

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

February 14, 2014

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

PSF No.:08OD-064

OAHU

Amend Prior Board Action of August 26, 2011, Item D-8 by Revising the Performance Bond Condition and Approving the Easement Document Regarding the Grant of Perpetual, Non-Exclusive Easement to Honolulu Seawater Air Conditioning, LLC for Seawater Air Conditioning Waterlines Purposes on State Submerged Lands off Kakaako, Honolulu, Oahu, Tax Map Key: (1) 2-1-060:Seaward of 008

BACKGROUND:

On August 26, 2011, under agenda item D-8, the Board approved the issuance of a perpetual, non-exclusive easement to Honolulu Seawater Air Conditioning LLC for seawater air conditioning waterlines purposes. A copy of the approved submittal is attached as **Exhibit 1**.

The latest draft easement document for the subject request attached as **Exhibit 2**¹ is different from a typical utility line easement. It is the agreed version resulted from the various negotiations between counsels representing the applicant and the State.

Among the conditions in the easement document, the most significant one pertains to the posting of a performance bond. Staff prepares an excerpt of the easement document containing the bond provision described above as **Exhibit 3**.

The bond will be used to pay for any default under the easement. Since the easement is subject to a lump sum payment of \$32,500, the normal bond requirement, which is twice the annual rent payable, is not applicable in the subject easement request. The Division believes the bond should be the estimated removal cost of the improvements to be placed on State lands

Applicant has obtained a quote of \$4,450,875 as the estimated removal cost of the improvements. Applicant proposes to fund the total bond amount over a period of 25 years by annual payments described below:

¹ Latest amendments proposed by the applicant's counsel are shown in blue on Exhibit 2.

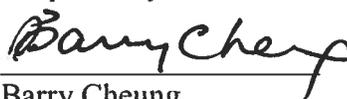
Year 1 through Year 10:	\$45,650
Year 11 through Year 15:	\$114,125
Year 16 through Year 20	\$228,250
Year 21 through Year 25	\$456,500

Staff has no objection to the bond amount and the manner of payment, and recommends the Board authorize the use of the easement document attached as Exhibit 2 for the subject request.

RECOMMENDATION: That the Board amend its prior action of August 26, 2011, Item D-8 by:

- A. Revising the performance bond provision as described above;
- B. Approving the easement document attached as Exhibit 2; and
- C. All other terms in the August 26, 2011 approval shall remain in full force and effect.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

AMENDED

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

August 26, 2011

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

PSF No.:08od-064

OAHU

Grant of Perpetual, Non-Exclusive Easement to Honolulu Seawater Air Conditioning, LLC for Seawater Air Conditioning Waterlines Purposes on State Submerged Lands off Kakaako, Honolulu, Oahu, Tax Map Key: (1) 2-1-060:seaward of 008

APPLICANT:

Honolulu Seawater Air Conditioning, LLC, a domestic limited liability company.

LEGAL REFERENCE:

Section 171-13, 53(c) Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged lands situate off Kakaako, Honolulu, Oahu, identified by Tax Map Key: (1) 2-1-060:seaward of 001, as shown on the attached map labeled **Exhibit A1 & A2**.

AREA:

8.813 acres, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 26, 2011

as amended

On

EXHIBIT " 1 "

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove waterlines for transmitting seawater for air conditioning purposes over, under and across State-owned submerged lands.

TERM

Perpetual

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Final Environmental Impact Statement was published in the Environmental Notice on September 23, 2009.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u> </u>
Registered business name confirmed:	YES <u> x </u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Honolulu Seawater Air Conditioning, LLC (HSWAC) proposes to install approximately 25,000 feet of supply and 4,500 feet return waterlines on the State submerged lands for the purpose of distributing chilled water to customers, including government buildings in downtown Honolulu. The system will also include a cooling station situated on lands at the corner of Ilalo and Keawe Streets and pipelines under the public roads.

The project, by providing a renewable source of energy, will reduce the use of fossil fuels and potable water used by the current air conditioning system. In addition, it reduces the amount of water dumped into the existing sewer system by the current air conditioning system.

