HART
HONOLULU AUTHORITY ~ RAPID TRANSPORTATION

Lori M.K. Kahikina, P.E.
Executive Director and CEO

Rick Keene
Deputy Executive Director and COO

BOARD OF DIRECTORS

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June 14, 2023

'23JUN14 PM 4:02 CITY CLERK

The Honorable Tommy Waters, Chair
Honolulu City Council
City and County of Honolulu
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters:

Subject: Draft Resolutions

Attached for your consideration is a Draft Resolution Approving that the City and County of Honolulu Sell a Nonexclusive Perpetual Easement to Hawaiian Electric Company, Inc., for Electrical Purposes Not Related to the Honolulu Rail Transit Project Over Two Properties Located at 1163 Kona Street and 1174 Waimanu Street, Honolulu, Hawaii 96814 Identified as Tax Map Key Nos. (1) 2-3-007-039 and (1) 2-3-007-036.

Very truly yours,

Lori M.K. Kahikina, P.E.
Executive Director and CEO

Attachment

cc: Mr. Michael Formby, Managing Director
HART Board of Directors
Office of the City Clerk

DEPT. COM. 391

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

APPROVING THAT THE CITY AND COUNTY OF HONOLULU SELL A NON-EXCLUSIVE PERPETUAL EASEMENT TO HAWAIIAN ELECTRIC COMPANY, INC., FOR ELECTRICAL PURPOSES NOT RELATED TO THE HONOLULU RAIL TRANSIT PROJECT OVER TWO PROPERTIES LOCATED AT 1163 KONA STREET AND 1174 WAIMANU STREET, HONOLULU, HAWAII 96814 IDENTIFIED AS TAX MAP KEY NOS. (1) 2-3-007-039 AND (1) 2-3-007-036

WHEREAS, Section 46-66, Hawaii Revised Statutes, as amended (HRS), authorizes each county, subject to council approval, to grant, sell, or otherwise dispose of any easement for particular purposes in perpetuity by direct negotiation or otherwise, subject to reverter to such county upon the termination or abandonment of the specific purpose for which the easement was granted, including easements for any governmental or public utility purpose; and

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (Charter); and

WHEREAS, Section 17-103.2(c) of the Charter empowers HART "[to]recommend to the council the sale, exchange or transfer of real property or any interest therein which is under the control of the authority. The council shall take no action to dispose of such property without the written approval of the authority, and all proceeds from the disposition shall be deposited into the transit fund;" and

WHEREAS, Section 13-107 of the Charter provides that "title to all property acquired by any agency of the city shall be vested in the city;" and

WHEREAS, the City and County of Honolulu (City) acquired for the use and benefit of HART, the fee simple interest in Lot 352 (Property 1), more particularly described in Exhibit A, located at 1163 Kona Street, Honolulu Hawaii 96814 and identified as Tax Map Key (TMK) (1) 2-3-007-039 on December 1, 2015; and

WHEREAS, the City and County of Honolulu (City) acquired for the use and benefit of HART, the fee simple interest in Lot 353A (Property 2), more particularly described in Exhibit B, located at 1174 Waimanu Street, Honolulu Hawaii 96814 and identified as Tax Map Key (TMK) (1) 2-3-007-036 on September 26, 2014; and

RESOLUTION

WHEREAS, Hawaiian Electric Company, Incorporated (HECO) has requested to purchase an easement to install underground electrical facilities within Property 1 and Property 2 for purposes unrelated to the Honolulu Rail Transit Project (HRTP); and

WHEREAS, HECO's intended use of the easements does not conflict with HART's needs for the HRTP; and

WHEREAS, the designation of Easement A for electrical purposes, with an area of 2,000 square feet, and Easement B with an area of 1,840 square feet, (Easements), as shown on the map attached as Exhibit C and described in Exhibit D which is attached hereto and by reference made a part hereof; and

WHEREAS, an application for designation the Easements will be filed with the Department of Planning and Permitting (DPP) upon approval of this resolution; and

WHEREAS, a petition for designation of the Easements, will be submitted to the Land Court of the State of Hawaii; and

WHEREAS, the Easements are required prior to the Land Court's Order (Order) for designation of the Easements; and

WHEREAS, prior to the Order, the Grant of Easement will encumber Property 1 and Property 2 and restrict rights to the use of the area covered by the Easements; and

WHEREAS, upon issuance of the Order approving the designation of the Easements, the Grant of Easement will be amended to partially terminate the grant of easement as to the remainder of Property 1 and Property 2 outside of the Easements; and

WHEREAS, HART and HECO entered into a Memorandum of Understanding for the Purchase of Easements Located in the Kewalo Basin (MOU) whereby HECO has agreed to pay the fair market value of the easements as determined by a HART designated appraiser and reviewed by a HART designated review appraiser; and HECO has agreed to reimburse HART for costs associated with obtaining approval from the FTA, Board of Directors and City Council for Easements; and

WHEREAS, the HART designated appraiser has determined the value of Easement A to be $1,062,500 and Easement B to be $1,035,000; and

RESOLUTION

WHEREAS, HART and HECO will enter into a Purchase and Sales agreement for the transaction after designation of the Easements through approval of the Easements map by DPP; and

WHEREAS, the Grant of Easement (general form in Exhibit E) reserves the right for HART to exercise or grant similar or compatible rights or easements to others without the consent of the grantee; provided, however, that such rights or easements shall be used in a manner that will not unreasonably interfere with the grantee's facilities or access in the grantor's discretion; and

WHEREAS, HECO, at HECO's expense, shall be responsible for installation of HART's infrastructure required for the HRTP on Property 1 and Property 2; and

WHEREAS, the infrastructure to be installed will run from property line to property line and include but not be limited to: handholes, underground wirelines, electrical conduit; backfill and concrete slurry material (also identified as CSM); and mandrel testing; and approval and acceptance by HECO in its capacity as the utility provider. Infrastructure to be installed per Utility Relocation Plans UP1695, dated March 18, 2021.

