20) feet downstream of the downstream edge of the Woodlawn Drive 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 Exhibit A (as may be modified by the STATE); and

a. Once the construction of the PROJECT has begun, the STATE shall complete the PROJECT within TWENTY-FOUR (24) 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 (including any weather-related delays), the STATE may extend the time for completion as it deems reasonably 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 that starts from the upstream edge of the Woodlawn Drive Bridge and extends forty (40) feet upstream of the Woodlawn Drive Bridge, and starts from the downstream edges of the Woodlawn Drive Bridge and extends forty (40) feet 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.

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, damaged, undermined, or destroyed, including any and all affected improvements, equipment, and appurtenances, in the condition originally delivered to the City. 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 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 Woodlawn Properties 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; provided, however, that nothing herein shall be interpreted to require the City to indemnify and save harmless the State against such injuries, death, loss or damages to the extent arising out of the acts or omissions of

the State in connection with 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 in 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. No Admission of Liability. CITY understands and agrees that the STATE does not admit to any liability or responsibility regarding any damage or injury to the Property, personal property, or persons caused by or related to the PROJECT or the Improvements.

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

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

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

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

6. 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.

8. 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.


9. 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 IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT this
10th day of May, 2018.

Approved by the Board
of Land and Natural Resources at its
meeting held on November 9, 2017.

APPROVED AS TO FORM:


Deputy Attorney General
STATE OF HAWAII

APPROVED AS TO FORM:

Deputy Corporation Counsel
CITY & COUNTY OF HONOLULU

STATE:


Its Chairperson, Board of Land and Natural
Resources

CITY AND COUNTY OF HONOLULU, a
municipal corporation of the State of
Hawaii:

Kirk Caldwell
Mayor

CITY AND COUNTY OF HONOLULU,
by its Department of Budget and Fiscal
Services

Nelson H. Koyanagi, Jr.
Director

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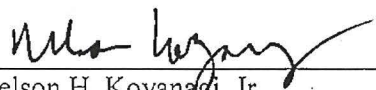
Deputy Corporation Counsel
CITY & COUNTY OF HONOLULU

CITY AND COUNTY OF HONOLULU, a
municipal corporation of the State of
Hawaii:

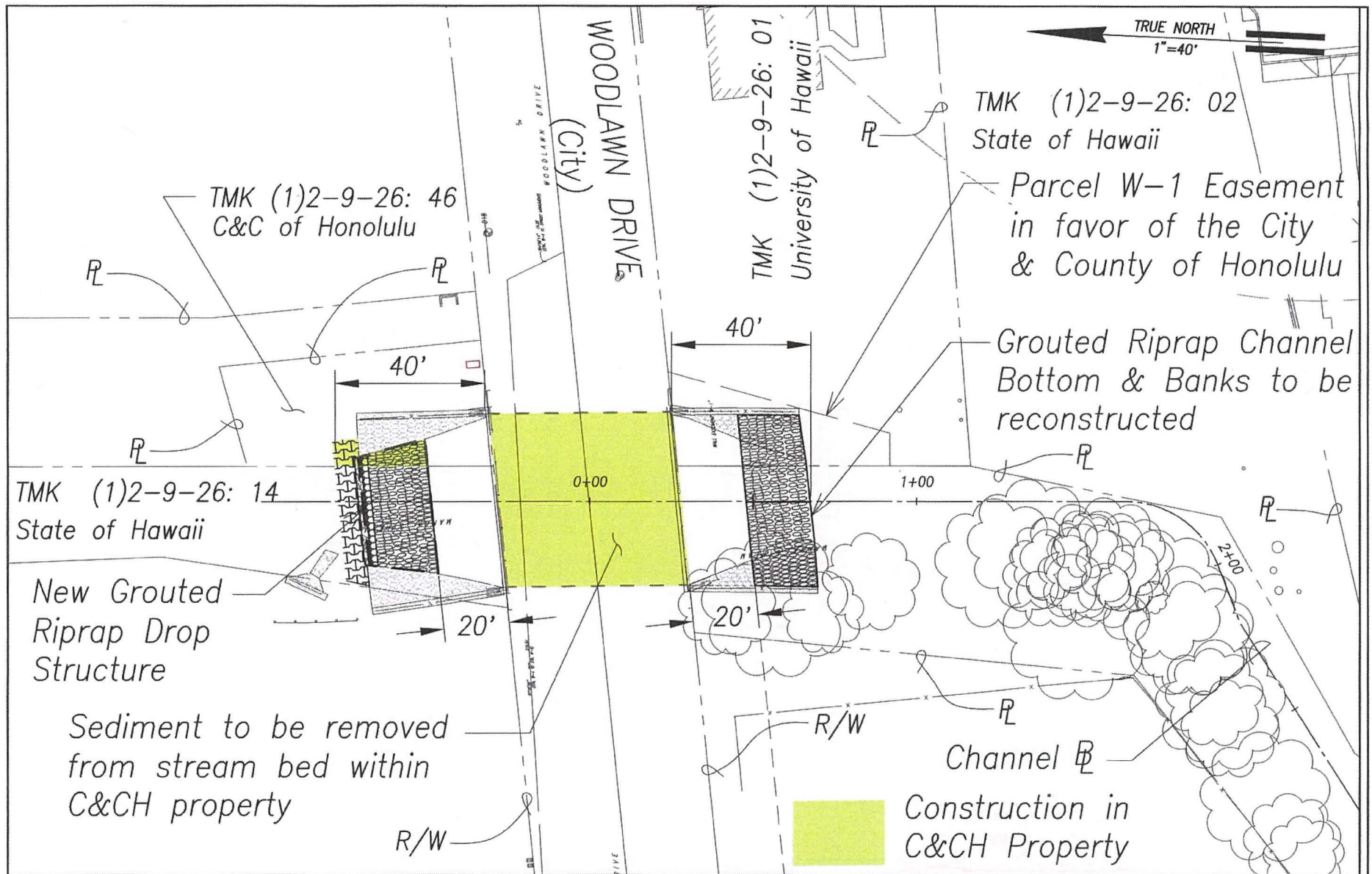


Kirk Caldwell
Mayor

CITY AND COUNTY OF HONOLULU,
by its Department of Budget and Fiscal
Services



Nelson H. Koyanagi, Jr.
Director



Planning - Engineering - Environmental Services - Photogrammetry - Surveying - Construction Management
R. M. TOWILL CORPORATION
 808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494

MANOA STREAM IMPROVEMENTS AT WOODLAWN DRIVE BRIDGE

**PROPOSED WORK WITHIN CITY & COUNTY
OF HONOLULU PROPERTY**

**EXHIBIT
A**