

Estimated just compensation
deposited with the above-
mentioned Court:

\$700,300.00

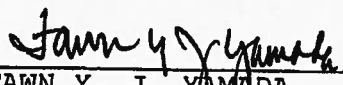
Date of deposit:

JULY 15, 2008

For: Interstate Route H-3, Halawa Interchange to
Koolau Range FAIP No. I-H3-1(38), Halawa,
Ewa, Hawaii

Date of Possession: AUGUST 17, 2008

DATED: Honolulu, Hawaii, AUG 20 2008.



FAWN Y. J. YAMADA
Deputy Attorney General
Attorney for Plaintiff
STATE OF HAWAII

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Certificate of Deposit and Possession was duly served by U.S.
mail, postage prepaid, addressed to the following persons on
AUG 20 2008 :

Director of Finance
Department of Budget and Fiscal Services
City and County of Honolulu
530 S. King Street, Room 208
Honolulu, Hawaii 96813

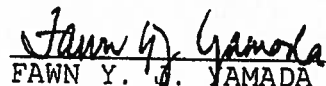
Real Property Assessment Division
City and County of Honolulu
842 Bethel Street, 2nd Floor
Honolulu, HI 96813

Department of Budget and Fiscal Services
Real Property Assessment
Kapolei Hale
1000 Ulu'ohia Street, Room 206
Kapolei, HI 96707

Jodi Shin Yamamoto, Esq.
Yamamoto & Settle
A Limited Liability Law Company
700 Bishop Street, Suite 200
Honolulu, Hawaii 96813
Attorney for Queen Emma Land Company

Hawaiian Cement
99-1300 Halawa Valley Street
Aiea, Hawaii 96701

DATED: Honolulu, Hawaii, AUG 20 2008 .


FAWN Y. J. YAMADA
Deputy Attorney General
Attorney for Plaintiff
STATE OF HAWAII

CONDEMNATION CHECKLIST FOR SECRETARY'S USE

(To be used with Eminent Domain Proceedings)

CIVIL No. 03-1-0364(1)

Apr. 2004

1. COMPLAINT:		
☒	Sent to:	Date Completed
	Director of Finance (of county involved) (see attached Addresses)	
	Real Property Assessment Division (of county involved) (see attached Addresses)	
	Land Division (for DLNR cases)	
2. NOTICE OF PENDENCY OF ACTION:		
☒	Completed:	Date Completed
	Notice of Pendency of Action Filed	
	Notice of Pendency of Action Recorded at the Bureau of Conveyances	
DOT Cases: record Notice through Abstracting Section		
DLNR Cases: record Notice through Land Division		
3. TITLE SEARCH brought up to date of Notice of Pendency of Action (check with your deputy)		
4. RECEIPT OF DEPOSIT:		
☒	Sent to:	Date Completed
	Right-of-Way Branch for DOT cases	
	Land Division for DLNR cases	
5. SERVICE OF SUMMONS:		
☒	Completed:	Date Completed
	Personal Service	
	Certified Mail Return Receipt Requested	
	Publication in newspaper	
	Posting of Summons on the property	
6. CERTIFICATE OF DEPOSIT AND POSSESSION:		
☒	Sent to:	Date Completed
	Director of Finance (of county involved)	
	Real Property Assessment Division (of county involved)	
	Right-of-Way Branch (for DOT cases)	
	Land Division (for DLNR cases)	
7. FINAL ORDER OF CONDEMNATION:		
☒	Sent to:	Date Completed
☒	Right-of-Way Branch for recordation (without parcel map) (for DOT cases)	2/26/07
	Land Division for recordation (with parcel map) (for DLNR cases)	
☒	Send with parcel map (with or without possession) to:	Date Completed
☒	Director of Finance (of county involved)	2/26/07
☒	Real Property Assessment Division (of county involved)	2/26/07
8. NOTICE OF ADDITIONAL DEPOSIT (subsequent to Judgment):		
☒	Sent to:	Date Completed
	Defendants	
	Attorneys of record	
9. For Land Court Property Only:		
☒	Taking Entire Lot of Land Court Property:	Date Completed
	Update title search within 90 days of filing Final Order w/Land Court	HA
	Recordation copy of Final Order of Condemnation filed in case file	HA
☒	Taking a Portion of Land Court Lot:	Date Completed
	Update title search within 90 days of filing Final Order w/Land Court	HA
	Recordation copy of Final Order of Condemnation filed in case file	HA
	Petition for Subdivision filed w/Land Court (incl. Designation of Restriction of Access Rights, if applicable)	HA
	Land Court Order approving and authorizing subdivision filed in case file	HA

RW-2

Date

SUBJECT: Request for Eminent Domain Proceedings
TO: Legal Section, Department of Transportation
PROJECT TITLE: _____

Please file condemnation proceedings on the
following parcel(s):

DATE POSSESSION DESIRED: _____ Within _____ days

Funds (are) (are not) immediately available for deposit.

(See Attachment for particulars)

1. Appraisal Review
2. 25 Reduced Maps
3. 25 Descriptions
4. Letter of Offer
5. Negotiation Diary
6. Correspondence with
7. Internal correspondence
8. Title Search
9. Full Size Right-of-Way Map
10. Tax Map

220-S-89-228-D-7501-497-1135-1233D

for deposit

220-S-89-228-D-7199-497-1134-1233D

for service of warrant

Supervising Right-of-Way Agent

APPROVED:

Right-of-Way Branch Manager

ATTACHMENT TO RW-2

PARCEL NO. _____

REMNANT PARCEL NO. _____

1. REASON FOR REQUEST: Include property owner's demands.

2. MAPS:

a. 25 prints of parcel maps attached.

b. One copy of Tax Map attached with:

() Parcels identified

() Larger parcel delineated

() Comparable sales of surrounding property marked

() Zoning of vicinity delineated

c. () Construction plans attached (only if pertinent)

3. DESCRIPTION:

a. () Surveyor's description attached. (If it does not coincide with abstractor's description and area, cite discrepancies.)

4. SEARCH OF TITLE:

a. () Abstractor's Report brought up to date and attached.

b. () _____ is date of last search.

5. PERSONS IN POSSESSION:

<u>Possessor</u>	<u>Spouse</u>	<u>Interest</u>	<u>Street Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. CLAIMANTS: (Those who should be listed as defendants to obtain clear title)

Recorded Interests:

<u>Claimant*</u> (If minor, so state)	<u>Interest</u>	<u>Street Address</u>	<u>Attorney or Agent</u>
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____

Unrecorded interests and Adverse Possessors:

<u>Claimant*</u> (If minor, so state)	<u>Interest</u>	<u>Street Address</u>	<u>Attorney or Agent</u>
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____
Spouse _____	_____	_____	_____

Remarks and Other Information on Claimants:

*Include owners, purchasers, lessees, sublessees, assigns, mortgagees, licensees, tenants other than month to month residents, etc.

7. VALUATION:

<u>Total Area</u>	<u>Value Land</u>	<u>Value Improvements</u>	<u>Severance Damage</u>	<u>Special Benefits</u>	<u>Total Value for Deposit</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

8. APPRAISAL:

a. Name(s) of appraiser(s) who will substantiate values for deposit:

b. _____ is date of appraisal.

c. () Approved by Staff Appraiser.

d. Present and actual use of parcel _____

e. Appraiser's opinion of highest and best use: _____

f. Special instructions given appraisers: None

g. Basis for severance damages: None.

h. Special benefits: None

Basis:

() New road
() widening or
realignment of
existing road

i. () Mass Appraisal () Concentrated appraisal

j. Strength and weakness of appraisal:

k. New evidence and other information affecting value: None

9. HISTORY OF NEGOTIATIONS:

<u>Date</u>	<u>Action</u>
_____	See Negotiation Diary
_____	_____
_____	_____
_____	_____

10. LAND:

- a. ☐ Registered ☐ Unregistered
- b. Evidence of probable change in zoning: None
- c. ☐ Partial taking ☐ Total taking
- d. ☐ Excess taking Parcel No. _____
- e. ☐ Open access ☐ Limited access
- f. Other pertinent information on topography, accessibility, drainage, restrictive covenants, etc.

11. IMPROVEMENTS:

- a. Number, kind, use, age and general condition of existing improvements:
- b. If partial taking, describe project as it relates to remainder property.

12. COMMITMENTS TO OWNER:

- a. As to the land, improvements, payment, litigation, holding over, etc.:

13. MISCELLANEOUS INFORMATION:

[illegible]

ACQUISITION OF STATE LANDS

- PURPOSE:** To describe procedures for the transfer of State lands or interest in lands under the jurisdiction of the Board of Land and Natural Resources or other State agencies for highway or highway-related purposes.
- POLICY:** State lands shall be transferred for highway or highway-related purposes at no cost, unless specified by the Board of Land and Natural Resources (BLNR) or the Highways Division.
- RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) is responsible for the coordination and completion of land transfers or use of State lands for highway or highway-related purposes.
- SCOPE:** This section applies to the Right-of-Way Branch (HWY-R) and the Cadastral Engineering Section (HWY-DC) of the Design Branch.
- PROCEDURES:** The Acquisition Unit or the Project Agent for the assigned project, or their assigns initiates and completes action for the proper transfer or use of State lands for highway or highway-related purposes. All communications are addressed to the Chairman, BLNR and signed by the Director, Department of Transportation (DOT) or as otherwise designated.¹

Appraisals

Generally, appraisals are not required for State lands as these are made available to the Highways Division at no cost by BLNR. Appraisals, shall be required in the event Highways Division (1) pursues functional replacement pursuant to the provisions of 23 CFR, Part 712, Sub-part F, or (2) payment is requested by the BLNR and/or the State Highways Division.

¹ 171-2 HRS Definition of public lands; 171-3 Department of Land and Natural Resources; 171-11 Public purposes, lands set aside by the Governor; management. The Governor may, with prior approval of the Board of Land and Natural Resources, set aside public lands to any department or agency of the State for public use or purpose. Lands while so set aside for such use or purpose or when acquired for roads and streets shall be managed by the department, agency, etc, having jurisdiction thereof, unless otherwise prohibited by law.

Land Board Submittal

Every effort shall be made by the Acquisition Units to submit the Department of Transportation's request to BLNR at the earliest possible date to assure early action for inclusion in the Land Board's agenda.

- A. Requests for land transfers shall contain, but not be limited to the following:
 - 1. Map delineating area required for highway and highway-related purposes such as construction parcels, borrow pit or waste disposal sites.
 - 2. Appropriate descriptions for the right-of-way parcels. If descriptions are not available at the time of request, these may be furnished at a later date as soon as they are completed. Descriptions do not need to be submitted for areas to be used for temporary purposes unless required by the BLNR.
 - 3. Amount of Just Compensation for the right-of-way parcel(s) if payment is to be made for the land transfer.
 - 4. Interim right-of-entry request pending transfer of required parcels or areas.
- B. Requests for right-of-entry only for surveying, test borings, archaeological survey, etc. shall contain but not be limited to the following:
 - 1. Surveying. Map delineating area of entry for surveying purposes.
 - 2. Test Borings. Map delineating area of entry and approximate locations of the boring sites.
- C. Where land has been set aside by Governor's Executive Order to another governmental agency, the copy of the request shall be transmitted to the agency having jurisdiction over the affected land.

Subsequent communications may be made directly with the agency having jurisdiction over the property if so directed.

- D. Where land is encumbered by a lease, the Land Board shall be so informed so that this matter is cleared up by and between said Land Board and Lessee before the land is made available to DOT.