WHEREAS, in response to concerns expressed by the Board, and to encourage favorable action on this resolution, HECO has committed to

1. connect HART with either Hawaii Energy or another third party to see if HART could benefit from any of HECO's programs;
2. arrange a discussion with HECO's internal demand response staff to see if there are any benefits to HART from HECO's demand response program, and;
3. work with HART to see if a time of use option would be advantageous to HART; and

WHEREAS, HECO, at HECO's expense, shall be responsible for installation of HART's infrastructure required for the Honolulu Rail Transit Project on the property as set forth in paragraph A of the easement:

A. **Installation of Improvements**. Grantee, at Grantee's expense, shall be responsible for installation of Grantor's infrastructure required for the Honolulu Rail Transit Project

("HRTP") on the Property ("Construction Obligation"). The Construction Obligation shall be completed by the earlier of (a) the date of Grantor's need for such improvements, as identified in notice from Grantor to Grantee and (b) the date that Grantee has advised Grantor that the Grantee's Facilities will be installed, provided that Grantee shall provide one hundred eighty (180) days prior written notice to Grantor of the commencement of the construction of Grantor's Facilities. The Construction Obligation shall include without limitation, construction of the infrastructure improvements identified on Utility Relocation drawings Nos. UP1595, UP1596A, UP1695(HEP), UP1695(HEP)A, UP1695(HEST), UP1695(HEST)A, UP1695B(HEP), UP1695B(HEP)A, UP1695B(HEST), UP1695(HEST)A, UP3660B, UP3672 and shall be limited to the following:

(i) concrete manholes, concrete encased conduits and such other appurtenances as may be necessary for relocation of the 46kV and 12kV lines affected by the HRTP. Excludes installation of any electrical cable and equipment. Grantee shall stub out conduits at the locations shown on the Grantor's Utility Relocation drawings referenced above;

(ii) backfill with suitable material or low strength concrete material (also identified as CLSM); and

(iii) mandrel testing of Grantee's Facilities to acceptance by Grantee.

WHEREAS, on May 11, 2023 the HART Board of Directors approved and recommended to the City Council that the City Council approve the grant of perpetual easement over the Property for electrical purposes to HECO (Exhibit F); and now, therefore,

BE IT RESOLVED that the City Council approves the granting of a non-exclusive perpetual easement over Property 1 and Property 2 for electrical purposes to HECO at the value determined by HART's appraiser; and subject to the requirement that HECO install the HART improvements as described herein; and

BE IT RESOLVED that the City Council approve, upon issuance of the Land Court order designating the non-exclusive perpetual easement, the amendment of the grant of non-exclusive perpetual easement to amend the Property 1 and

Property 2 described therein to Easement A and Easement B (or such renumbered easement) for electrical purposes; and

BE IT RESOLVED that the City Council grant the non-exclusive perpetual easement on the condition that HECO confirm its commitment to work with both the City Administration and HART to explore potential ways to reduce the electrical costs of the HRTP, including the specific measures listed herein; and

BE IT FURTHER RESOLVED that the Executive Director of HART or the Executive Director's designee is authorized to execute the Grant of Easement, and the amendment to the grant of Easement substantially as described herein, together with any amendments or supplements thereto as necessary to effectuate the transaction contemplated by this resolution.

BE IT FINALLY RESOLVED that certified copies of this resolution be transmitted to the Executive Director of HART, and HART Board Chair.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION: _____

_____

_____ _____

Honolulu, Hawaii Councilmembers

EXHIBIT A

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 352, area 5,000 square feet, more or less, Section 2, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 880 (amended) of Bishop Trust Company, Limited.

EXHIBIT B

All of that certain parcel of land situate at Kewalo, City and County of Honolulu, State of Hawaii, described as follows:

LOT 353-A, area 4,600 sq. ft., more or less, Section 2 as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 880 of Bishop Trust Company, Limited.

