

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

January 27, 2012

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

PSF No. 11OD-042

OAHU

Memorandums of Agreement Between the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR) for Construction and Maintenance of Certain Roads by DHHL in East Kapolei, and Subsequent Dedication of the Roads to the City and County of Honolulu (CCH) by DLNR, Tax Map Keys: (1) 9-1-16: Por. of 141, and (1) 9-1-17: Por. of 110

APPLICANT:

Department of Hawaiian Home Lands

LEGAL REFERENCE:

Chapter 264, and Sections 171-6(19), and 171-64.7, Hawaii Revised Statutes, as amended (HRS).

LOCATION AND AREA:

Kapolei Parkway Extension – an eastern extension to the section of the Kapolei Parkway previously completed by the Hawaii Housing Finance and Development Corporation, containing 5.023 acres, more or less, Honouliuli, Oahu, Tax Map Key: (1) 9-1-16: Por. of 141, as shown on the attached Exhibit A.

East-West Road – Section beginning at its intersection with the North-South Road to the eastern boundary of DHHL's East Kapolei II development, containing 13.458 acres, more or less, Honouliuli, Oahu, Tax Map Key: (1) 9-1-17: Por. 110, as shown on the attached Exhibit B.

Road E – Section beginning at its intersection with the East-West Road to the eastern boundary of DHHL's East Kapolei II development, containing 7.570 acres, more or less, Honouliuli, Oahu, (1) 9-1-17: Por. 110, as shown on the attached Exhibit B.

Road S – Section beginning at its intersection with the North-South Road to the eastern boundary of DHHL's East Kapolei II development, containing 2.430 acres, more or less, Honouliuli, Oahu, Tax Map Key: (1) 9-1-17: Por. 110, as shown on the attached Exhibit B.

TRUST LAND STATUS:

Non-ceded, Government land acquired after statehood from the Estate of James Campbell.

CURRENT USE STATUS:

Kapolei Parkway Extension is completed.

East-West Road is under construction.

Roads E and S areas are currently vacant.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement Notice for the East Kapolei Master Plan was published in the OEQC Environmental Notice in July 1998. All of the subject roads are located within the East Kapolei Master Plan area.

APPLICANT REQUIREMENTS:

1. Applicant shall obtain final subdivision approval from CCH and the State of Hawaii, Land Court, for the subject road lots.
2. Applicant shall provide DLNR with survey maps and descriptions of the subject road lots according to Department of Accounting and General Services, Survey Division standards.
3. DHHL shall be responsible for compliance with Section 171-64.7, HRS.

REMARKS:

This request involves two memorandums of agreement (MOAs) between DHHL and DLNR regarding the subject road sections. The first is an after-the-fact MOA, dated December 31, 2007 (Exhibit C), covering the conveyances to CCH of the Kapolei Parkway Extension and East-West Road. The second is a proposed MOA (Exhibit D) covering the conveyances to CCH of future Roads E and S.

The subject road sections are part of the master planned regional roadway system that will pass through DHHL's East Kapolei II development allowing arterial traffic to flow past private and public development.

DHHL will construct, to CCH standards, the arterial road sections that pass through its East Kapolei II development. Under Chapter 264, HRS, relating to roads, the subject road sections are considered "public highways" under the jurisdictional control of the county where they are located. When completed, such roads are typically conveyed, in fee simple and without

consideration, to the respective counties for the roads' on-going maintenance, repair, and replacement.

The problem for DHHL with the above process is the Hawaiian Homes Commission Act of 1920 prohibits the fee simple conveyance of Hawaiian home land. Because of the prohibition DHHL has requested the BLNR directly convey the land under the subject road sections to CCH.

If the Board approves DHHL's request then the fee simple interest of the land will remain with the State until the road improvements are completed by DHHL and accepted by CCH and the subject land is conveyed to CCH. Until then DHHL will maintain and repair the subject road sections as necessary.

In 2009 the legislature passed Act 176 (Section 171-64.7 HRS), which requires prior legislative approval, by concurrent resolution, of sales or gifts of State land. Before submission of the concurrent resolution to the legislature, the proposing State agency must have the land appraised to determine its value. It must also conduct an informational briefing on the proposed sale or gift in the community where the land is located.