The land acquisition units shall contact the staff of the Department of Land and Natural Resources (DLNR) from time to time and follow up on the DOT's request until such time that the request has been fulfilled. Any special conditions incorporated in the transfer or grant of right-of-entry shall be forwarded to the appropriate agency within the Highways Division for their information and/or action.

Land Exchange

The Right-of-Way (ROW) Agent shall not make any commitment during negotiations with the private owner to exchange right-of-way parcels for State owned lands. All owners shall be informed that land exchanges are under the jurisdiction of BLNR and that their requests should be so directed. If the owner is insistent on a land exchange and as a means of an administrative settlement, the following guidelines should be applied:

- A. Inform owner that we have no objection to this procedure; condemnation proceedings will be filed so that the State may have legal possession of the parcel to proceed with the construction and to set the date of valuation. The State, shall:
1. Withhold obtaining the Final Order of Condemnation in order to provide the owner sufficient time to negotiate a land exchange with the BLNR.
 2. If the land exchange is approved, Legal Counsel will be requested to take appropriate action necessary so that owner may consummate the exchange with the BLNR.
 3. If the land exchange is disapproved, ROW will immediately request Legal Counsel to complete the acquisition of the parcel by condemnation proceedings.

- B. Inform owner we have no objection to owner's attempt for land exchange providing he grants the State an interim right-of-entry for construction purposes under the following conditions:
1. The right-of-entry agreement sets the date of valuation as of the date of said right-of-entry.
 2. The owner will be granted a specified time period in which to negotiate the land exchange with BLNR.
 3. If the land exchange is approved, the right-of-way acquisition will be by said land exchange prepared by BLNR.
 4. If the land exchange is disapproved, acquisition will be by voluntary conveyance or condemnation proceedings based on the established date of valuation.

The ROW Agent may arrange preliminary meetings with the owner and representatives of the BLNR for discussions on land exchange if this is desirable and acceptable with all concerned.

Public Land Trust ²

All funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State; provided that;

All proceeds and income from the sale, lease or other disposition of lands, ceded to the United States, or acquired in exchange for lands so ceded, retained by the United States under section 5(c) and 5(d) of the Act of March 18, 1959 and later conveyed to the State under section 5(e) shall be held as public trust for:

1. The support of the public schools and other public educational institutions;
2. The betterment of the condition of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, as amended;³

² 171-18 Public Land Trust,

³ Hawaiian Homes Commission Act of July 9, 1921, www.hawaii-nation.org/hhca.html Section 205

3. The development of farm and home ownership on as widespread a basis as possible;
4. The making of public improvements;
5. The provision of lands for public use.

Land Conveyance by the Department of Hawaiian Home Lands (DHHL) follow typical acquisition policies, but differ by conveyance with a License instead of Deeds, as stipulated in their Hawaii Administrative Rules 10-4-21 and 22.⁴

Negotiations are common and compensation for License(s) are often settled by Administrative Settlement.

Although not in every case, Licenses are not typically granted until the improvements are complete. An executed right-of-entry from the DHHL Commission allows entry, construction and other allowable activities within the Right-of-Way and supports the Right-of -Way Certification 2 to be approved, as needed.

Other State Lands under “Public Property”

HRS 101-51 Definitions. as used herein: “Public property” means real property (1) owned by a political subdivision of the State or (2) owned by the State in its own right and not owned by the United States. “Public property” shall not be deemed to include public lands, defined to be such by section 171-2. [L 1949, c 377, pt of 1; RL 1955, 8-52; HRS 101-53]

Special Proceedings Relating to Public Property:

HRS 101-52 Proceedings Authorized. [2004 amendment repealed June 30, 2010. L 2006, c 94 1.] Any officer authorized to bring eminent domain proceedings under Part I, and any county when thereunto authorized in the manner provided by section 101-13, which is made applicable to this part, may file or cause to be filed a special proceeding for the acquisition by the State or county, as the case may be, of public property required for public uses which are under the officer’s or county’s jurisdiction and control. The circuit courts may try and determine the proceedings without a jury, subject only to an appeal in accordance with

⁴ HAR 10-4 HAR Department of Hawaiian Home Lands, Management of Hawaiian Home Lands.

chapter 602, in the manner provided for civil appeals from the circuit courts. The circuit court, on its own motion or on motion of any party, may try and determine any issue in the condemning authority for the condemnation of any public property taken under this chapter. [L 1949, c 377, pt of 1; RL 1955, 8-51; am L 1957, c 160, 1; HRS 101-52; am L 1973, c 30, pt of 5; am L 2004, c 202, 12]

HRS 101-53 Property already appropriated to a public purpose. Whenever the public property sought to be acquired has already been appropriated to some public purpose, in order that the property be acquired by the petitioner it must appear that the use to which the property is sought to be put is more necessary than the purpose to which it has already been appropriated. [L 1949, c 377, pt of 1; RL 1955, 8-52, HRS 101-53]

ACQUISITION OF COUNTY LANDS

- PURPOSE:** To describe procedures in negotiations for lands or interests in lands owned by the various county governments.
- POLICY:** The State shall facilitate acquisition of County owned real property interest negotiations through communications with proper county agencies.
- RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) is responsible for the coordination and completion of right-of-way negotiations with the various county governments.
- SCOPE:** This section applies to all sections of the Right-of-Way Branch (HWY-R).
- PROCEDURES:** Unless provided by statutes, negotiations for acquisition of lands or interests in lands owned by the county are similar to that of private interests, except that communications are made with staff members of the various agencies responsible for the activity.

Right-of-Way Purchases

The procedures for negotiating acquisition of County lands shall be dependent on the use and agency jurisdiction of the parcels or interests to be acquired.

- A. Existing County Highways: Section 264-2, Hawaii Revised Statutes, provides for the transfer of existing County Highways to the State for State Highway purposes without compensation.
 - 1. Communications for the land transfer shall be addressed to the Department of Budget and Fiscal Services (DBFS, aka Finance) Director's Office for the City and County of Honolulu and to the Mayor with respect to the other County governments.

2. The County shall be informed of the State's proposed project and the necessity to acquire the County road parcel. Reference shall be made to Section 264-2, HRS, advising the County that the State will prepare the transfer document for execution. In the interim, a right-of-entry for construction purposes is requested pending the land transfer.
 3. Completed transfer documents shall be transmitted to the County and upon execution; the recordation and distribution procedures shall be followed in accordance with procedures affecting private interests.
- B. Fee County lands except those under the jurisdiction of the Board of Water Supply or its equivalent county counterpart (BWS).
1. Offer shall be made through the DBFS Director's office in the case of the City and County of Honolulu and to the Mayor for all other Counties.
 2. The offer shall be signed by the Director of Transportation and based on the just compensation established by the Review Appraiser.
 3. Where no improvements are involved, an interim right-of-entry for construction purposes is requested.
 4. Where improvements are involved, an interim right-of-entry is requested pending satisfactory arrangement for the removal or replacement of said improvements.
 5. Once the offer has been submitted, the Right-of-Way (ROW) Agent shall from time to time contact staff members of the appropriate County agency with regard to the status of the offer. Written follow-up communications shall be signed by the Director of Transportation. If acceptance and/or right-of-entry are not received within a reasonable time, the County shall be informed that condemnation proceedings will be filed for the acquisition.

6. Transfer documents for execution shall be prepared and submitted immediately upon County's acceptance of the State's offer.
 7. Payment, recordation, and distribution of the transfer document shall be processed similar to that of private interests.
- C. Board of Water Supply. The right-of-way purchase and closing procedures for Fee County lands shall be followed except that the offer and communications with BWS shall be made directly to the BWS of the respective County.

Right-of-Entry

Request for right-of-entry for surveying, test borings, archaeological surveys, driveway adjustments and similar purposes where no acquisition is involved, shall be made through the Administrator, Highways Division to:

- A. Chief Engineer of the respective County for lands under its jurisdiction.
- B. BWS of the respective County for lands under its jurisdiction.

The ROW Agent shall from time to time follow up on the requests for right-of-entry with staff members of the appropriate agencies.

Right-of-Way Adjustments

Negotiations for right-of-way adjustments shall be made through the Administrator, Highways Division to the Chief Engineer or BWS of the respective County. The process for request and approval of right-of-way adjustments shall follow that of private interests.

Examples of Right-of-Way Adjustments

In one instance, the County of Maui negotiated a partial taking for the Haleakala Widening project (37B-03-94), the County required, a final, executed and approved as to form, Warranty Deed that was submitted for full Council vote.

In another instance, Honoapiilani Highway Realignment, Phase 1A, Lahainaluna Road to Keawe Street Extension (NH-030-1(35)), the County of Maui, could not deliver clear title to their roads. Adjustments were made to the land title.

In such instances, of unusual circumstances, the agent is required to work with the Attorney General's office and the Branch's Abstract Section to find a solution of transferring County lands to the State.

The State – County Road Agreements are not legal transference of title. Roads will have to be surveyed, properly described and legally documented and recorded with the State Bureau of Conveyance.

ACQUISITION OF FEDERAL LANDS

- PURPOSE:** To describe procedures relating to the acquisition of lands or interests in lands owned by the United States (federal lands) for highway purposes.
- POLICY:** State shall request transfer of federal/US lands or interests in lands through the Federal Highway Administration (FHWA) and/or a Federal Agency with independent authority to transfer lands.
- RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) is responsible for coordinating and processing requests for federal lands.
- SCOPE:** This section applies to HWY-RL of the Right-of-Way Branch (HWY-R).
- PROCEDURES:** Whenever lands owned by federal lands are affected and required for highway federal-aid or federally assisted projects, applications for said lands or interests in land shall be made through FHWA.
- The exception to this process is when such lands or interests therein are managed or controlled by an Agency with independent transfer authority such as the Army, Air Force, Navy, Coast Guard or Veterans Administration (Military or VA). Transfer applications for said lands are made directly to the Agencies or their land agent.

Authority for Federal Land Transfers

The following paragraphs provide for the acquisition by the States, of lands or interests in lands owned by the Federal government for highway purposes, generally in Hawaii.

- A. Section 317 of Title 23, United States Code. This section authorizes the transfer upon the determination of the Federal Highway Administration Division Office that such lands or interests in lands are reasonably necessary for (1) right-of-way for any highway; (2) as a source of materials for the construction or maintenance of such highway; (3) for maintenance and stockpile sites; or (4) for roadside and landscape development.

- B. Section 107(d) of Title 23, United States Code. This section authorizes the Secretary of Transportation to make necessary arrangements with the Federal agency having jurisdiction over the lands when right-of-way including control of access are required for the Interstate System.

Reference is made to other paragraphs and federal laws which provide for acquisition of lands or interest in lands owned by the United States, 23 CFR 712.501-503. Where the law is not clear as to which law will take precedence, reference to said law may be omitted in requesting Federal Highway Administration's assistance in the Federal land transfers. Proper and adequate enclosures for final transfers, shall be provided to the FHWA in order that they may submit the State's application to the proper agency.

Application

The application for transfer of land or interests in land owned by the United States shall be in fee simple and contain the following:

- A. Statement as to the purpose for which lands or interests in lands are to be used;
- B. Indicate the Federal Agency that has control of the property requested;
- C. Specify that the State of Hawaii agrees that the acquisition, if approved, will be subject to the terms and conditions of the applicable regulations of any agency making the grant;
- D. Statement that the State shall commit itself to construction of the highway and/or the removal of material from the right-of-way requested for transfer within a period not exceeding ten years following the transfer of the lands to the State;
- E. Each application shall be accompanied by:
 - 1, Seven prints of approved Right-of-Way and/or Land Court Maps with subject parcel(s) outlined in colors;
 - 2. Original, one duplicate original and five copies of the metes and bounds and/or Land Court descriptions.