EXHIBIT C

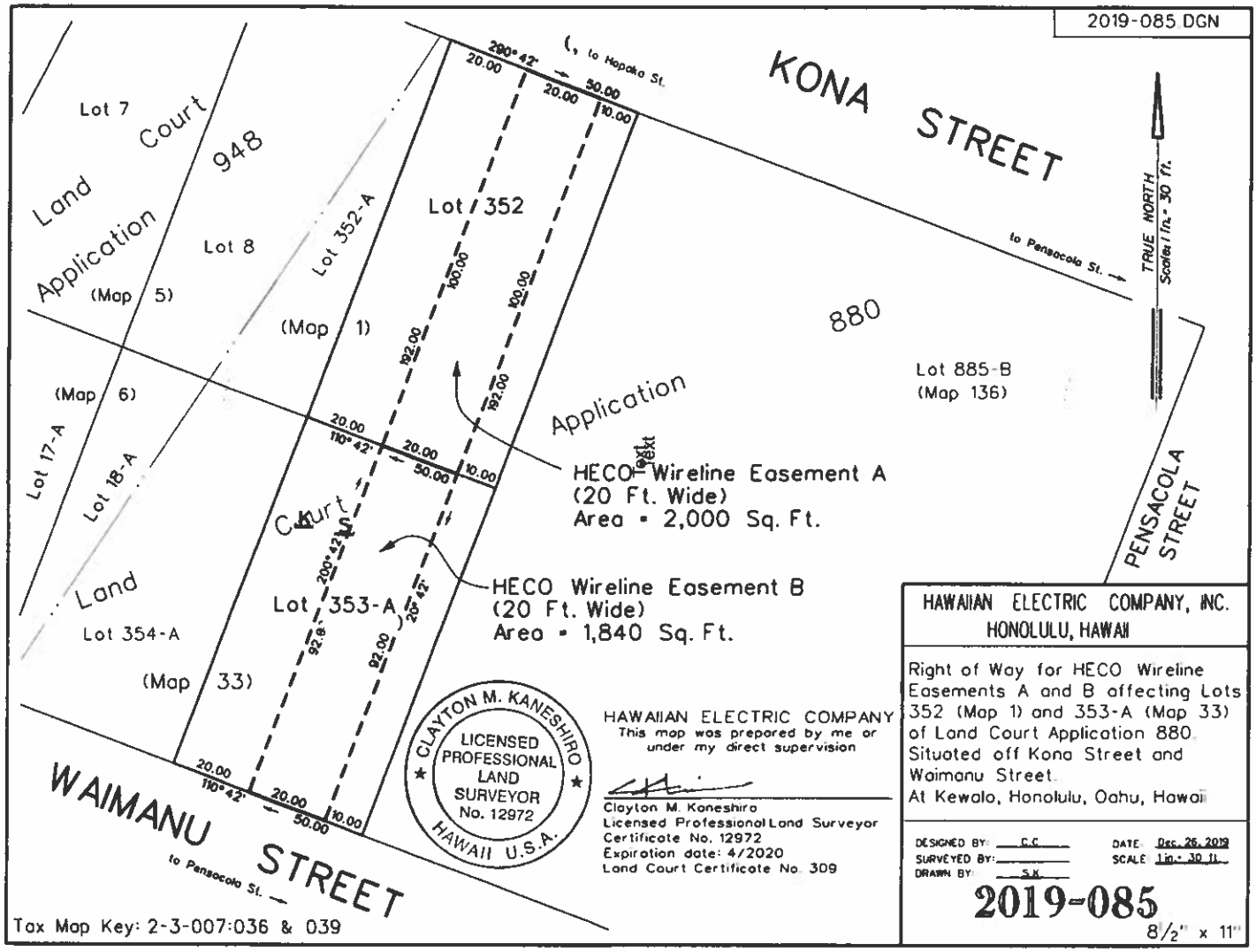

2019-085.DGN
KONA STREET
to Hopoko St.
to Pensacola St.
TRUE NORTH
Scale: 1 in. = 30 ft.
Lot 7
Land Court
948
Land Application
Lot 8
(Map 5)
Lot 352-A
(Map 1)
Lot 352
880
Lot 885-B
(Map 136)
(Map 6)
Lot 17-A
Lot 18-A
Land Court
Application
HECO Wireline Easement A
(20 Ft. Wide)
Area = 2,000 Sq. Ft.
HECO Wireline Easement B
(20 Ft. Wide)
Area = 1,840 Sq. Ft.
Lot 353-A
Lot 354-A
(Map 33)
PENSACOLA STREET
WAIMANU STREET
to Pensacola St.
Tax Map Key: 2-3-007:036 & 039
CLAYTON M. KANESHIRO
LICENSED PROFESSIONAL LAND SURVEYOR
No. 12972
HAWAII U.S.A.
HAWAIIAN ELECTRIC COMPANY
This map was prepared by me or under my direct supervision
Clayton M. Koneshiro
Licensed Professional Land Surveyor
Certificate No. 12972
Expiration date: 4/2020
Land Court Certificate No. 309
HAWAIIAN ELECTRIC COMPANY, INC.
HONOLULU, HAWAII
Right of Way for HECO Wireline Easements A and B affecting Lots 352 (Map 1) and 353-A (Map 33) of Land Court Application 880.
Situated off Kona Street and Waimanu Street.
At Kewalo, Honolulu, Oahu, Hawaii
DESIGNED BY: C.C.
SURVEYED BY:
DRAWN BY: S.K.
DATE: Dec. 26, 2019
SCALE: 1 in. = 30 ft.
2019-085
8 1/2" x 11"

EXHIBIT D

EASEMENT A:

Being a portion of Lot 352, as shown on Map 1, of Land Court Application 880.

Beginning at the northeast corner of this parcel of land, and along the south side of Kona Street, the direct tie from the northwest corner of Lot 885-B, as shown on map 136, of Land Court Application 880, by true azimuth and distance being 110°42' 10.00 feet, thence running by azimuths measured clockwise from True South:-

1.	20°42'	100.00 feet along the remainder of Lot 352, as shown on Map 1, of Land Court Application 880;
2.	110°42'	20.00 feet along Lot 353-A, as shown on Map 33, of Land Court Application 880;
3.	200°42	100.00 feet along the remainder of Lot 352, as shown on Map 1, of Land Court Application 880;
4.	290°42'	20.00 feet along the south side of Kona Street to the point of beginning and containing an area of 2,000 square feet.

EASEMENT B:

Being a portion of Lot 353-A, as shown on Map 33, of Land Court Application 880.

Beginning at the southeast corner of this parcel of land, and along the north side of Waimanu Street, the direct tie from the southwest corner of Lot 885-B, as shown on map 136,

of Land Court Application 880, by true azimuth and distance being 110°42' 10.00 feet, thence running by azimuths measured clockwise from True South:-

1.	100°42'	20.00 feet along the north side of Waimanu Street;
2.	200°42'	92.00 feet along the remainder of Lot 353-A, as shown on Map 33, of Land Court Application 880;
3.	290°42'	20.00 feet along Lot 352, as shown on Map 1, of Land Court Application 880;
4.	20°42'	92.00 feet along the remainder of Lot 353-A, as shown on Map 33, of Land Court Application 880 to the point of beginning and containing an area of 1,840 square feet.