Staff understands HSWAC will submit separate requests to the State Department of Transportation and the City and County of Honolulu for the respective portions of waterline underneath the public roads. Once the waterlines go into the property boundary, HSWAC will seek authorization from the owners for installation for the waterlines. Staff will bring any request, if appropriate, over State lands to the Board for consideration at a later date.

Conservation District Use Permit (OA-3579) was approved by the Board on June 23, 2011, and the Final Environmental Impact Statement was published on September 23, 2009. Staff did not solicit comments for the subject easement request as comments were solicited during the CDUA and EIS stages already.

HSWAC also requests for immediate construction right-of-entry in view of the tight time line of the project.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

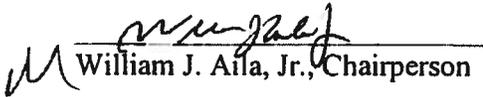
1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Honolulu Seawater Air Conditioning, LLC covering the subject area for waterline for seawater air conditioning purposes under the terms and conditions 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.
- 2. Authorize the issuance of a construction right-of-entry to Honolulu Seawater Air Conditioning, LLC covering the subject area for waterline for seawater air conditioning 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 right-of-entry document form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

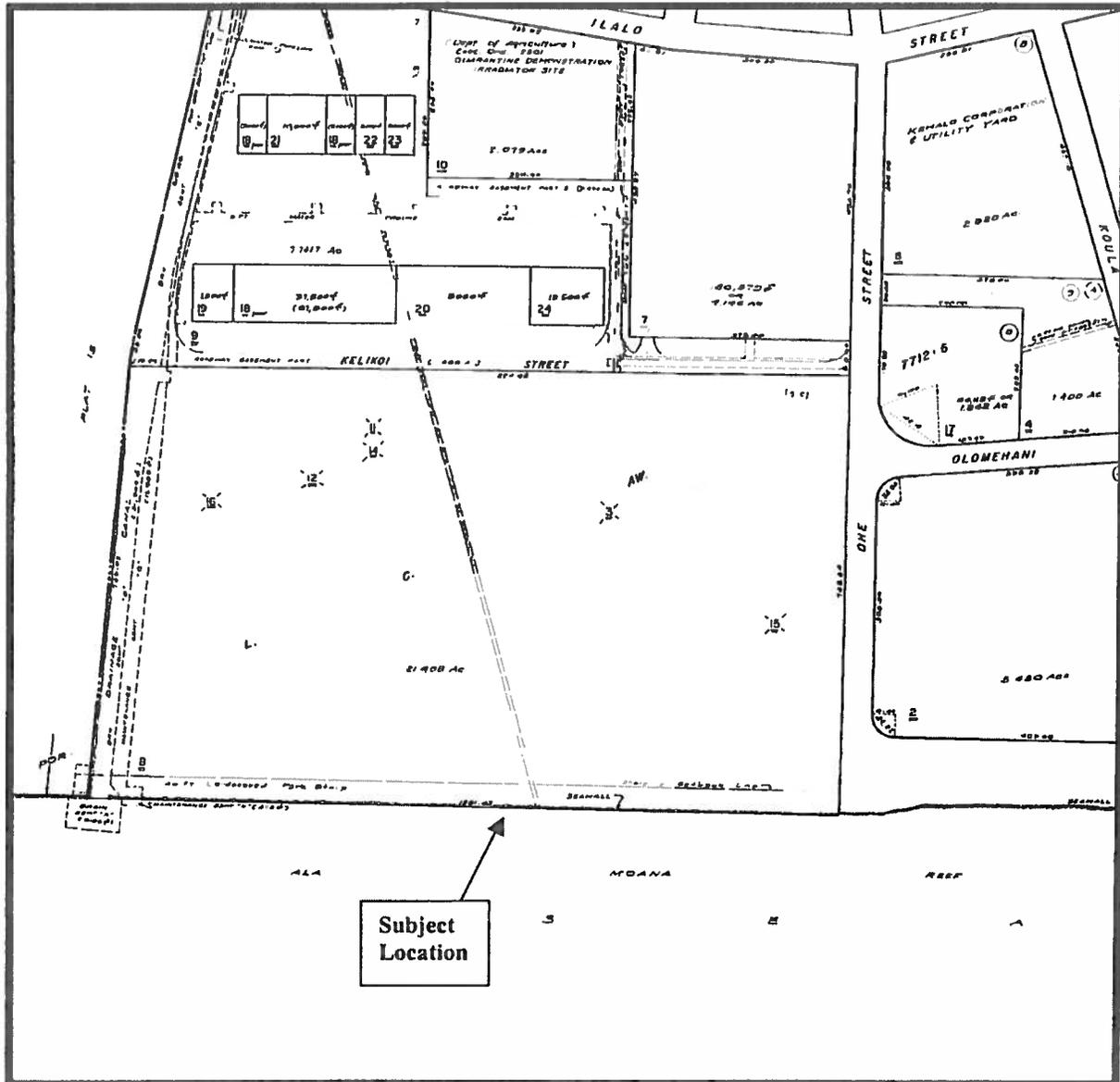

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

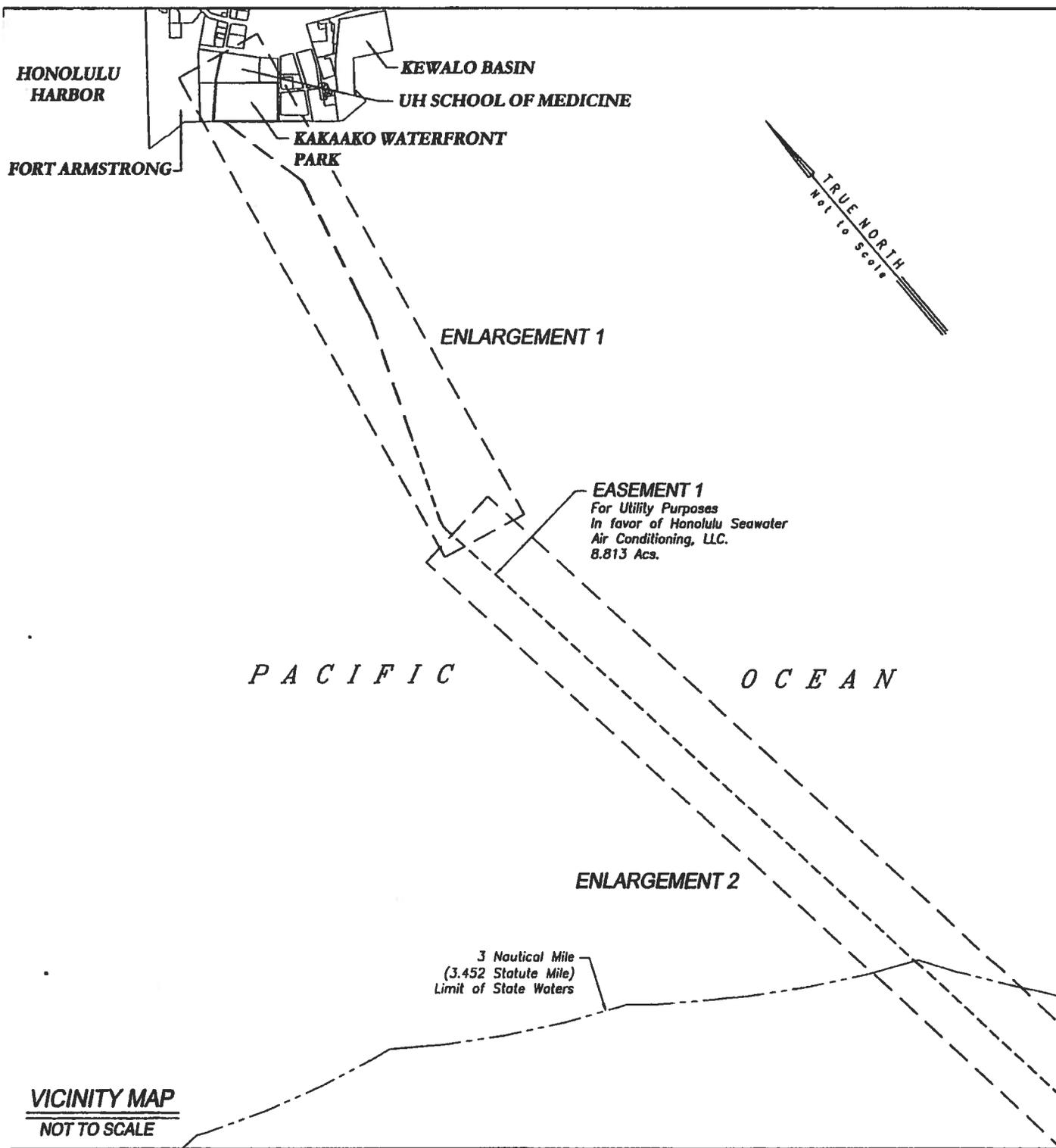
Land Board Meeting: August 26, 2011: D-8:

Approved as amended. Amended by adding the legal reference that the lease be issued also pursuant to 171-95.



TMK (1) 2-1-060:008 seaward

EXHIBIT A1



ENLARGEMENT 1
SCALE: 1 in. = 300 ft.

transmitting seawater for air conditioning purposes, in, over, under and across that certain parcel of submerged land ("easement area") situate off Kakaako, Honolulu, Oahu, Hawaii, containing an area of 8.813 acres, more or less, subject to review and approval by the State of Hawaii, Department of Accounting and General Services, Survey Division and paragraph 22 herein, more particularly delineated on Exhibit "A-2" as attached to the State of Hawaii, Department of Land and Natural Resources, Land Division, Board Submittal dated August 26, 2011, designated as Exhibit "1," both exhibits are attached hereto and made parts hereof, TOGETHER WITH the rights of ingress and egress to and from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to indemnify, defend, and hold the Grantor harmless from and against any claim or demand 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 the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the herein Grantee in the use of the easement area for the purposes for which this easement is granted.

3. All improvements placed in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.

5. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

8. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal,

state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.

10. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

11. The Grantee shall, upon termination or revocation of this easement peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the termination or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

12. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

13. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee 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 the easement area any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor'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 Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

The Grantee agrees to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.

For the purpose of this easement "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 bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions

of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. The Grantee shall not mortgage or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage or pledge without such approval shall be null and void.

16. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to dispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Grantor for

costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redisposition which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

17. The Grantee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this easement, comprehensive general liability insurance, or its equivalent, with 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, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire easement area, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee.

The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall furnish the Grantor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire easement term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Grantor. The Grantor may at any time require the Grantee to provide Grantor with copies of the insurance policy(s) that are or were in effect during the easement period.

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate protection for the Grantor, the Grantor may require Grantee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks

which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Grantee's liability under this easement nor to release or relieve the Grantee of the indemnification provisions and requirements of this easement. Notwithstanding the policy(s) of insurance, Grantee shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's negligence or neglect connected with this easement.

It is agreed that any insurance maintained by the Grantor will apply in excess of, and not contribute with, insurance provided by Grantee's policy.

18. The Grantee shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grant.

19. The Grantee shall comply with all applicable federal and state environmental impact regulations.

20. The Grantee shall 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 the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall 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 the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.

21. This easement is subject to the terms and conditions of Conservation District Use Permit (OA-3579), attached hereto and made a part hereof, as Exhibit "C."

22. The parties agree that the survey description(s) and

survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map(s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement. The parties further agree that if the easement area is encumbered by Executive Order, appropriate approvals if required will be obtained, and said easement will be similarly amended.

23. The Grantee shall, at its own cost and expense, within sixty (60) days after completion of construction of the pipelines and other improvements located within the easement area procure and deposit with the Grantor and thereafter keep in full force and effect during the term of this easement a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Grantee of all the terms, conditions, and covenants of this easement, in an amount equal to \$4,450,875.00. This bond shall provide that in case of a breach or default of any of the easement terms, covenants, conditions, and agreements, ~~the full~~such amount of the bond that is reasonably related to such breach or default shall be paid to the Grantor as liquidated and ascertained damages and not as a penalty.