- F. When transfer applications are made directly to the Military or VA, it shall be accompanied by:
 - 1. Eight prints of approved Right-of-Way and/or Land Court Maps with subject parcel(s) outlined in colors;
 - 2. Original, one duplicate original and six copies of the metes and bounds and/or Land Court descriptions.
- G. Where land under the Land Court System is involved, a request shall be made for the loan of the Owner's Transfer Certificate of Title. If acquisition is to involve only a portion of the property, easement or access right, the appropriate Land Court Petition shall be included for execution;
- H. In all cases, request for interim right-of-entry for construction purposes pending final transfer of the land or interests in land shall be included.

Processing Transfer of Documents

Generally the Federal Agency having jurisdiction of the land of the United States affected by the right-of-way prepares the transfer document in final form for acceptance by the State. Where the State is requested to prepare documents, drafts of the documents are first prepared and submitted to the Federal agency through the FHWA for review and approval. When the land is controlled by the Military or VA, drafts of conveyance documents should be sent directly to the affected Agency for review.

- A. Final documents received by the State shall be referred to Legal Counsel for review and "Approval as to Form".
- B. Documents approved by Legal Counsel shall be executed by the Director of Transportation and routed to Abstracting Section (HWY-RA) for recording. The process for recordation is the same as other documents.
- C. A copy of the filed documents with recordation noted thereon shall be returned to the Federal agency for their information and files.
- D. Where lands under the Land Court System involve partial takings, easements, etc., a Land Court Petition is prepared by the State and submitted to the Federal agency for execution. After full execution and filing of the petition, a copy of the filed petition is returned to the Federal agency for their preparation of the transfer document.

Improvements

Where improvements are affected, the relocation, replacement or demolition of improvements shall be negotiated with the Federal agency through the FHWA. When the improvements are located on land controlled by the Military or VA, all work on the improvements will be negotiated directly with the affected Agency. Where the Federal agency is to perform work to replace the facilities requiring advancement of funds:

- A. Request Federal agency to submit replacement cost estimates of facilities to be replaced.
- B. Have Appraisal Section (HWY-RP) review estimates and submit comments, if any.
- C. After cost estimates are resolved, prepare drafts of Agreement for replacement of facilities and Escrow Agreement.
- D. Have Fiscal Officer review drafts for comments before submitting to Legal Counsel for preliminary approval of drafts.
- E. Transmit drafts to Federal agency for their review and comments and submittal of exhibits showing facilities being replaced for attachment to Agreement.
- F. After resolving issues on drafts, type agreements into final form and transmit for execution.
- G. Distribute copies of fully executed Agreements to Federal and State agencies.
- H. Fiscal Staff (HWY-SF) process Escrow Agreement.
- I. If actual bid prices for replacement facilities exceed estimates in agreement and escrow account, revise Detailed Cost Estimate to reflect change for amendment of the Project Agreement with the FHWA and also for additional deposit to the Escrow Account by HWY-SF.
- J. If replacement cost of the facilities is not substantial, arrangements may be made by mutual agreement to pay the full cost upon completion of the replacement facilities provided that the State certifies as to the availability of funds.

Where the State is to perform the work, concurrence of the work in writing by letter or agreement shall be entered into with the Federal agency.

Right-of-Entry (No Acquisition)

Whenever it is necessary to enter upon Federal land to conduct test borings, surveying, archaeological surveys, etc., the request for right-of-entry is made directly to the Federal agency. The request shall be accompanied with:

- A. Appropriate maps delineating areas upon which entry is required;
- B. Reasons entry is required;
- C. Approximate duration of entry; and
- D. Any other information as needed to clarify request.

A copy of the request shall be furnished to the FHWA for their information.

LANDSCAPING AND SCENIC ENHANCEMENT

- PURPOSE:** To describe procedures in acquiring right-of-way for landscaping and scenic enhancement projects or other related highway projects, including, but not limited to historic boundaries, location or section signage or other important markers detailing and enhancing the Right-of-Way.
- POLICY:** Where feasible, it is the policy of the Division to provide owners with options to convey right-of-way in fee or by way of easements for landscaping and scenic enhancement.
- RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) of the Right-of-Way Branch (HWY-R) is responsible to process and acquire the required right-of-way for landscaping and scenic enhancement.
- SCOPE:** This section applies to HWY-R and the Landscape Design Section (HWY-DL).
- PROCEDURES:** Landscaping and scenic enhancement projects are generally programmed and undertaken in conjunction with highway projects so as to produce the greatest efficiency and economy of operations consistent with the requirement of each program.
- The right-of-way requirement of the highway project as determined by HWY-DL sets the guidelines as to whether the landscaping or scenic enhancement parcel is to be acquired in fee or whether the owner is to be given an option of a fee or easement acquisition.
- Where landscaping issues are involved and requires the taking of right-of-way, coordination should be made with HWY-DL. Landscaping has become an important part of the highway improvement and discussions with HWY-DL can assist in the visualization of the final outcome of the project. The agents can utilize the information to better explain the project and convince the owners that the end product may be a safer and more beautiful environment.

Project Agreements

Similar to a highway project, the Acquisition Unit shall prepare right-of-way cost estimates for submittal to the Project Management Staff (HWY-SM) to enter into project agreement with the Federal Highway Administration (FHWA).

Certificate of Search and Appraisals

The same procedure shall be followed as in a highway project for Certificate of Searches. Requests for appraisals, however, shall include additional valuations for easement takings wherever applicable.

Subdivision Approval and Variances

- A. Upon receipt of approved right-of-way maps, the maps along with applicable tax maps shall be submitted to the County Planning Department (or City Department of Planning and Permitting) in which the project is located for subdivision approval. Where appropriate, a location map (title sheet of construction plans) should also be included;
- B. Submit Land Court maps to the Planning Department or City Department of Planning and Permitting for approval and to Land Court with the Petition to subdivide if the parcels are registered lands;
- C. Submit variance applications with the Planning Department for remainder lots which will become substandard after the taking but which are still economically adequate;
- D. Submit Conservation District Use Application, together with the items listed in the Application, with the Department of Land and Natural Resources (DLNR) for parcels which are within Conservation District;
- E. Submit request for boundary change to DLNR whenever forest reserve lands are involved.

Preliminary Information to Property Owners

Prior to the submittal of the offers to purchase, an informational letter shall be mailed to the affected property owners. The informational letter shall contain a map delineating the property affected and explain the purpose of the beautification project and the type of acquisition involved.

Negotiations

Upon receipt of the Report of Reviewer establishing the just compensation, the offer to purchase shall be made to the property owner for the acquisition.

- A. Where feasible, the offer shall include both an offer for the purchase in fee and an easement;
 - 1. The owner shall be given the option of the method of conveyance;
 - 2. A sample of the easement document shall be enclosed where an option is given;
- B. Dwellings or related improvements may be acquired in limited situations through negotiations.
 - 1. In no event shall dwellings and related improvements be acquired by condemnations.
 - 2. Any displacements of occupants as a result of the negotiated acquisition shall be provided relocation assistance and payments in accordance with Federal requirements.

Closing

Closing procedures for acquisition and payments shall be the same as in highway projects.

UTILITY AGREEMENTS

PURPOSE:	To describe procedures in processing utility agreements.
POLICY:	Provide for the relocation, adjustment, installation or accommodation of utility facilities by written agreements, in compliance with applicable State and Federal requirements.
RESPONSIBILITY:	The Land Acquisition Section (HWY-RL) of the Right-of-Way Branch (HWY-R) is responsible for preparing and processing utility agreements.
SCOPE:	This section applies to all branches of the Highways Division involved in utility work.
PROCEDURES:	Utility agreements are prepared and processed immediately upon receipt of the cost estimates and color-coded relocation plans from the Design Branch (HWY-D). The agreements shall be in accordance with current State and/or Federal requirements.

Utility Agreement Requirements

Utility agreements are entered into by and between the State and the Company/County on a project basis as to their separate responsibilities in financing and accomplishing the utility work. The agreement shall incorporate each relocation or utility work encountered as follows:

- A. The basis of the State's authority, obligation, or liability to pay for the relocation.
- B. The scope, description and location of the work to be undertaken.
- C. The method to be used by the utility for developing relocation costs.
- D. The methods to be used for performing the relocation work, either by the utility's forces or by contract.
- E. Facilities to be relocated to a position within the highway right-of-way will be accommodated in accordance with applicable Federal and/or State requirements.

Utility Relocation Cost Estimates

The cost estimates for relocation, adjustment and installation of affected utility facilities are the responsibility of the Highway Design Engineer. The Right-of-Way (ROW) Agent, shall assist the Design Engineer to verify cost sharing of the net costs in the work to be performed when requested. For the purposes of verifying cost sharing using the State's standards, (Chapter 264-33, Hawaii Revised Statutes) the following guidelines are used:

- A. Private Utility Facility Providing Public Utility Services.
 - 1. Where facilities occupying highway right-of-way are relocated and the net cost of relocation is less than \$10,000, the private utility company pays entire cost of relocation.
 - 2. Where facilities occupying highway right-of-way are relocated and the net cost of relocation exceeds \$10,000, the cost over \$10,000 (paid by the private utility company) is shared equally between the company and the State.
 - 3. Where facilities occupying private easements are relocated to another private easement outside the ROW, generally the entire cost less betterment is borne by the State. Where the utility facilities are to be incorporated within the ROW, the existing easement document should be checked on a case-by-case basis for special conditions which may affect relocation cost payments. In these cases the utility company must relinquish their easement as consideration for the new utility use and occupancy agreement.
- B. County Facilities. Except for betterment, the State generally bears all costs for relocation.
- C. Federal Agencies. Except for betterment, the State generally bears all costs for relocation.

All questionable cost sharing situations shall be referred to Legal Counsel for final determination.

Utility Agreement Forms

The following forms and/or revised versions shall be used for utility agreements where applicable:

- A. Private Utility Facility occupying highway right-of-way.
 - 1. Form DOT 4-204 (HWY-RL 5/90) when net utility relocation costs exceeds \$50,000 (see page 2.14-A).
 - 2. Memorandum of Understanding (MOU) when net utility relocation costs do not exceed \$50,000 (see page 2.14-G). MOU prepared and provided by HWY-D to HWY-RL.
 - 3. Form DOT 4-204-A (HWY-RL 5/90) for accommodation of existing facilities not affected; no utility work involved (see page 2.14-I).
 - 4. Form DOT 4-204-F (HWY-RL 5/90) for facilities located on private property (see page 2.14-K).

Printed Form "Basis of Payments, Records and Accounts – Exhibit A (Company)" (see page 2.14-M) properly filled together with printed Form "Exhibit B (Revised)" (see page 2.14-O) and relocation cost estimates (Refer to Procedure No. 7-05-06, Utility, and Form DOT 4-232, "Utility Payment Standards Comparison") (see page 2.14-R) shall be attached and made part of the utility agreement when applicable.

- B. Private Utility Facility occupying private easements. Form DOT 4-204-F (HWY-RL 5/90) where State pays 100%.
- C. County Facilities.
 - 1. Form DOT 4-204-C (HWY-RL 5/90) used whenever County facilities are affected (see page 2.14-S).
 - 2. Form DOT 4-204-D (HWY-RL 5/90) used for accommodation of existing facilities; no utility work involved (see page 2.14-V).