By: _____

Clayton M. Kaneshiro
Licensed Professional Land Surveyor
Exp. 4/30/20

Exhibit E

LAND COURT SYSTEM | REGULAR SYSTEM

After Recordation, Return By: ☐ Mail ☑Pickup

Hawaiian Electric Company, Inc.
Survey Division
P. O. Box 2750
Honolulu, HI 96840-0001

This document contains ___ pages.

HECO WO# 6080607

TITLE OF DOCUMENT(S): R/W 2019-085

NON-EXCLUSIVE GRANT OF EASEMENT

PARTIES TO DOCUMENT:

GRANTOR(S): CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous City agency

GRANTEE(S): HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation

DESCRIPTION: Those certain premises situated off Kona Street, at Kewalo, Honolulu, Oahu, Hawaii, being a portion of Lot 352, as shown on Map 1, and Lot 353-A, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 880 of Bishop Trust Company, Limited, and covered by Transfer Certificate of Title Nos. 1,107,877 and 1,085,844.

Tax Map Key: (1) 2-3-007: 036 & 039
Address: 1174 Waimanu Street and 1163 Kona Street, Honolulu, Hawaii 96814

NON-EXCLUSIVE GRANT OF EASEMENT

THIS GRANT, made this ___ day of _____, 20___ by and between the **CITY AND COUNTY OF HONOLULU** for the use and benefit of the **HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**, a semi-autonomous City agency, whose principle place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 (the "Grantor"), and **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, whose principal place of business is 1099 Alakea Street, Suite 2200, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii 96840 (the "Grantee"),

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

The Grantor, in consideration of the sum of Ten Dollars ($10.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, grants and conveys unto the Grantee a perpetual and non-exclusive right and easement to construct, reconstruct, access, operate, maintain, repair, replace and remove manholes, underground wirelines and such other appliances and equipment (the "Grantee's Facilities") as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communication and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor's land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon, across and through those certain premises situated off Kona Street, at Kewalo, Honolulu, Oahu, Hawaii, being a portion of Lot 352, as shown on Map 1, and Lot 353-A, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 880 of Bishop Trust Company, Limited, and covered by Transfer Certificate of Title Nos. 1,107,877 and 1,085,844 ("Property"); and limiting said use to Easement A & B being 20 ft. wide, containing areas of 2,000 square feet and 1,840 square feet, respectively, shown on HECO R/W 2019-085 and further described in Exhibit A, attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the Grantee, forever.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee's use of the granted premises, Grantee's Facilities, or Grantee's access to and maintenance of Grantee's Facilities. The Grantor further reserves the right to exercise or grant similar or compatible rights or easements to others without the consent of the Grantee; provided, however, that such rights or easements shall be used in a manner that will not unreasonably interfere with the Grantee's Facilities or access, determined in the Grantor's reasonable discretion. The Grantor shall not at any time during the term of this Grant of Easement erect or place, or allow to be erected or placed by a third party, any foundation of any building or structure of any kind below the surface of the Easement Area, or at any time erect or place, or allow to be erected or placed by a third party, any building or structure of any kind on the surface of the Easement Area, without the written consent of the Grantee. In its exercise of the reserved rights herein, the Grantor shall not interfere with the Grantee's

right to use, travel over and across, improve, maintain, replace and repair the Easement Area and the facilities and equipment of the Grantee within the Easement Area or the adjacent public road right of way, as the case may be. Such limitations on Grantor's use of the Easement Area shall include, but not be limited to; the installation and maintenance of any vegetation or landscaping that may interfere with Grantee's right to access, use and travel over and across the Easement Area.

AND the Grantee hereby covenants and agrees that:

1. **Due Care and Diligence.** It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

2. **Indemnification.** The Grantee will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by the Grantee's failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee's failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

A. **Installation of Improvements**. Grantee, at Grantee's expense, shall be responsible for installation of Grantor's infrastructure required for the Honolulu Rail Transit Project ("HRTP") on the Property ("Construction Obligation"). The Construction Obligation shall be completed by the earlier of (a) the date of Grantor's need for such improvements, as identified in notice from Grantor to Grantee and (b) the date that Grantee has advised Grantor that the Grantee's Facilities will be installed, provided that Grantee shall provide one hundred eighty (180) days prior written notice to Grantor of the commencement of the construction of Grantor's Facilities. The Construction Obligation shall include without limitation, construction of the infrastructure improvements identified on Utility Relocation drawings Nos. UP1595, UP1596A, UP1695(HEP), UP1695(HEP)A, UP1695(HEST), UP1695(HEST)A, UP1695B(HEP), UP1695B(HEP)A, UP1695B(HEST), UP1695(HEST)A, UP3660B, UP3672 and shall be limited to the following:

(i) concrete manholes, concrete encased conduits and such other appurtenances as may be necessary for relocation of the 46kV and 12kV lines affected by the HRTP. Excludes installation of any electrical cable and equipment. Grantee shall stub out conduits at the locations shown on the Grantor's Utility Relocation drawings referenced above

(ii) backfill with suitable material or low strength concrete material (also identified as CLSM); and

(iii) mandrel testing of Grantee's Facilities to acceptance by Grantee.

B. Reduction of Impact to the Property. Grantee's exercise of its rights under this Agreement and the construction of Grantee's Facilities shall be completed in a manner which minimizes the impact to the use of the Property by others, including without limitation, Grantor and Grantor's contractors. Grantee acknowledges that the Property is currently being used for construction as a staging yard. Prior to construction, Grantee shall provide to Grantor a plan to minimize the impact of Grantee's activities of the Property.