24. Any bonds required by this easement shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Grantee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Grantor security in certified checks, certificates of deposit (payable on demand or after a period the Grantor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Grantor a deed or deeds of trust of real property, all of a character which is satisfactory to Grantor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Grantor shall be determined by the Grantor, and that the Grantee may, with the approval of the Grantor, exchange other securities or money for any of the deposited securities if in the

judgment of the Grantor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Grantee, but only upon the written consent of the Grantor and that until this consent is granted, which shall be discretionary with the Grantor, no surety shall be released or relieved from any obligation.

25. The Grantee may post a cash deposit in lieu of a surety bond, as follows:

The Grantee will fund the total sum of \$4,450,875.00 (the "Cash Deposit") in the amounts shown below:

Year 1 through Year 10: \$45,650 annually
Year 11 through Year 15: \$114,125 annually
Year 16 through Year 20: \$228,250 annually
Year 21 through Year 25: \$456,500 annually.

26. Upon substantial compliance by the Grantee with the terms, covenants, and conditions contained in this easement on its part to be observed or performed, or for other good cause, the Grantor at its discretion may in writing, waive or suspend the surety bond requirement or may in writing, modify the particular bond(s) by reducing its amount; provided, however, that the Grantor reserves the right to reactivate the bond(s) or reimpose the bond(s) in and to its original tenor and form at any time throughout the term of this easement, by providing the Grantee with written notice of such reactivation or reimposition of the bond requirement and Grantee shall commence reinstating the Cash Deposit by funding the Cash Deposit on such schedule as provided in Section 25 above, with Year 1 commencing within 60 days after the Grantee's receipt from the Grantor of written notice of such reactivation or reimposition, and the total sum of the Cash Deposit funded by Year 25, being twenty-five years after the Grantee's receipt of such written notice from the Grantor of such reactivation or reimposition.-

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of
Land and Natural Resources
at its meetings held on
August 26, 2011 and
_____.

By _____
WILLIAM J. AILA, JR.
Chairperson
Board of Land and
Natural Resources

GRANTOR

APPROVED AS TO FORM:

23. The Grantee shall, at its own cost and expense, within sixty (60) days after completion of construction of the pipelines and other improvements located within the easement area procure and deposit with the Grantor and thereafter keep in full force and effect during the term of this easement a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Grantee of all the terms, conditions, and covenants of this easement, in an amount equal to \$4,450,875.00. This bond shall provide that in case of a breach or default of any of the easement terms, covenants, conditions, and agreements, such amount of the bond that is reasonably related to such breach or default shall be paid to the Grantor as liquidated and ascertained damages and not as a penalty.

24. Any bonds required by this easement shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Grantee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Grantor security in certified checks, certificates of deposit (payable on demand or after a period the Grantor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Grantor a deed or deeds of trust of real property, all of a character which is satisfactory to Grantor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Grantor shall be determined by the Grantor, and that the Grantee may, with the approval of the Grantor, exchange other securities or money for any of the deposited securities if in the judgment of the Grantor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Grantee, but only upon the written consent of the Grantor and that until this consent is granted, which shall be discretionary with the Grantor, no surety shall be released or relieved from any obligation.

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Year 16 through Year 20: \$228,250 annually
Year 21 through Year 25: \$456,500 annually.

26. Upon substantial compliance by the Grantee with the terms, covenants, and conditions contained in this easement on its part to be observed or performed, or for other good cause, the Grantor at its discretion may in writing, waive or suspend the surety bond requirement or may in writing, modify the particular bond(s) by reducing its amount; provided, however, that the Grantor reserves the right to reactivate the bond(s) or reimpose the bond(s) in and to its original tenor and form at any time throughout the term of this easement, by providing the Grantee with written notice of such reactivation or reimposition of the bond requirement and Grantee shall commence reinstating the Cash Deposit by funding the Cash Deposit on such schedule as provided in Section 25 above, with Year 1 commencing within 60 days after the Grantee's receipt from the Grantor of written notice of such reactivation or reimposition, and the total sum of the Cash Deposit funded by Year 25, being twenty-five years after the Grantee's receipt of such written notice from the Grantor of such reactivation or reimposition.