Printed Form "Basis of Payments, Records and Accounts – Exhibit A (County)" and cost estimates (Refer to Procedure No. 7-05-06, Utility) shall be attached and made part of the utility agreement. Utility agreement forms may be revised in accordance with special conditions or stipulations agreed upon by both parties for relocation, installation, or accommodations of the utilities under Sections 5.3(A) and (B).

- D. U.S. Government Facilities. There are no special printed forms for relocation of facilities owned by Federal agencies. An agreement entered into between the Federal agency and the State shall be on the basis of a "Facility Relocation Agreement" following basically the format of the printed form (see page 2.14-W).

Assignment of Utility Agreement Number

All agreements for relocation, adjustment, installation and/or accommodation of utilities shall be identified by a number. The number to be assigned for the agreement is obtained from the Utility Agreement Log, (see page 2.14-Z), using the next available unassigned number. In assigning the utility agreement number, the ROW Agent shall post in the Utility Agreement Log:

- A. The Agreement Number;
- B. Name of the Company;
- C. Project Title and Number.
- D. Title Sheet if available.

Other Concerns:

Utility Agreements (UA) with Federal Highway oversight will need Federal Highways Administration (FHWA) approval. All other agreements with DOT oversight may be transmitted to the requesting Branch.

County UA's are to be routed to the administering project manager and then routed to HWY-R for further processing.

Pipeline Policy, effective September 24, 2002, prohibits the abandonment of pipelines and utility facilities on all Department of Transportation (DOT) properties, including highway right-of-way. The policy is to address the increasing problem of unidentified, abandoned pipelines and the heightened awareness of environmental concerns related to and arising from abandoned pipelines. Notification of this policy should be given to any company, agency or user regarding lines within the right-of-way. The users must agree and are responsible for all costs of removing pipelines and must agree to be liable for any cleanup costs, if any, related to the abandoned pipelines, prior use of any pipelines or removal of pipelines. Unauthorized uses and activities must be immediately terminated or a direct agreement with DOT must be reached for their continued use.

Accommodations Policy, under HAR, Title 19, Subtitle 4, Ch. 105, allows utilities in the state highway right-of-way provided that the permitted use and occupancy does not interfere with the free and safe flow of traffic or otherwise impair the highway or its visual quality and does not conflict with the provisions of Federal, State or local laws or regulations.

The Federal regulations identify the State's responsibilities for maintaining the right-of-way. Following is the relevant language from the Code of Federal Regulations, 23 CFR Subchapter A:

1.23 Rights-of-way.

(b) *Use for highway purposes.* Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes; and (3) informational sites established and maintained in accordance with 1.35 of the regulations in this part.

New guidelines may be developed to speed up project delivery. Language for a Master UA is currently being worked on.

Preparation of Utility Agreement

The ROW Agent shall prepare the agreement on the basis of information provided by the Design Engineer.

- A. Where printed forms are used, the agreement shall be prepared in final form and submitted to the utility company first, then to Legal Counsel for approval.
- B. Where a "Facility Relocation Agreement" or an agreement is revised to incorporate special conditions or stipulations, a draft shall be prepared and submitted to Legal Counsel for review. Legal Counsel shall then make any corrections, if necessary, and prepare the agreement in final form.
- C. All agreements shall be "Approved as to Form" by Legal Counsel.

Execution of Utility Agreements

The original and two copies of the approved agreement shall be transmitted for execution.

- A. Utility agreements involving private companies shall be transmitted directly to said company.
- B. Utility agreements affecting County facilities shall be transmitted to the Chief Engineer of the respective County, except for the following:
 - 1. Agreements affecting the Board of Water Supply (BWS) shall be transmitted directly to said BWS of the respective County.
 - 2. Agreements affecting the Division of Wastewater Management for the City and County of Honolulu shall be transmitted directly to said Division of Wastewater Management.
- C. Facility Relocation Agreements shall be transmitted through the FHWA for execution by the respective Federal agency. Agreements affecting non-Federal-Aid projects and Federal-Aid secondary road projects shall be transmitted directly to the Federal agency.

- D. If the utility agreement includes work by the State or its Contractor, HWY-D shall revise the "Utility Payment Standards Comparison" (Refer to Procedure No. 7-05-06, Utility) and supporting documents to reflect the Contractor's bid price after bid opening. HWY-R will correct all applicable areas of the executed utility agreement and the amended utility agreement will be approved by the State and Utility Company. Distribution will be as indicated in procedures.

Approval of Agreements (Federal Highway Administration)

Federal Highway Administration's approval shall be obtained for all agreements affecting federally assisted projects, except for projects under the Federal-Aid secondary road system.

- A. One duplicate copy of the fully executed agreement together with a set of the color-coded relocation plan shall be transmitted for approval.
- B. If the submittal meets with their approval, the FHWA retains the agreement and relocation plans and notifies the State of said approval by returning a Letter of Approval or Authorization or a signed authorized stamped approval on the transferred document.
- C. If the submittal is disapproved, it is returned for appropriate revisions. The revisions are then returned to FHWA for approval. The process is repeated until final approval is received in writing.

Where private utility facilities being relocated occupy Federal lands, the certification of real property interest shall be included with the request for utility agreement approval.

Distribution

Additional copies shall be made and distributed upon Federal Highway Administration's approval of the utility agreements as follows:

- A. Original copy of agreement filed in project file of HWY-R with written approval formats.
- B. One signed copy of the agreement to Utility Company/County with color-coded plan.
- C. Two copies of the agreement and two sets of the color-coded relocation plans to the respective District Office.
- D. One copy to Fiscal Staff (HWY-SF).
- E. One copy to Design Branch (HWY-D).

On Federal-Aid secondary projects and non-Federal-Aid projects, distribution shall be made upon full execution by the Utility Company/County and the State. All subsequent material or information related to the agreement such as notice of the commencing and completion of utility work, requests to comply with the submittal of the Final Statement of Costs, Change Orders, etc., shall be filed with the Utility Relocation File on a project-by-project basis.

Utility Agreement Log

- A. Utility Agreement Log is maintained for all agreements covering:
- B. Agreement number, date of agreement, identification of utility company and the project title and number.
- C. Date of Federal Highway Administration's approval indicated by FHWA Letter of Approval and/or Authorization.

- D. Date company started and completed relocation work and the Final Statement of Cost Notice date furnished by the District Office.
- E. Date final payment made furnished by HWY-SF.
- F. ROW Agent responsible for the Agreement.

The ROW Agents shall be responsible for posting information covered under Items A, B and E. Where Federal Highway Administration's approval is not required, the symbol "N/A" for not applicable is inserted. The Principal ROW Agent shall be responsible for Items C and D. He shall also be responsible for the overall maintenance of the Utility Agreement Log. All information received from FHWA, District Office and HWY-SF is routed to the ROW Agents for information and filing with the project file for utility.

The clearance of utility issues within a project and the processing of utility agreements are essential in completing the final ROW Certifications to FHWA in Federal-Aid projects. The certification is part of the Plans, Specifications and Estimates (PS&E) package submitted to FHWA to begin receiving bids for the construction of a project.

Relocation of Utility Facilities¹

As part of the negotiations and completion of the ROW Certification, it is important to understand any future impact on the utility companies that results from work of construction, reconstruction or maintenance of any state highway, or any Federal-aid highway, requirements for the removal, relocation, replacement or reconstruction of any utility facility and the expense of removal, relocation, replacement or reconstruction is governed by this section. Essentially, it requires the utility company to pay one-half of all of the described costs above \$10,000, provided that all of the expense of removal, relocation, replacement of publicly owned utility facilities shall be a charge against the State or County funds.

¹ 264-33 Relocation of Utility Facilities

UTILITY / EMENT NO. _____

THIS AGREEMENT, made this _____ day of _____,
20____, by and between the STATE OF HAWAII, hereinafter called
the "STATE", and
hereinafter called the "COMPANY",

W I T N E S S E T H T H A T:

WHEREAS, the STATE has scheduled _____

hereinafter referred to as the "Highway Project"; and

WHEREAS, the Highway Project will affect existing surface
and subsurface utilities, utility facilities, and/or utility
poles which belong to the COMPANY (collectively referred to as
the "Utility Facilities"), which will necessitate the removal and
relocation of said Utility Facilities and/or the installation of
new Utility Facilities (such removal, relocation, and
installation, including all labor, materials, equipment, and
services, are hereinafter referred to as the "Work"); and

WHEREAS, for purposes of this Agreement, including Exhibits
A (Revised) and B (Revised) attached hereto, "STATE" shall herein
mean and refer to the State of Hawaii, its officers, employees,
agents, representatives, successors, assigns, and any contractor
employed by the STATE on the Highway Project, unless otherwise
specifically provided;

NOW, THEREFORE, in consideration of the foregoing premises
and of the promises each to the other made by the parties hereto,
it is agreed that the Work shall be performed and paid for in
accordance with the following terms and conditions:

1. Performance of the Work: The COMPANY and its
contractor or subcontractor shall perform or cause to be
performed all of the Work, as provided for in Utility Cost
Estimate No. _____, attached hereto and made a part hereof.
2. Compliance With Provisions: The COMPANY shall comply
with the provisions of Exhibits A (Revised) and B (Revised),
which are attached hereto and made parts hereof. The STATE may
withhold payments to the COMPANY or cancel, terminate or suspend
the Agreement if the COMPANY unreasonably fails to comply with
any of its obligations under this Agreement, including, without
limitation, Exhibit B (Revised) attached hereto.

3. Scope and Estimated Cost of Work: The Scope of Work
and the total estimated cost for the Work is the sum of
\$ _____. The Scope of Work and Estimate, consisting of
_____ page(s), are attached hereto as Utility Cost Estimate
No. _____ and made a part hereof.

4. Cost Sharing: Based on the total estimated cost of
\$ _____, the STATE's share is estimated to be
\$ _____. The actual cost to the STATE for the Work
will be determined in accordance with the procedures set forth on
page _____ of said Utility Cost Estimate and will be based on
the actual costs incurred by the parties hereto in performing the
Work. Reimbursement, if any, by the appropriate party, shall be

based on said actual costs. However, the COMPANY shall not be liable or responsible for actual costs of any services, labor, or materials performed or supplied by any party arising or growing out of the wrongful acts or omissions of the STATE, or parties outside of the COMPANY's direction and control, unless agreed to in writing by the COMPANY, including change orders, addenda, or other appropriate documentation.

5. Participation in Dispute Resolution: In the event a suit, action or claim is made against the STATE for actual costs of items covered for which the STATE intends to hold the COMPANY liable or responsible, whether in whole or in part, the STATE shall give reasonable and timely written notice to the COMPANY of such intent, and shall, to the maximum extent possible, provide the COMPANY with the opportunity to appear, defend, contest or otherwise participate in any litigation, arbitration, or other dispute resolution procedure then in effect, with respect to such suit, action, or claim. The COMPANY's opportunity to appear, defend, contest or otherwise participate in any litigation, arbitration, or other dispute resolution procedure, shall not include the right to select the arbitrators, mediators or other dispute resolution adjudicators. Should the STATE fail to provide such written notice to the COMPANY, or fail to allow the COMPANY to participate in such proceedings, then the STATE shall be deemed to have unequivocally waived its right to have the COMPANY share in paying for any actual costs in excess of the total estimated cost. Should the COMPANY become a signatory to the construction contract bid documents, then the COMPANY will

have the right and opportunity to fully participate in all aspects of any litigation, arbitration, or other dispute resolution procedure, including the right to participate in the selection of the arbitrator(s), mediator(s), or other dispute resolution adjudicators.