The concurrent resolution must contain the location of the land, its appraised value, the purpose of the sale or gift of land and a detailed summary of any development plans for the land being sold or given.

The additional time and expense of complying with Act 176, passed by the legislature in 2009, was never anticipated by DLNR when the December 31, 2007, MOA was issued. Accordingly, compliance with Section 171-64.7, HRS, shall be the responsibility of DHHL.

**RECOMMENDATION:**

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above, approve the following:

1. The December 31, 2007, Memorandum of Agreement (Exhibit C), between DHHL and DLNR, subject to review and approval by the Department of the Attorney General.
2. The undated Memorandum of Agreement (Exhibit D) between DHHL and DLNR, subject to review and approval by the Department of the Attorney General.
3. The conveyance, in fee simple, at gratis, to the City and County of Honolulu, of the State-owned land underlying the Kapolei Parkway extension, East-West Road, Road E, and Road S, under terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current deed (roads) document form, as may be amended from time to time.

- B. Review and approval by the Department of the Attorney General.
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:



 William J. Aila, Jr., Chairperson

HONOLULU, EVA, OAHU, HAWAII

BARBERS

POINT

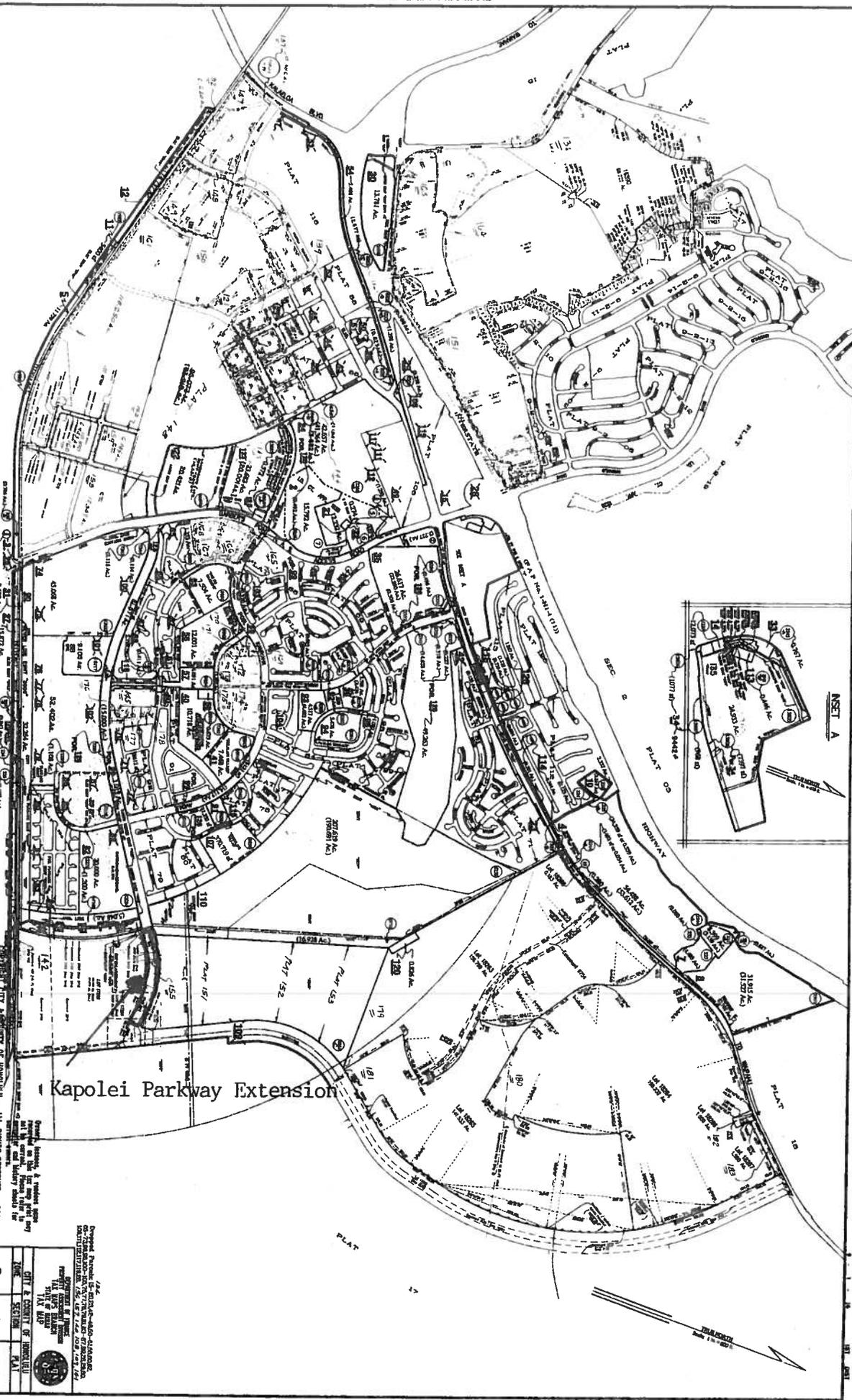
PLAT

AIRPORT

FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGAL SUBDIVIDED LOTS - SUBJECT TO CHANGE