C. Relocation Expenses. Grantee shall be responsible for all reasonable costs incurred to effectuate the relocation of Grantor's contractor (who is currently using the site), provided that in no event shall such costs exceed ONE HUNDRED THOUSAND DOLLARS ($100,000). The reimbursement of said costs shall be made to HART promptly upon submission of appropriate documentation by Grantor in accordance with executed MOU.

D. Condemnation. If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee.

E. Survey; Amendment. Promptly after the Easement Area is delineated and shown on a Land Court map, the Grantor and Grantee agree to execute and deliver an appropriate amendment of this Grant of Easement to partially terminate the easement as to the entire lot or parcel except as to the easement(s) as set forth on the Land Court Map for all purposes under this Grant of Easement. The amendment shall be substantially in the form shown in Exhibit B, attached hereto and made a part hereof.

F. Landscaping. The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant.

G. Warranty of Title. The Grantor, for itself, its heirs and assigns, covenant with the Grantee, its successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and have good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land.

H. Abandonment. If the Grantee shall at any time in the future abandon or remove the Grantee Facilities from the Easement Area and shall fail, within two (2) consecutive years thereafter, to use or reinstall Grantee Facilities within the Easement Area, then in such events, the rights granted and the obligations imposed hereunder shall thereupon terminate without any action on the part of the Grantor; provided, however, that in the event of an abandonment as contemplated by this Section E (Abandonment), the

Grantee shall have no obligation to remove the Grantee Facilities or any part thereof from the Easement Area.

I. **Default**. If Grantee breaches any provision of this Agreement, then Grantor shall provide Grantee with written notice of such failure, specifying the default in reasonable detail. Grantee shall promptly commence to cure such default. If Grantee shall at any time fail to comply with the terms and conditions of this Agreement, or otherwise default in the performance of any of Grantee's obligations under this Agreement, and fail to cure such default(s) within 30 calendar days after delivery of written notice thereof by Grantor, then, in addition to all other rights and remedies to which Grantor is entitled at law or in equity, Grantor shall have the unilateral right to terminate this Agreement and all of Grantee's rights hereunder upon written notice to Grantee, and Grantor shall be entitled to recover from Grantee all costs and expenses incurred in connection with such default, including, without limitation, reasonable attorneys' fees and court costs. If the default is such that more than thirty (30) days would be reasonably required to perform such action or comply with any term or provision hereof, then Grantor shall not exercise its right to terminate so long as Grantee commences performance or compliance within the fifteen (15) day period and diligently and continuously proceeds to complete such performance or achieve compliance.

J. **No Liability.** Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be liable to the Grantor or any other grantee of the Easement Area for any loss (including loss of electrical service), or any or damage to any property, or injury (including death) to any person resulting from such third party's use of the Easement Area in a manner that unreasonably interferes with the Grantee's use of the Easement Area, Grantee's Facilities, or Grantee's access to and maintenance of Grantee's Facilities except to the extent the Grantee is grossly negligent.

K. **Definitions.** All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine, feminine or neuter gender, as the context of this grant shall require. The term "person" shall mean an individual, partnership, association, trust, corporation or other entity as the context may require.

L. **Parties in Interest.** The covenants contained in this Agreement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns. Each of the parties which constitute the Grantee covenants for itself and not for the other party.

M. **Counterparts.** The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

[Signatures begin on the following page]

IN WITNESS WHEREOF the undersigned have executed this instrument as of the day and year first above mentioned.

CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous City agency

By:_____
Name: Lori M. K. Kahikina
Title: Executive Director and CEO

Grantor

Approved as to Form and Legality

By:_____
Deputy Corporation Counsel

Approved as to Content:

By:_____
Krista Lunzer, Director of Transit Property Acquisition and Relocation

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20_____, before me personally appeared Lori M. K. Kahikina, to me known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing _____-page instrument entitled Grant of Easement, dated _____, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities. This acknowledgement is deemed to include my Notary Certification.

_____
Notary Signature

Type or print name:_____
Notary Public, First Circuit, State of Hawaii

My commission expires:_____

[Affix Seal]

HAWAIIAN ELECTRIC COMPANY, INC.,
a Hawaii corporation

By_____
Name: ERIN P. KIPPEN
Title: Vice President

Grantee

APPROVED
Legal Form:

By_____

Land & Rights of Way

By_____

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20_____, before me appeared ERIN P. KIPPEN, to me personally known, who, being by me duly sworn, did say that such person is the Vice President of **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, and that said _____-page instrument entitled Grant of Easement, dated _____, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

_____
Notary Signature

Type or print name: _____
Notary Public, First Circuit, State of Hawaii

My commission expires:_____

[Affix Seal]

Exhibit E

LAND COURT SYSTEM | REGULAR SYSTEM

After Recordation, Return By: ☐ Mail ☑Pickup

Hawaiian Electric Company, Inc.
Survey Division
P. O. Box 2750
Honolulu, HI 96840-0001

This document contains ___ pages.

HECO WO# 6080607

TITLE OF DOCUMENT(S): R/W 2019-085

PARTIAL TERMINATION AND RESTATEMENT OF NON-EXCLUSIVE GRANT OF EASEMENT

PARTIES TO DOCUMENT:

GRANTOR(S): CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous City agency

GRANTEE(S): HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation

DESCRIPTION: Those certain premises situated off Kona Street, at Kewalo, Honolulu, Oahu, Hawaii, being a portion of Lot 352, as shown on Map 1, and Lot 353- A, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 880 of Bishop Trust Company, Limited, and covered by Transfer Certificate of Title Nos. 1,107,877 and 1,085,844.