6. Plans and Drawings: The Work shall be in accordance with those certain plans and drawings pertaining to the Highway Project which are on file in the Highways Division, Department of Transportation, State of Hawaii, or which shall be specifically identified by an Addendum to said Utility Cost Estimate signed by the parties hereto.

7. Compliance with Regulations: It is not the COMPANY's responsibility to ascertain that the Contract Documents or other documents associated with or covered by this Agreement are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the COMPANY observes that portions of such documents are at variance therewith, the COMPANY shall promptly notify the STATE.

8. Completion of Work and Waiver of Claims: Upon completion of the Work covered by this Agreement and payment by the STATE of its share of the cost of the Work, as determined pursuant to Paragraph 4, above, the COMPANY shall hold the STATE harmless from and waive any and all further claims for expenses incurred by the COMPANY in performing the Work in connection with the Highway Project, provided that such further claims for expenses incurred by the COMPANY are not caused by or attributed to the fault of the STATE.

9. Notice of Injury or Damage: If either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, the injured or damaged party to the Agreement shall provide written notice of such injury or damage, whether or not insured, to the other party to the Agreement within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the responsible party to investigate the matter. If a claim for additional cost or time related to this injury or damage is to be asserted, it shall be made as provided in Paragraph 16 (Notice of Claims) below.

10. Indemnity by COMPANY: The COMPANY shall save and hold harmless, indemnify, and defend the STATE, and all other governmental agencies from and against any and all suits, actions, claims of every nature and kind which may be brought for or on account of any injury, death, or damage, to persons or property, arising or growing out of the acts or omissions of the COMPANY, its officers, employees or agents and any contractor employed by it in connection with the Work covered by this Agreement, or the subsequent occupancy and use of the right of way by the COMPANY, provided, however, that the COMPANY's obligations hereunder shall not be effective, or enforceable, to the extent such injury, death, or damage to persons or property is caused in whole or in part by the STATE.

11. STATE's Responsibility: The STATE shall be responsible, to the extent permitted by law, for damage or injury caused by the STATE's officers and employees only, 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.

12. Unaffected Utility Facilities: Any Utility Facilities not affected by or relocated under this Agreement but which are situated within the Highway Project and shown on the Contract Documents may remain in place upon the express condition that the maintenance, removal, relocation, etc., of said unaffected Utility Facilities or any activity of the COMPANY affecting said unaffected Utility Facilities shall also be subject to the terms and conditions contained in the attached Exhibit B (Revised).

13. Hazardous Materials and Pollutants: In the event the COMPANY encounters material on the site reasonably believed to be hazardous which has not been rendered harmless, or material on the site reasonably believed to be a pollutant as defined by state or federal law, the COMPANY shall immediately stop Work in the area affected and report the condition to the STATE. The Work in the affected area should not be resumed except by written agreement of the STATE and the COMPANY if in fact the material is hazardous and has not been rendered harmless, or if it is in fact a pollutant. The Work in the affected area shall be resumed in the absence of hazardous materials or pollutants, or when such

hazardous material has been rendered harmless or pollutant has been remediated, by written agreement of the STATE and the COMPANY, or by mediation if agreed upon by the STATE and the COMPANY.

14. Work Relatin to Hazardous Materials or Pollutants: The COMPANY shall not be required to perform, without its consent, any work relating to hazardous materials or pollutants, unless the hazardous materials or pollutants are present due to the sole acts or omissions of the COMPANY, in which event the COMPANY shall bear all the costs of handling, removing, or remediation of such hazardous materials or pollutants. In the event that the acts or omissions of the COMPANY are partially responsible for the presence of hazardous materials or pollutants, it shall bear the cost to remove the hazardous materials or pollutants in an amount proportional to its degree of responsibility for the presence of the hazardous materials or pollutants.

15. Hazardous Material Indemnification: If the COMPANY is responsible for the presence of the hazardous material or pollutant, the COMPANY shall defend, indemnify and hold harmless the STATE, its officers, employees, agents and any contractor employed in connection with the Work covered by this Agreement, from and against claims, damages, losses, and expenses arising out of or resulting from performance of the Work in the affected area if in fact hazardous material therein has not been rendered harmless or a pollutant not properly remediated, provided that such claim, damage, loss or expense is attributable to bodily

injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by acts or omissions of the COMPANY, its officers, agents, representatives, successors and assigns, any contractor employed by the COMPANY, or anyone for whose acts the COMPANY may be responsible, even when such claim, damage, loss or expense is caused in part by the STATE, the intent of this provision being that each party shall be responsible for its own acts or omissions to the extent permitted by law. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 15.

16. Notice of Claims: Claims, change order requests or proposals, or other demands ("Claim") by either party, relating to arising out of, or connected with, increases in the cost of the Work or for extensions of the completion deadline, if any, must be made within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice, and shall include, to the fullest extent possible, an estimate of the cost and schedule impact of the condition giving rise to the Claim. Claims not made within the time frame provided for herein, and in the manner provided for herein, are forever waived and barred from being asserted without the prior mutual consent of the parties hereto in writing. In the case of

a continuing cost impact or delay, only one Claim is necessary. The submission of a Claim in compliance with this Paragraph 16 shall not be construed to entitle the submitting party to automatically recover the amounts claimed, proposed, or demanded, without determination or resolution of such Claim as may be provided in this Agreement, or by applicable law.

17. Unknown/Changed Conditions: If conditions are encountered at the Highway Project site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the plans, drawings, specifications, or other Highway Project documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement, then written notice by the observing party shall be given to the other party promptly before further work is performed.

18. Y : If the COMPANY wishes to make a claim for an increase in its cost to perform the Work due to (1) an order by the STATE to stop the Work where the COMPANY was not at fault, or (2) other reasonable grounds, written notice as provided herein shall be given before proceeding to perform the Work. Prior notice is not required for claims relating to an emergency endangering life or property.

19. Non-Waiver of Claims: Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as a waiver by the COMPANY or the STATE of any claim each may have

against the other or the other's contractors or consultants for damages resulting to the Utility Facilities or the Highway Project or any highway structures, facilities, equipment or appurtenances.

20. Merger; Interpretation: The STATE and the COMPANY have made no agreements or promises regarding the Highway Project not mentioned in this Agreement or the Utility Cost Estimate. The term "Agreement" shall include all exhibits attached hereto and the Utility Cost Estimate unless the context clearly indicates otherwise. The terms of this Agreement are contractual and not mere recital. In the event of any dispute or litigation, the STATE and the COMPANY agree that all matters at issue and all questions concerning the interpretation of this Agreement shall be decided and construed in accordance with Hawaii law. The parties hereto further agree that for the purposes of interpretation, no party shall be deemed to be the drafter of the Agreement.

21. Amendments: This Agreement shall not be altered, amended, modified or otherwise changed, in any respect or particular whatsoever, except by a writing duly executed by the STATE and the COMPANY. The STATE and the COMPANY 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 the COMPANY and supersedes all prior oral and written agreements, representations, negotiations and correspondence concerning the Highway Project.

(HWY-RL 2/07)

22. g: The headings included herein are for convenience only and do not in any way limit, alter, or affect the matters contained in this Agreement or the paragraphs which they encaption. The use of any gender in this Agreement shall include all genders and the singular shall include the plural and the plural the singular as the case may be.

23. Binding Agreement: This Agreement shall be binding upon the parties hereto and their representatives, successors and assigns.

(HWY-RL 2/07)

IN WITNESS WHEREOF, t t' ereto have caused this Agreement to be executed b eir duly authorized officers as of the day and year first above written.

STATE OF HAWAII

By Its Director of Transportation

APPROVED AS TO FORM

By Print Name
Its

Deputy Attorney General
State of Hawaii

By Print Name
Its

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:
HWY-DS 2.6163

August 4, 2010

Oceanic Time Warner Cable
200 Akamainui Street
Mililani, Hawaii 96789-3999

Attention: ~~Ms. Leona Porter~~

Subject: Memorandum of Understanding No. 2069 for Kamehameha V Highway, Kawela Bridge
Replacement, District of Molokai, Island of Molokai,
Federal Aid Project No. BR-0450(8)

Please endorse this Memorandum of Understanding No. 2069 for the subject project and return the original copy for our files. The construction of this project requires the relocation of the existing Oceanic Time Warner Cable facilities as shown on the attached color coded plan at an estimated cost of \$5,000.00. The cost incurred for relocating the existing Oceanic Time Warner Cable facilities is to be borne by Oceanic Time Warner Cable as shown on the attached utility Cost Estimate for Memorandum of Understanding No. 2069.

This letter of endorsement covers the above-mentioned work only. Any other work will entail notification of Oceanic Time Warner Cable. Other relocation/adjustment work that may occur will require additional plans, estimate and agreement to all parties concerned.

Enclosed are plans for the relocation work to be incorporated as part of our contract documents.

If the above requirements and the attached Exhibit A are acceptable, your approval is requested.

In response to this request, please reply to the attention of Project Manager Vincent Llorin. Should you have any questions, please call Vincent Llorin (Project Manager) at 692-7568.

Very truly yours,

PAUL T. SANTO
Acting Engineering Program Manager
Design Branch, Highways Division

Enclosures

APPROVED:
OCEANIC TIME WARNER CABLE

By

General Manager
Maui County

Date

8-16-10

2.14-G

RECEIVED
10 AUG 19 AM 17
HAWAIIAN HIGHWAYS DIVISION
DEPT. OF TRANSPORTATION

FOR OCEANIC TIME WARNER CABLE UTILITIES
EXHIBIT A

1. Any facilities of Oceanic Time Warner Cable not affected or relocated under this Memorandum of Understanding No. 2069 but which are situated within the right-of-way of this project may continue to remain in place upon the express condition, however, that the provisions of paragraphs 2 and 3 below, shall also be applicable to said facilities.
2. Oceanic Time Warner Cable shall bear all costs of servicing and maintaining its facilities and shall not perform such work from the through traffic lanes during peak traffic and high volume hours, except in emergencies and then only under the condition that such work shall be performed most expeditiously and with least possible interference with free flow of traffic and safe operation of highway facilities.
3. The cost of any future removal, relocation, replacement, reconstruction or adjustment of the utility facilities of Oceanic Time Warner Cable shall be borne by Oceanic Time Warner Cable and/or STATE in accordance with the provisions of Section 264-33, Hawaii Revised Statutes.
4. Oceanic Time Warner Cable and the STATE shall not be responsible nor liable for any injury, death, or damage arising or growing out of the acts of omission of the other party in their performance of work covered by this Memorandum of Understanding No. 2069.
5. Construction notes for Oceanic Time Warner Cable shall be included in Subsection 107.21 Contractor's Responsibility for Utility Property and Services of the Special Provisions.
6. Approval of this Memorandum of Understanding No. 2069 shall be valid for a period of one (1) year from the date of notification of approval. In the event construction does not commence within this one (1) year period, the STATE will be required to resubmit construction plans and another Memorandum of Understanding for Oceanic Time Warner Cable's review and approval.
7. Oceanic Time Warner Cable shall coordinate its work with the State's contractor and shall not unreasonably interfere with or delay the State's highway project. Any damages as a result of Oceanic Time Warner Cable's unreasonable interference or delay in completing said work shall be paid immediately by Oceanic Time Warner Cable to the STATE upon written demand. Oceanic Time Warner Cable estimates that it will complete its portion of the work within 2 working days.