COPYRIGHT CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2004

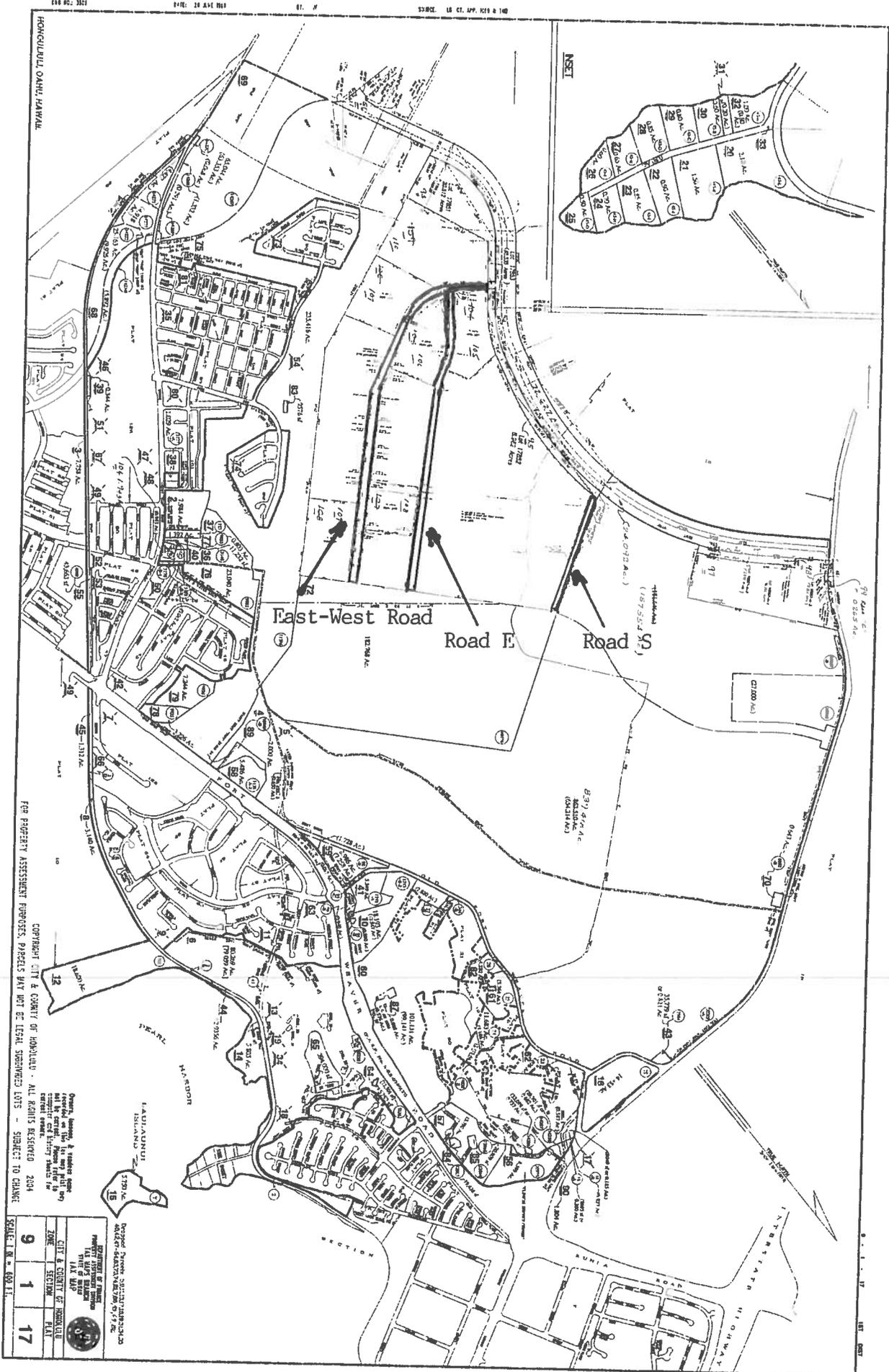
9 1 16



Kapolei Parkway Extension

9	1	16
CITY & COUNTY OF HONOLULU		
PLAT		

EXHIBIT A



HONOLULU, OAHU, HAWAII  
 FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGAL SURVEYED LOTS - SUBJECT TO CHANGE  
 COPYRIGHT CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2024

Owners, Owners, & Address Lists  
 Available on the City and County of Honolulu  
 Website at [www.honolulu.gov](http://www.honolulu.gov) or by  
 contacting the City and County of Honolulu  
 Planning Department.

CITY & COUNTY OF HONOLULU	LAULANU ISLAND
9	1
17	

SCALE: 1" = 400 FT.  
 NORTH ARROW

EXHIBIT B

MEMORANDUM OF AGREEMENT  
THE CONSTRUCTION OF THE EAST-WEST ROAD,  
KAPOLEI, EWA, OAHU,  
TMK: (1) 9-1-16:portion of 141 (formerly portion of 108)  
and (1) 9-1-17:portions of 71 and 88

THIS AGREEMENT, made this 31<sup>st</sup> day of December 2007,  
by and between the DEPARTMENT OF HAWAIIAN HOME LANDS (hereinafter "DHHL") and  
the DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter "DLNR")

WITNESSETH THAT:

WHEREAS, DHHL is planning the construction of the following two (2) roads:

- 1) The Kapolei Parkway Extension, an eastward extension of Kapolei Parkway previously constructed by the Hawaii Community Development Corporation of Hawaii, now referred as the "Hawaii Housing Finance and Development Corporation (HHFDC)", being further described as a separate roadway lot by County Subdivision File number 2005/SUB-108, approved on June 17, 2005, and bearing Tax Map Key: (1) 9-1-16:portion of 141; and