Tax Map Key: (1) 2-3-007: 036 & 039
Address: 1174 Waimanu Street and 1163 Kona Street, Honolulu, Hawaii 96814

PARTIAL TERMINATION AND
RESTATEMENT OF NON-EXCLUSIVE GRANT OF EASEMENT

THIS GRANT, made this ___ day of ___, 20__, by and between the **CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**, a semi-autonomous City agency, whose principle place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 (the "Grantor"), and **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, whose principal place of business is 1099 Alakea Street, Suite 2200, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii 96840 (the "Grantee"),

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

WHEREAS, the Grantors previously granted to Grantee a Non-Exclusive Grant of Easement dated _____, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____ and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No._____ (Original Grant), which Non-Exclusive Grant of Easement is terminated except as to the easement areas described below.

NOW THEREFORE, The Grantor, in consideration of the sum of Ten Dollars ($10.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, (1) terminates the Original Grant across the entirety of Lot _____, as shown on Map ___, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application _____, and covered by Transfer Certificate of Title No. _____ , except as to the portion described in the Easement Area (defined below) and (2) confirms that Grantor grants and conveys unto the Grantee a perpetual and non-exclusive right and easement to construct, reconstruct, access, operate, maintain, repair, replace and remove manholes, underground wirelines and such other appliances and equipment (the "Grantee's Facilities") as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communication and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor's land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon, across and through those certain premises situated _____ (collectively, "Easement Area"), as shown on _____, identified as Exhibit A and further described in Exhibit B, attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the Grantee, forever.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee's use of the granted premises, Grantee's Facilities, or Grantee's access to and maintenance of Grantee's Facilities. The Grantor further reserves the right to exercise or grant similar or compatible rights or easements to others without the consent of the Grantee; provided, however, that such rights or easements shall be used in a manner that will not unreasonably interfere with the Grantee's Facilities or access, determined in the Grantor's reasonable discretion. The Grantor shall not at

any time during the term of this Grant of Easement erect or place, or allow to be erected or placed by a third party, any foundation of any building or structure of any kind below the surface of the Easement Area, or at any time erect or place, or allow to be erected or placed by a third party, any building or structure of any kind on the surface of the Easement Area, without the written consent of the Grantee. In its exercise of the reserved rights herein, the Grantor shall not interfere with the Grantee's right to use, travel over and across, improve, maintain, replace and repair the Easement Area and the facilities and equipment of the Grantee within the Easement Area or the adjacent public road right of way, as the case may be. Such limitations on Grantor's use of the Easement Area shall include, but not be limited to; the installation and maintenance of any vegetation or landscaping that may interfere with Grantee's right to access, use and travel over and across the Easement Area.

AND the Grantee hereby covenants and agrees that:

1. **Due Care and Diligence.** It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

2. **Indemnification.** The Grantee will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by the Grantee's failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee's failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

A. **Installation of Improvements**. Grantee, at Grantee's expense, shall be responsible for installation of Grantor's infrastructure required for the Honolulu Rail Transit Project ("HRTP") on the Property ("Construction Obligation"). The Construction Obligation shall be completed by the earlier of (a) the date of Grantor's need for such improvements, as identified in notice from Grantor to Grantee and (b) the date that Grantee has advised Grantor that the Grantee's Facilities will be installed, provided that Grantee shall provide one hundred eighty (180) days prior written notice to Grantor of the commencement of the construction of Grantor's Facilities. The Construction Obligation shall include without limitation, construction of the infrastructure improvements identified on Utility Relocation drawings Nos. UP1595, UP1596A, UP1695(HEP), UP1695(HEP)A, UP1695(HEST), UP1695(HEST)A, UP1695B(HEP), UP1695B(HEP)A, UP1695B(HEST), UP1695(HEST)A, UP3660B, UP3672 and shall be limited to the following:

(i) concrete manholes, concrete encased conduits and such other appurtenances as may be necessary for relocation of the 46kV and 12kV lines affected by the HRTP. Excludes installation of any electrical cable and equipment. Grantee shall stub out conduits at the locations shown on the Grantor's Utility Relocation drawings referenced above

(ii) backfill with suitable material or low strength concrete material (also identified as CLSM); and

(iii) mandrel testing of Grantee's Facilities to acceptance by Grantee.

B. Reduction of Impact to the Property. Grantee's exercise of its rights under this Agreement and the construction of Grantee's Facilities shall be completed in a manner which minimizes the impact to the use of the Property by others, including without limitation, Grantor and Grantor's contractors. Grantee acknowledges that the Property is currently being used for construction as a staging yard. Prior to construction, Grantee shall provide to Grantor a plan to minimize the impact of Grantee's activities of the Property.

C. Relocation Expenses. Grantee shall be responsible for all reasonable costs incurred to effectuate the relocation of Grantor's contractor (who is currently using the site), provided that in no event shall such costs exceed ONE HUNDRED THOUSAND DOLLARS ($100,000). The reimbursement of said costs shall be made to HART promptly upon submission of appropriate documentation by Grantor in accordance with executed MOU.

D. Condemnation. If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee.

E. Survey; Amendment. At such time as the Easement Area is delineated and shown on a Land Court map, the Grantor and Grantee agree to execute and deliver an appropriate amendment of this Non-exclusive Grant of Easement to partially terminate the easement as to the entire lot or parcel except as to the easement(s) as set forth on the Land Court Map for all purposes under this Grant of Easement. The amendment shall be substantially in the form shown in Exhibit B, attached hereto and made a part hereof.