FOR OCEANIC TIME WARNER CABLE UTILITIES
EXHIBIT A

8. Oceanic Time Warner Cable shall give the State's Project Engineer 10 working days notice prior to the commencement of work when Oceanic Time Warner Cable wants to proceed with its portion of the work of said facilities prior to receiving notice to proceed from the STATE.
9. When applicable, at its own expense, Oceanic Time Warner Cable will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the STATE consents in writing to allow abandonment in place. Notwithstanding any such consent by the STATE for abandonment in place, Oceanic Time Warner Cable agrees to be responsible for the removal costs and any costs of clean-up and remediation for any pollution or contamination caused by the facilities, if such action becomes necessary in the future. Oceanic Time Warner Cable further agrees to indemnify and hold harmless, the STATE, from any and all liabilities which may arise from Oceanic Time Warner Cable's acts or omissions relating to such pipelines or facilities.
10. Pursuant to regulations and requirements of the Federal Highway Administration (FHWA) and Hawaii State law, the Oceanic Time Warner Cable is prohibited from assigning or subleasing any facilities that are allowed to be abandoned in place in the highway right-of-way without the express permission of, and arrangements with the STATE or unless such assignment or sublease is required by law. Oceanic Time Warner Cable shall give the STATE 10 (ten) days prior written notice of any use by third parties of Oceanic Time Warner Cable's facilities that Oceanic Time Warner Cable is required by law to allow. Any such unauthorized use of Oceanic Time Warner Cable's facilities by any other utility or third party is strictly prohibited.
11. The reference/file number for this endorsement shall be Memorandum of Understanding No. 2069.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-232
(HWY-RL 6/00)

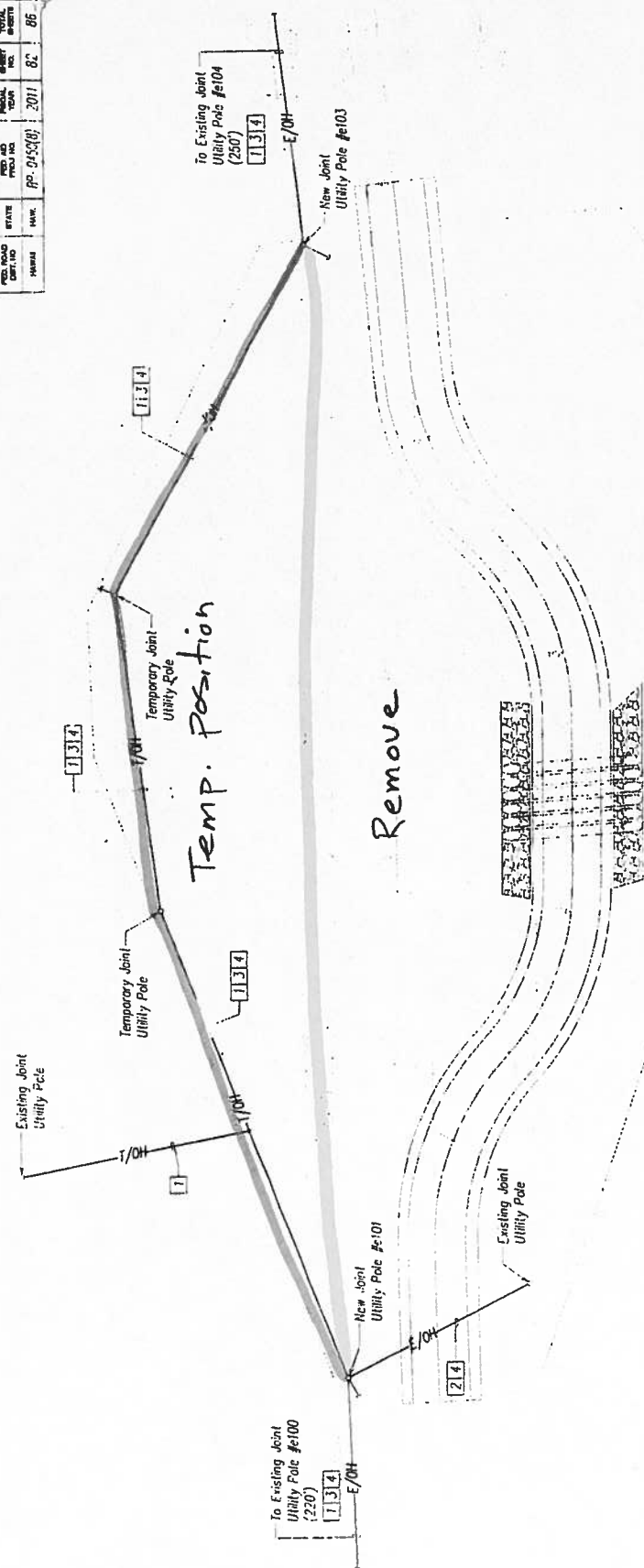
UTILITY COST ESTIMATE FOR UTILITY AGREEMENT NO. 2069

Projec <u>Kamehameha V Highway</u>	Utility Co.: <u>Oceanic Time Warner Cable</u>
<u>Kawela Bridge Replacement</u>	Prepared by: <u>Bill Hanke</u> Date: <u>7/21/2010</u>
Project No.: <u>BR-0450(8)</u>	Checked by: <u>Mike Hunnemann</u> Date: <u>7/27/2010</u>

UTILITY PAYMENT STANDARDS COMPARISON

STATE STANDARDS		FEDERAL STANDARDS (FAPG Sec. 645.117)	
A. Work/material by Utility Company and/or its Contractor	5,000.00		
B. Work/material by State and/or its Contractor	0.00		
C. Total Cost of Utility Work (A+B)	5,000.00		5,000.00
D. Less Deductions:			
1. Depreciation			
2. Salvage Value			
3. Betterments			
E. Total Deductions (D1+D2+D3)	0.00		0.00
F. Net Cost of Relocation (C minus E)	5,000.00		5,000.00
G. Less Cost Sharing Arrangements:			
1. \$10,000 (only if required by H.R.S. Section 264-33, e.g., privately owned facilities within the highway right-of-way)	10,000.00	10,000.00	
2. Amount for Extraordinary* Items referred to in Item J	0.00	0.00	
3. Total (G1+G2)	10,000.00		10,000.00
H. Net Amount (F minus G3)	(5,000.00)		(5,000.00)
I. State Share in Net Amount [50%]	0.00	0.00	
J. State's Share for Extraordinary* Items which have been deleted from G2	0.00	0.00	
K. State's Share in Total Cost of Utility Work (I+J)	0.00		0.00 (Amount for Fed Par)
L. Utility's Share in Total Cost of Utility Work (C minus K)	5,000.00		5,000.00
* Extraordinary Items are special improvements in which the State does not participate on the same basis, percentagewise. Attach a description.			
ESTIMATED REIMBURSEMENT		FEDERAL SHARE	
Utility Company to State (B minus K)	0.00		0.00 (K x Fed Par Rate)
State to Utility Company (K minus B)	0.00		

FED. ROAD DIST. NO.	STATE	PROJ. NO.	PROJ. YEAR	SHEET NO.	TOTAL SHEETS
100	HI	0152(0)	2011	82	86



NOTES:

1. Coordinate All Utility Work With Respective Utility Companies.
2. All Temporary Utility Poles & Overhead Lines Shall Be Removed After Installation Of Permanent Utility Poles & Overhead Lines Has Been Completed.
3.
 1. MECO Primary Electric Line.
 2. MECO Secondary Electric Line.
 3. Hawaiian Telecom Telephone Line.
 4. Oceanic Time Warner Cable CATV line.



TEMPORARY ELECTRICAL PLAN
SCALE: 1"=30'

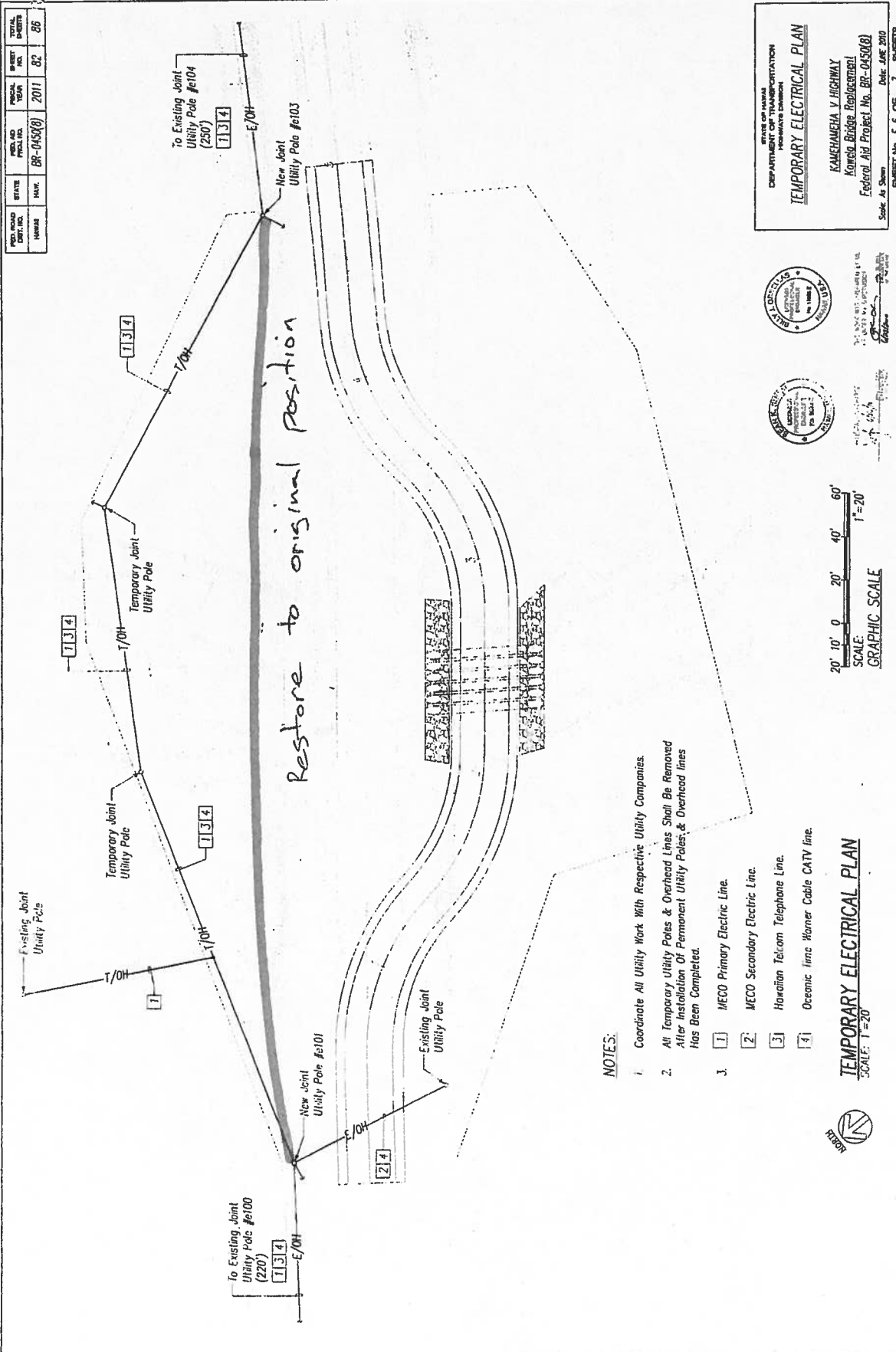


20' 10' 0' 20' 40' 60'
SCALE: 1"=20'
GRAPHIC SCALE

TEMPORARY ELECTRICAL PLAN
KAMEHAUHA V. HIGHWAY
Kameha Bridge Replacement
Federal Aid Project No. BP-0450(0)
Scale: As Shown
DATE: JUNE 2010
SHEET No. 82 OF 86

Oceanic Time Warner Cable

PROJECT NO.	STATE	DATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL SHEETS
BR-0450(8)	HA	2011	BR-0450(8)	2011	82	86



NOTES:

1. Coordinate All Utility Work With Respective Utility Companies.
2. All Temporary Utility Poles & Overhead Lines Shall Be Removed After Installation Of Permanent Utility Poles; & Overhead Lines Has Been Completed.
3.
 1. MECO Primary Electric Line.
 2. MECO Secondary Electric Line.
 3. Hawaiian Telecom Telephone Line.
 4. Oceanic Line Warner Cable CATV Line.