- 2) A section of the East-West Road, situated in Kapolei, Ewa, Oahu, extending from the southern half of the North-South Road, traversing Tax Map Keys: (1) 9-1-17: 71 and 88, and heading east toward Fort Weaver Road.

WHEREAS, the Kapolei Parkway Extension and a portion of the East West Road will be constructed on DLNR lands reserved for DHHL by the Board of Land and Natural Resources, at its meeting on September 24, 2004, under item D-14, as part of a 16,518-acre settlement agreement between DLNR and DHHL.

WHEREAS, DHHL desires the turnover of the Kapolei Parkway Extension and the East-West Road to the City and County of Honolulu (hereinafter "City") following its construction for on-going maintenance and repair in accordance with the provisions of Chapter 264, Hawaii Revised Statutes, as amended.

WHEREAS, DHHL and DLNR acknowledge the Hawaiian Homes Commission Act which prohibits the disposition of Hawaiian home lands in fee simple, except as authorized by the Act.

WHEREAS, the Kapolei Parkway Extension and East-West Road are both part of the regional roadway system designed to accommodate arterial flow past public and private development. Therefore, they are both considered "public highways".

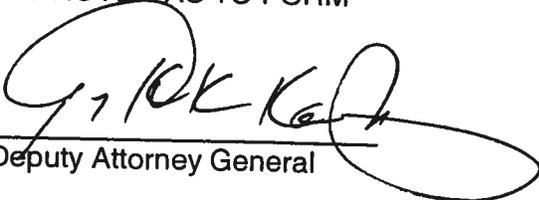
WHEREAS, DLNR has retained the fee simple interest in the land underlying the subject roads, and will convey the said land to the City upon the passing of a City Council Resolution to accept the roadway improvements, if necessary.