F. Landscaping. The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant.

G. Warranty of Title. The Grantor, for itself, its heirs and assigns, covenant with the Grantee, its successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and have good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land.

H. Abandonment. If the Grantee shall at any time in the future abandon or remove the Grantee Facilities from the Easement Area and shall fail, within two (2) consecutive years thereafter, to use or reinstall Grantee Facilities within the Easement Area, then in such events, the rights granted and the obligations imposed hereunder shall thereupon terminate without any action on the part of the Grantor; provided, however, that in the event of an

abandonment as contemplated by this Section E (Abandonment), the Grantee shall have no obligation to remove the Grantee Facilities or any part thereof from the Easement Area.

I. **Default.** If Grantee breaches any provision of this Agreement, then Grantor shall provide Grantee with written notice of such failure, specifying the default in reasonable detail. Grantee shall promptly commence to cure such default. If Grantee shall at any time fail to comply with the terms and conditions of this Agreement, or otherwise default in the performance of any of Grantee's obligations under this Agreement, and fail to cure such default(s) within 30 calendar days after delivery of written notice thereof by Grantor, then, in addition to all other rights and remedies to which Grantor is entitled at law or in equity, Grantor shall have the unilateral right to terminate this Agreement and all of Grantee's rights hereunder upon written notice to Grantee, and Grantor shall be entitled to recover from Grantee all costs and expenses incurred in connection with such default, including, without limitation, reasonable attorneys' fees and court costs. If the default is such that more than thirty (30) days would be reasonably required to perform such action or comply with any term or provision hereof, then Grantor shall not exercise its right to terminate so long as Grantee commences performance or compliance within the fifteen (15) day period and diligently and continuously proceeds to complete such performance or achieve compliance.

J. **No Liability.** Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be liable to the Grantor or any other grantee of the Easement Area for any loss (including loss of electrical service), or any or damage to any property, or injury (including death) to any person resulting from such third party's use of the Easement Area in a manner that unreasonably interferes with the Grantee's use of the Easement Area, Grantee's Facilities, or Grantee's access to and maintenance of Grantee's Facilities except to the extent the Grantee is grossly negligent.

K. **Definitions.** All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine, feminine or neuter gender, as the context of this grant shall require. The term "person" shall mean an individual, partnership, association, trust, corporation or other entity as the context may require.

L. **Parties in Interest.** The covenants contained in this Agreement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns. Each of the parties which constitute the Grantee covenants for itself and not for the other party.

M. **Counterparts.** The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

[Signatures begin on the following page]

IN WITNESS WHEREOF the undersigned have executed this instrument as of the day and year first above mentioned.

CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous City agency

By:_____
Name: Lori M. K. Kahikina
Title: Executive Director and CEO

Grantor

Approved as to Form and Legality

By:_____
Deputy Corporation Counsel

Approved as to Content:

By:_____
Krista Lunzer, Director of Transit Property Acquisition and Relocation

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20_____, before me personally appeared Lori M. K. Kahikina, to me known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing _____-page instrument entitled Grant of Easement, dated _____, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities. This acknowledgement is deemed to include my Notary Certification.

_____
Notary Signature

Type or print name:_____
Notary Public, First Circuit, State of Hawaii

My commission expires:_____

[Affix Seal]

APPROVED
Legal Form:

By _____

Land & Rights of Way

By _____

HAWAIIAN ELECTRIC COMPANY, INC.,
a Hawaii corporation

By _____

Name: ERIN P. KIPPEN
Title: Vice President

Grantee

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

HECO

On this _____ day of _____, 20_____, before me appeared ERIN P. KIPPEN, to me personally known, who, being by me duly sworn, did say that such person is the Vice President of **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, and that said _____-page instrument entitled Grant of Easement, dated _____, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

_____
Notary Signature

Type or print name: _____
Notary Public, First Circuit, State of Hawaii

My commission expires:_____

[Affix Seal]

EXHIBIT F

Honolulu Authority for Rapid Transportation

RESOLUTION NO. 2023-5

APPROVING AND RECOMMENDING THAT THE CITY AND COUNTY OF HONOLULU GRANT A NON-EXCLUSIVE PERPETUAL EASEMENT TO HAWAIIAN ELECTRIC COMPANY, INC., FOR ELECTRICAL PURPOSES NOT RELATED TO THE PROJECT WITHIN PROPERTIES LOCATED AT 1163 KONA STREET AND 1174 WAIMANU STREET, HONOLULU, HAWAII 96814 IDENTIFIED AS TAX MAP KEY (1) 2-3-007-039 AND (1) 2-3-007-036

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (Charter); and

WHEREAS, Section 17-103.2(c) of the Charter empowers HART "[to] recommend to the council the sale, exchange or transfer of real property or any interest therein which is under the control of the authority. The council shall take no action to dispose of such property without the written approval of the authority, and all proceeds from the disposition shall be deposited into the transit fund;" and

WHEREAS, Section 13-107 of the Charter provides that "title to all property acquired by any agency of the city shall be vested in the city;" and

WHEREAS, the City and County of Honolulu (City) acquired for the use and benefit of HART, the fee simple interest in Lot 352 (Property 1), more particularly described in Exhibit A, located at 1163 Kona Street, Honolulu Hawaii 96814 and identified as Tax Map Key (TMK) (1) 2-3-007-039 on December 1, 2015; and

WHEREAS, the City and County of Honolulu (City) acquired for the use and benefit of HART, the fee simple interest in Lot 353A (Property 2), more particularly described in Exhibit B, located at 1174 Waimanu Street, Honolulu Hawaii 96814 and identified as Tax Map Key (TMK) (1) 2-3-007-036 on September 26, 2014; and