TEMPORARY ELECTRICAL PLAN
SCALE: 1"=20'

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HAWAIIAN HIGHWAYS DIVISION

TEMPORARY ELECTRICAL PLAN

KAMAHAMUA Y HIGHWAY
Kamuela Bridge Rehabilitation
Federal Aid Project No. BR-0450(8)

Scale: As Shown Date: JUNE 2010
SHEET No. E-5 OF 7 SHEETS



2. The scope of work and the total estimated cost for the removal and relocation of the existing facilities and/or installation of new facilities is the sum of \$_____.

The scope and estimate, consisting of _____ pages, are attached hereto as Utility Cost Estimate No. _____ and made a part hereof.

3. Based on the estimated cost of \$_____, the STATE's share is estimated to be \$_____.

The actual cost to the STATE for the removal and relocation of the existing and/or installation of new facilities will be determined in accordance with the procedures set forth on page _____ of said Utility Cost Estimate and will be based on the actual costs incurred by the parties hereto in removing and relocating the existing facilities and/or installing new facilities of the COMPANY. Reimbursement, if any, by the appropriate party, shall be based on said actual costs.

4. The removal and relocation of the existing facilities and/or installation of new facilities shall be in accordance with those certain plans and drawings dated _____, prepared by the COMPANY and approved by the STATE, which are on file in the Highways Division, Department of Transportation, State of Hawaii.

5. Upon completion of the work covered by this Agreement and payment by the STATE of its share of the cost of such work, as determined pursuant to paragraph 3, above, the COMPANY shall hold the STATE harmless from and waive any and all further claims for expenses incurred by the COMPANY in removing and relocating the existing facilities and/or installing new facilities in connection with the Highway Project.

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19____, between the STATE OF HAWAII, hereinafter called the "STATE," and _____,

hereinafter called the "COMPANY,"

WITNESSETH THAT:

WHEREAS, the STATE is now or will be constructing _____,

and _____, WHEREAS, the COMPANY occupies the right of way of said highway; and

WHEREAS, it is in the best interests of the parties to enter into an agreement relative to the accommodation of the facilities of the COMPANY within said highway,

NOW, THEREFORE, in consideration of the foregoing premises and of the grant by the STATE of permission to occupy the right of way of said highway, the parties hereto agree that the occupancy by the COMPANY of said right of way shall be subject to the provisions and requirements of Exhibit B (Revised) attached hereto and by reference made a part hereof.

1. The COMPANY shall comply with the provisions of Exhibits A (Revised) and B (Revised), which are attached hereto and made parts hereof. The STATE may withhold payments to the COMPANY or cancel, terminate or suspend the Agreement if the COMPANY fails to comply with Exhibit B (Revised) requirements.

6. The COMPANY shall perform or cause to be performed all of the work involved in the relocation of the facilities, except as provided for in said Utility Cost Estimate.
7. The COMPANY shall save and hold harmless, indemnify, and defend the STATE, its officers, agents, representatives, successors and assigns, and all other governmental agencies from and against any and all suits, actions, claims of every nature and kind which may be brought for or on account of any injury, death, or damage, arising or growing out of the acts or omissions of the COMPANY, its officers, employees or agents and any contractor employed by it in connection with the work covered by this Agreement.
8. Any facilities of the COMPANY not affected by or relocated under this Agreement but which are situated within the aforementioned project and shown on the aforementioned plans may remain in place upon the express condition that the maintenance, removal, relocation, etc., of said facilities or any activity of the COMPANY affecting said facilities shall also be subject to the terms and conditions of the attached Exhibit B (Revised).
9. Expired service life _____ applicable to the work to be performed under this Agreement _____
10. This Agreement shall be binding upon the parties hereto and their representatives, successors and assigns.

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

STATE OF HAWAII

By _____
Its _____

APPROVED AS TO FORM:

Deputy Attorney General

UTILITY AGREEMENT NO.

THIS AGREEMENT, made this _____ day of _____, 19____, by and between the STATE OF HAWAII, hereinafter called the "STATE," and _____ hereinafter called the "COMPANY,"

WITNESSETH THAT:

WHEREAS, the STATE has scheduled _____ hereinafter referred to as the "Highway Project"; and

WHEREAS, the Highway Project will affect the facilities of the COMPANY which will necessitate the removal and relocation of said facilities and/or the installation of new facilities; and

WHEREAS, the cost of relocating said facilities is to be borne entirely by the STATE in accordance with the terms and conditions herein for the reason that the existing facilities are not within the existing highway and that Section 264-33, Hawaii Revised Statutes, is thus not applicable;

NOW, THEREFORE, in consideration of the foregoing premises and of the promises each to the other made by the parties hereto, it is agreed that the removal and relocation of the existing facilities and/or the installation of new facilities as a result of the Highway Project shall be performed and paid for in accordance with the following terms and conditions:

1. The COMPANY shall comply with the provisions of Exhibits A (Revised) and B (Revised), which are attached hereto and made parts hereof. The STATE may withhold payments to the COMPANY or cancel, terminate or suspend the Agreement if the COMPANY fails to comply with Exhibit B (Revised) requirements.
2. The scope of work and the total estimated cost for the removal and relocation of the existing and/or installation of new facilities is the sum of \$ _____, which scope and estimate, consisting of _____ pages, are attached hereto as Utility Cost Estimate No. _____ and made a part hereof.
3. Based on the estimated cost of \$ _____, the STATE's share is estimated to be \$ _____. The actual amount of the STATE's share in the cost of removal and relocation of the existing and/or installation of new facilities will be determined in accordance with the procedures set forth in the Utility Cost Estimate and will be based on the actual costs incurred by the parties hereto in removing and relocating the existing facilities and/or installing new facilities of the COMPANY. Reimbursement, if any, by the appropriate party, shall be based on said actual costs.
4. The removal and relocation of the existing facilities and/or installation of new facilities shall be in accordance with those certain plans and drawings dated _____, prepared by the COMPANY and approved by the STATE, which are on file in the Highways Division, Department of Transportation, State of Hawaii.

5. Upon completion of the work covered by this Agreement and payment by the STATE of its share of the cost of such work, as determined pursuant to paragraph 3, above, the COMPANY shall hold the STATE harmless from and waive any and all further claims for expenses incurred by the COMPANY in removing and relocating the existing facilities and/or installing new facilities in connection with the Highway Project.
6. The COMPANY shall perform or cause to be performed all of the work involved in the relocation of the facilities, except as provided for in said Utility Cost Estimate.
7. The COMPANY shall save and hold harmless, indemnify and defend the STATE, its officers, agents, representatives, successors and assigns, and all other governmental agencies from any and all suits or actions of every nature and kind which may be brought for or on account of any injury, death, or damage, arising or growing out of the acts or omissions of the COMPANY, its officers, employees or agents and any contractor employed by it in connection with the Highway Project, their officers, agents, servants or employees in the performance of the work covered by this Agreement.
8. Any facilities of the COMPANY not affected by or relocated under this Agreement but which are situated within the aforementioned project and shown on the aforementioned plans may remain in place upon the express condition, however,

that the maintenance, removal, relocation, etc., of said facilities or any activity of the COMPANY affecting said facilities shall also be subject to the terms and conditions of Exhibit B (Revised).

9. Expired service life _____ applicable to the work to be performed under this Agreement because _____

10. 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.

STATE OF HAWAII

By Its Director of Transportation

APPROVED AS TO FORM:

Deputy Attorney General

BASIS OF PAYMENTS, RECORDS AND ACCOUNTS

EXHIBIT A (REVISED)

1. The costs of the Work shall be based on the prevailing rates and/or unit prices for labor, equipment and materials, plus a fixed percentage of such costs for indirect costs and overhead, at the time the Work is commenced if the prevailing rates and/or unit prices are different from those indicated in the cost estimate. Such rates, unit prices and percentages shall be subject to the prior approval of the STATE, and shall be based on actual costs incurred by the COMPANY for the Work. The STATE expressly agrees that it will not unreasonably withhold such approval.
2. If a portion of the Work is covered up or buried contrary to the COMPANY's request or contrary to written requirements in the Contract Documents, and prior to the COMPANY performing any necessary or required inspections, procedures, or tests, that portion of the Work must, if required in writing by the COMPANY, be uncovered for the COMPANY's inspection, procedures, or tests, and recovered at the expense of the STATE or its Contractor.
3. If a portion of the Work has been covered which the COMPANY has not specifically requested to observe, or for which no inspection or testing is required, prior to its being covered, the COMPANY may request to see such Work and it shall be uncovered by the STATE. If such Work is in conformity with this Agreement and the applicable standards and specifications (see Exhibit B, paragraph 1.a.), the cost of uncovering and recovering shall, by appropriate change order, be charged to the COMPANY. If such Work is not in conformity with this Agreement and the applicable standards and specifications (see Exhibit B, paragraph 1.a.), the STATE shall pay such costs unless the condition was caused by the COMPANY, in which event the COMPANY shall be responsible for payment of such costs. Nothing herein shall prevent or limit the STATE's right, if any, to recover such costs from its contractor or other responsible parties.
4. The STATE shall give the COMPANY working days notice to proceed with its portion of the Work. The COMPANY shall coordinate its Work with the STATE's contractor and shall not unreasonably interfere with or delay the STATE's Highway Project. Any damages as a result of the COMPANY's unreasonable interference or delay in completing said Work shall be paid immediately by the COMPANY to the STATE upon written demand. The COMPANY estimates that the Work will require approximately working days. This estimate is for planning and coordination

EXHIBIT A.99

- 1 -

purposes only. The STATE and the COMPANY understand and agree that such working days will not necessarily be consecutive.

5. The Agreement to which this exhibit is attached shall be construed as allowing for a reasonable time for the completion of the Work as determined by the STATE and as subject to paragraph 6 immediately following.

6. If the COMPANY is delayed at any time in progress of the Work by any act of the STATE, its officers, agents, representatives, successors and assigns, or of a contractor employed by the STATE, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, emergency power outages within the COMPANY's service area, life-threatening and/or property-threatening situations within the COMPANY's service area, or other causes beyond the COMPANY's control, or by other causes which may justify delay, then the COMPANY's completion deadline, if any, shall be extended by change order for such reasonable time as the parties hereto may determine.

7. If the COMPANY wants to proceed with its portion of the Work prior to receiving notice to proceed from the STATE, the COMPANY shall give the STATE's Project Engineer working days notice; provided that no Work shall be done by the COMPANY without the written consent of the STATE.