NOW, THEREFORE, in consideration of the premises contained in this Agreement, the parties agree as follows:

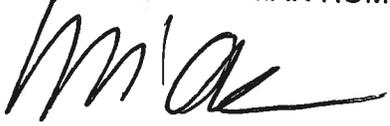
1. DHHL will construct the Kapolei Parkway Extension and its portion of the East-West Road in conformance with the City's standards for roadways.
2. DHHL will be responsible for the maintenance and repair of the Kapolei Parkway Extension and its East-West Road improvements until such time that the fee simple interest in the land and road improvements thereon are transferred to the City.
3. DHHL will be responsible for all liability the land, Kapolei Parkway Extension and East-West Road improvements thereon may pose until the fee simple interest and improvements on said land are transferred to the City.
4. DLNR will retain fee ownership in the land under the Kapolei Parkway Extension and East-West Road, and convey the same to the City following a City Council resolution approving the City's acceptance of the subject roadways.
5. This Agreement shall be binding upon the parties hereto, their representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

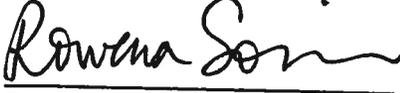
APPROVED AS TO FORM

  
Deputy Attorney General

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

By   
Micah A. Kane, Chairman

APPROVED AS TO FORM

  
Deputy Attorney General

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL  
RESOURCES

By   
Laura H. Thielen, Chairperson

MEMORANDUM OF AGREEMENT  
CONSTRUCTION OF ROADS IN EAST KAPOLEI II  
TMK: (1) 9-1-17: portions of 110

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the DEPARTMENT OF HAWAIIAN HOME LANDS (hereinafter "DHHL") and the DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter "DLNR").

WITNESSETH THAT:

WHEREAS, DHHL is planning the construction of two roads within the East Kapolei II subdivision, Road "E" and Road "S", as indicated on the attached Exhibit A (hereinafter "the Roads").

WHEREAS, the Roads will be constructed on DLNR lands reserved for DHHL by the Board of Land and Natural Resources, at its meeting on September 24, 2004, under agenda item D-14, as part of a 16,518-acre settlement agreement between DLNR and DHHL.

WHEREAS, DHHL desires the conveyance of the Roads to the City and County of Honolulu (hereinafter "City") following their construction, for on-going maintenance and repair in accordance with the provisions of Chapter 264, Hawaii Revised Statutes, as amended.

WHEREAS, DHHL and DLNR acknowledge the Hawaiian Homes Commission Act, which prohibits the disposition of Hawaiian home lands in fee simple, except as authorized by the Act.

WHEREAS, the Roads are part of the regional roadway system designed to accommodate arterial flow past public and private development. Therefore, they are both considered "public highways."

WHEREAS, DLNR has retained the fee simple interest in the land underlying the subject roads, and will convey the said land to the city upon the passing of a City Council Resolution to accept the roadway improvements, if necessary.

NOW, THEREFORE, in consideration of the premises contained in this Agreement, the parties agree as follows:

1. DHHL will construct the Roads in conformance with the City's standards for roadways.
2. DHHL will be responsible for the maintenance and repair of the Roads until such time the fee simple interest in the land and the Roads improvements thereon are transferred to the City.

- 3. DHHL will be responsible for all liability the land and the Roads improvements thereon may pose until the fee simple interest and improvements on said land are transferred to the City.
- 4. DLNR will retain the fee simple ownership in the land under the Roads and convey the same to the City following a City Council resolution approving the City's acceptance of the Roads.
- 5. This agreement shall be binding upon the parties hereto, their representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

APPROVED AS TO FORM

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

\_\_\_\_\_  
Deputy Attorney General

By \_\_\_\_\_  
Albert "Alapaki" Nahale-a, Chairman  
Hawaiian Homes Commission

APPROVED AS TO FORM

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL  
RESOURCES

\_\_\_\_\_  
Deputy Attorney General

By \_\_\_\_\_  
William J. Aila, Jr., Chairperson  
Board of Land and Natural Resources