8. Reimbursement to the COMPANY, if any, shall be on a monthly basis if the COMPANY submits a detailed statement of actual costs incurred, less the applicable deductions for depreciation, salvage value, betterment and expired service life, on or before the fifteenth (15th) day of the month. The reimbursement shall be limited to ninety percent (90%) of the net estimated reimbursable amount. The balance shall be withheld by the STATE until such time as the Final Statement of Costs is submitted by the COMPANY and accepted by the STATE. Within one hundred twenty (120) days after the Work has been completed, the STATE shall provide to the COMPANY a detailed unit-cost breakdown of all work performed by the STATE and/or its contractor(s). Within ninety days (90) days after receipt of the detailing unit-cost breakdown of all work performed by the STATE and/or its contractor(s), the Final Statement of Costs shall be submitted by the COMPANY in the same general form as the monthly statement of actual costs incurred. The STATE shall make full and final payment of all amounts due and owing to the COMPANY as reflected in the Final Statement of Costs within a reasonable time in accordance with §103-10 of the Hawaii Revised Statutes, as amended. Interest shall accrue on all amounts reflected as due and owing to the COMPANY in the Final Statement of Costs at a rate of twelve percent (12%) simple interest per annum, unless otherwise prescribed by law, beginning two hundred forty (240)

EXHIBIT A.99

- 2 -

EXHIBIT A
(HWY-RL 2/99)

days after completion of the Work, or thirty (30) days after the Final Statement of Costs is submitted by the COMPANY, whichever is earlier, unless delay is justified as provided in §103-10 of the Hawaii Revised Statutes, as amended. The COMPANY shall immediately inform the STATE in writing of any substantial change in the estimated cost known to the COMPANY. Any request for extension of the foregoing deadlines shall not be unreasonably withheld.

9. The records and accounts of the COMPANY and its contractor(s), if any, pertaining to the Work performed under the terms of this Agreement shall be retained for a period of not less than three (3) years from the date of the final payment of Federal funds to the STATE for said project and shall be available for reasonable inspection and audit by representatives of the Department of Transportation, State of Hawaii, and the Federal Highway Administration at the respective offices of the COMPANY and its contractor(s) in Honolulu.

10. Where applicable, the terms of this Agreement, including the Final Statement of Costs and payment thereof, shall be subject to Code of Federal Regulations 23 CFR 140, 23 CFR 645 and Section 264-33 of the Hawaii Revised Statutes, as amended, which are incorporated herein by reference and made a part of this Agreement.

11. The COMPANY's existing Utility Facilities shall remain in place until the proposed site is ready and available for installation of the new Utility Facilities and/or the removal and relocation of existing Utility Facilities.

EXHIBIT B (REVISED)

RESPONSIBILITIES OF THE COMPANY

1. The COMPANY shall:
 - a. Perform all Work under this Agreement in a neat, workmanlike manner and in conformity with the following:
 - (1) The latest revision of "Specifications for Installation of Miscellaneous Improvements within State Highways", issued by the Highways Division, Department of Transportation, State of Hawaii as of the date of the contract to which this exhibit is attached;
 - (2) Applicable sections of the STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, Highways Division, State of Hawaii in effect as of the date of the contract to which this exhibit is attached; and
 - (3) Applicable statutes and ordinances and orders of the State Director of Transportation or his authorized representative. The documents referred to in subparagraphs 1.a.(1) through 1.a.(3) of this exhibit shall be collectively referred to as the "Specifications".
 - b. Perform or pay to have performed, for a period of one year after the satisfactory completion of the Work performed under this Agreement, any repairs to highway facilities caused or necessitated by such Work, provided that such repairs are not caused by or attributed to the fault of the STATE.
 - c. Pay the actual cost of any repairs, performed by or on behalf of the State Department of Transportation, to roadway prisms, base course, pavement and any other structure when such repairs are necessitated by the Work performed under this Agreement within one year from the satisfactory completion of such Work, provided that such repairs are not caused by or attributed to the fault of the STATE.
 - d. Remove, relocate, replace, reconstruct or adjust any of its Utility Facilities that may be situated, under this

EXHIBIT B 07

1

Agreement, on or under highway rights of way belonging to the STATE, as may be reasonably required by the State Director of Transportation or his authorized representative in connection with any construction, reconstruction, repair or maintenance of the highway by the STATE. The cost of relocation of Utility Facilities shall be borne as provided by Section 264-33, Hawaii Revised Statutes.

e. Take reasonable actions as necessary to keep all Utility Facilities installed under this Agreement in good repair so that their presence on or under the highway will not impair the use or usefulness of any highway improvement, which may now exist or hereafter come into existence.

f. Make all repairs as may be required by Chapter 264, Hawaii Revised Statutes.

g. The COMPANY shall save and hold harmless, indemnify, and defend the STATE, and all other governmental agencies from and against any and all suits, actions, claims of every nature and kind which may be brought for or on account of any injury, death, or damage, to persons or property, arising or growing out of the acts or omissions of the COMPANY, its officers, employees or agents and any contractor employed by it in connection with the Work covered by this Agreement, or the subsequent occupancy and use of the right of way by the COMPANY, provided, however, that the COMPANY's obligations hereunder shall not be effective, or enforceable, to the extent such injury, death, or damage to persons or property is caused in whole or in part by the STATE.

h. Obtain any applicable right of way for introduction, storage, and installation of the COMPANY's overhead or underground facilities, both for purposes of planning and for performance of the Work, or both, if existing STATE right of way for either overhead or underground facilities are provided or made available to the COMPANY, but the COMPANY does not wish to utilize such existing STATE right of way, PROVIDED, however, that in no event shall the COMPANY be responsible for any delays, disruptions or resequencing of Work, that could not have been reasonably foreseen by either party, related to or associated with the COMPANY's efforts to obtain the right of way.

2. In addition, the COMPANY shall comply with all Federal, State and local laws and ordinances applicable to the Work to be done under this Agreement. Without limiting the generality of the foregoing, the COMPANY shall comply with the following:

EXHIBIT B.07

- 2 -

a. Compliance with Regulations: Regulations of the Department of Transportation of the United States of America relative to nondiscrimination in federally assisted programs of said Department of Transportation (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: Nondiscrimination with regard to the work performed by it after award and prior to completion of the contract work, on the ground of race, creed, color, sex, national origin, or disability, as defined in The Americans with Disabilities Act of 1990, in the selection and retention of subcontractors, including procurements of materials and leases of equipment; and nonparticipation, either directly or indirectly, in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix A ll of the Regulations.

c. Solicitations for Subcontracts. Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the COMPANY for work to be performed pursuant to any subcontract hereunder, including procurements of materials or equipment, notification to each potential subcontractor or supplier by the COMPANY of the COMPANY's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color or national origin, or disability as defined in the Americans with Disabilities Act of 1990.

d. Information and Reports: Providing all information and reports required by the Regulations, or orders and instructions issued pursuant thereto referred to in subparagraph 2.a, and permitting access to its books, records, accounts, other sources of information, and its Utility Facilities as may reasonably be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Certifying to the STATE or the Federal Highway Administration as appropriate setting forth what efforts it has made to obtain the information where any information required of the COMPANY is in the exclusive possession of another who fails or refuses to furnish this information.

e. Transmission of Documents: Include the provisions of any contract or subcontract and the Regulations, order, or instructions referred to in subparagraph

HWY-RL 7/07

2.a, and take such action with respect to any contract, subcontract, or procurement as the STATE or the Federal Highway Administration may reasonably direct as a means of enforcing such provisions including sanctions for noncompliance; provided, that, in the event the COMPANY becomes involved in, or is threatened with, litigation against a contractor, subcontractor, or supplier as a result of such direction, the COMPANY may request the STATE to enter into such litigation to protect the interest of the STATE, and, in addition, the COMPANY may request the United States to enter into such litigation to protect the interest of the United States.

In the event the COMPANY fails to comply with the nondiscrimination provisions of this Agreement, the STATE shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,

- (1) withholding payments to the COMPANY under the Agreement until the COMPANY complies and/or
- (2) cancellation, termination or suspension of the Agreement, in whole or in part.

3. The COMPANY shall not, except with the prior approval of the State Director of Transportation, or in the event of an emergency, perform work on its Utility Facilities from:

- a. The through traffic lanes or ramps of a freeway; or
- b. The through traffic lanes or ramps of all other highways on weekdays, during the hours of 6:00 to 9:00 a.m. and 3:00 to 6:30 p.m.

The COMPANY shall, however, perform such work in a reasonable and expeditious manner, with as little interference as may be reasonably possible with the free flow of traffic and the safe operation of highway facilities.

4. When applicable, at its own expense, the COMPANY will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the STATE consents in writing to allow abandonment in place. Notwithstanding any such consent by the STATE for abandonment in place, the COMPANY agrees to be responsible for the removal costs and any costs of clean-up and remediation for any pollution or contamination caused by the facilities, if such action becomes necessary in the future. The COMPANY further agrees to indemnify and hold harmless, the STATE,

EXHIBIT B.07

from any and all liabilities which may arise from the COMPANY'S acts or omissions relating to such pipelines or facilities.

5. Pursuant to regulations and requirements of the Federal Highway Administration (FHWA) and Hawaii state law, the COMPANY is prohibited from assigning or subleasing any facilities that are allowed to be abandoned in place in the highway right-of-way without the express permission of, and arrangements with the STATE or unless such assignment or sublease is required by law. The COMPANY shall give the STATE ten (10) days prior written notice of any use by third parties of the COMPANY'S facilities that the COMPANY is required by law to allow. Any unauthorized use of the COMPANY'S facilities by any other utility or third party is strictly prohibited.

6. The foregoing responsibilities of the COMPANY are in addition to, and not by way of limitation of, any other responsibilities contained in the Agreement to which this exhibit is attached, as well as any other exhibits and attachments thereto.

RESPONSIBILITIES OF THE STATE

1 The STATE shall:

- a. Obtain, or control, and provide reasonable and timely access, rights of way, and opportunity for introduction, storage, and installation of the COMPANY'S overhead and/or underground facilities, both for purposes of planning and for performance of the Work, to the extent such actions are within the power of the STATE to grant without having to exercise its power of eminent domain. If such reasonable and timely access, rights of way, and opportunity for introduction, storage, and installation of overhead and/or underground facilities are not provided or made available to the COMPANY, and the COMPANY is unable to proceed with its planning or the Work as a result thereof, the lack of timely access, rights of way, and opportunity for introduction, storage, and installation of the COMPANY'S materials and equipment shall constitute impossibility of performance and the COMPANY shall not be required to continue the planning or performance of the Work under the Agreement. Nothing contained in this paragraph 1.a. shall be construed as obligating the COMPANY to exercise its right of

EXHIBITS.07

condemnation, if any, to plan or perform the Work under the Agreement.

- b. Provide for coordination of the activities of the STATE and its contractors with the COMPANY in preparing for and performing the Work, in such a manner as to provide a logical, systematic, sequential, and efficient flow of work and eliminate unnecessary interference with the Work.
- c. Avoid any unnecessary interference by the STATE and its contractors with the COMPANY'S preparations for the performance of the Work. In the event of any such interference, the COMPANY shall not be responsible for any resulting schedule or cost impacts.

2. The foregoing responsibilities of the STATE are in addition to, and not by way of limitation of, any other responsibilities contained in the Agreement to which this exhibit is attached, as well as any other exhibits and attachments thereto.

EXHIBITS.07