WHEREAS, Hawaiian Electric Company, Incorporated (HECO) has requested to purchase an easement to install underground electrical facilities within Property 1 and Property 2 for purposes unrelated to the Honolulu Rail Transit Project (HRTP); and

WHEREAS, HECO's intended use of the easements does not conflict with HART's needs for the HRTP; and

WHEREAS, the designation of Easement A for electrical purposes, with an area of 2,000 square feet, and Easement B with an area of 1,840 square feet, (Easements), as shown on the map attached as Exhibit C and described in Exhibit D which is attached hereto and by reference made a part hereof; and

WHEREAS, an application for designation of the Easements will be filed with the Department of Planning and Permitting (DPP) upon approval of this resolution; and

WHEREAS, a petition for designation of the Easements, will be submitted to the Land Court of the State of Hawaii; and

WHEREAS, the Easements are required prior to the Land Court's Order (Order) for designation of the Easements; and

WHEREAS, prior to the Order, the Grant of Easement will encumber Property 1 and Property 2 and restrict rights to the use of the area covered by the Easements; and

WHEREAS, upon issuance of the Order approving the designation of the Easements, the Grant of Easement will be amended to revise the description of Property 1 and Property 2 to the limited description of the Easements only; and

WHEREAS, HART and HECO entered into a Memorandum of Understanding for the Purchase of Easements Located in the Kewalo Basin (MOU) whereby HECO has agreed to pay the fair market value of the easements as determined by a HART designated appraiser and reviewed by a HART designated review appraiser; and HECO has agreed to reimburse HART for costs associated with obtaining approval from the Federal Transit Administration, Board of Directors and City Council for Easements; and

WHEREAS, the HART designated appraiser has determined the value of Easement A to be $1,062,500 and Easement B to be $1,035,000; and

WHEREAS, HART and HECO will enter into a Purchase and Sales agreement for the transaction after designation of the Easements through approval of the Easements map by DPP; and

WHEREAS, the Grant of Easement (general form in Exhibit E) reserves the right for HART to exercise or grant similar or compatible rights or easements to others without the consent of the grantee; provided, however, that such rights or easements shall be used in a manner that will not unreasonably interfere with the grantee's facilities or access in the grantor's discretion; and

WHEREAS, HECO, at HECO's expense, shall be responsible for installation of HART's infrastructure required for the HRTP Property 1 and Property 2; and

WHERAS, the infrastructure to be installed will run from property line to property line

and include but not be limited to: handholes, underground wirelines, electrical conduit; backfill and concrete slurry material (also identified as CSM); and mandrel testing; and approval and acceptance by HECO in its capacity as the utility provider. Infrastructure to be installed per Utility Relocation Plans UP1695, dated March 18, 2021; and

WHEREAS, in response to concerns expressed by the Board, and to encourage favorable action on this resolution, HECO has committed to:

1. connect HART with either Hawaii Energy or another third party to see if HART could benefit from any of HECO's programs;
2. arrange a discussion with HECO's internal demand response staff to see if there are any benefits to HART from HECO's demand response program; and
3. work with HART to see if a time of use option would be advantageous to HART; and

WHERAS, HECO, at HECO's expense, shall be responsible for installation of HART's infrastructure required for the Honolulu Rail Transit Project on the property as set forth in paragraph A of the easement:

A. **Installation of Improvements**. Grantee, at Grantee's expense, shall be responsible for installation of Grantor's infrastructure required for the Honolulu Rail Transit Project ("HRTP") on the Property ("Construction Obligation"). The Construction Obligation shall be completed by the earlier of (a) the date of Grantor's need for such improvements, as identified in notice from Grantor to Grantee and (b) the date that Grantee has advised Grantor that the Grantee's Facilities will be installed, provided that Grantee shall provide one hundred eighty (180) days prior written notice to Grantor of the commencement of the construction of Grantor's Facilities. The Construction Obligation shall include without limitation, construction of the infrastructure improvements identified on Utility Relocation drawings Nos. UP1595, UP1596A, UP1695(HEP), UP1695(HEP)A, UP1695(HEST), UP1695(HEST)A, UP1695B(HEP), UP1695B(HEP)A, UP1695B(HEST), UP1695(HEST)A, UP3660B, UP3672 and shall be limited to the following:

   (i) concrete manholes, concrete encased conduits and such other appurtenances as may be necessary for relocation of the 46kV and 12kV lines affected by the HRTP. Excludes installation of any electrical cable and equipment. Grantee shall stub out conduits at the locations shown on the Grantor's Utility Relocation drawings referenced above;
   (ii) backfill with suitable material or low strength concrete material (also identified as CLSM); and

(iii) mandrel testing of Grantee's Facilities to acceptance by Grantee.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That the HART Board of Directors approves and recommends to the Council of the City and County of Honolulu the grant of non-exclusive perpetual easement over Property 1 and Property 2 for electrical purposes to HECO at the value determined by HART's appraisal; and subject to the requirement that HECO install the HART improvements as described herein; and

2. That the HART Board of Directors approves and recommends to the Council of the City and County of Honolulu, upon issuance of the Land Court order designating the non-exclusive perpetual easement, the amendment of the grant of non-exclusive perpetual easement to amend the Property 1 and Property 2 described therein to Easement A and Easement B (or such renumbered easement) for electrical purposes; and

3. HART recommends the City Council grant the non-exclusive perpetual easement on the condition that HECO confirm its commitment to work with both the City Administration and HART to explore potential ways to reduce the electrical costs of the HRTP, including the specific measures listed herein,

4. That a copy of this resolution be transmitted to the Honolulu City Council.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on May 11, 2023.

Board Chair

ATTEST:

Board Executive Officer

EXHIBIT A

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

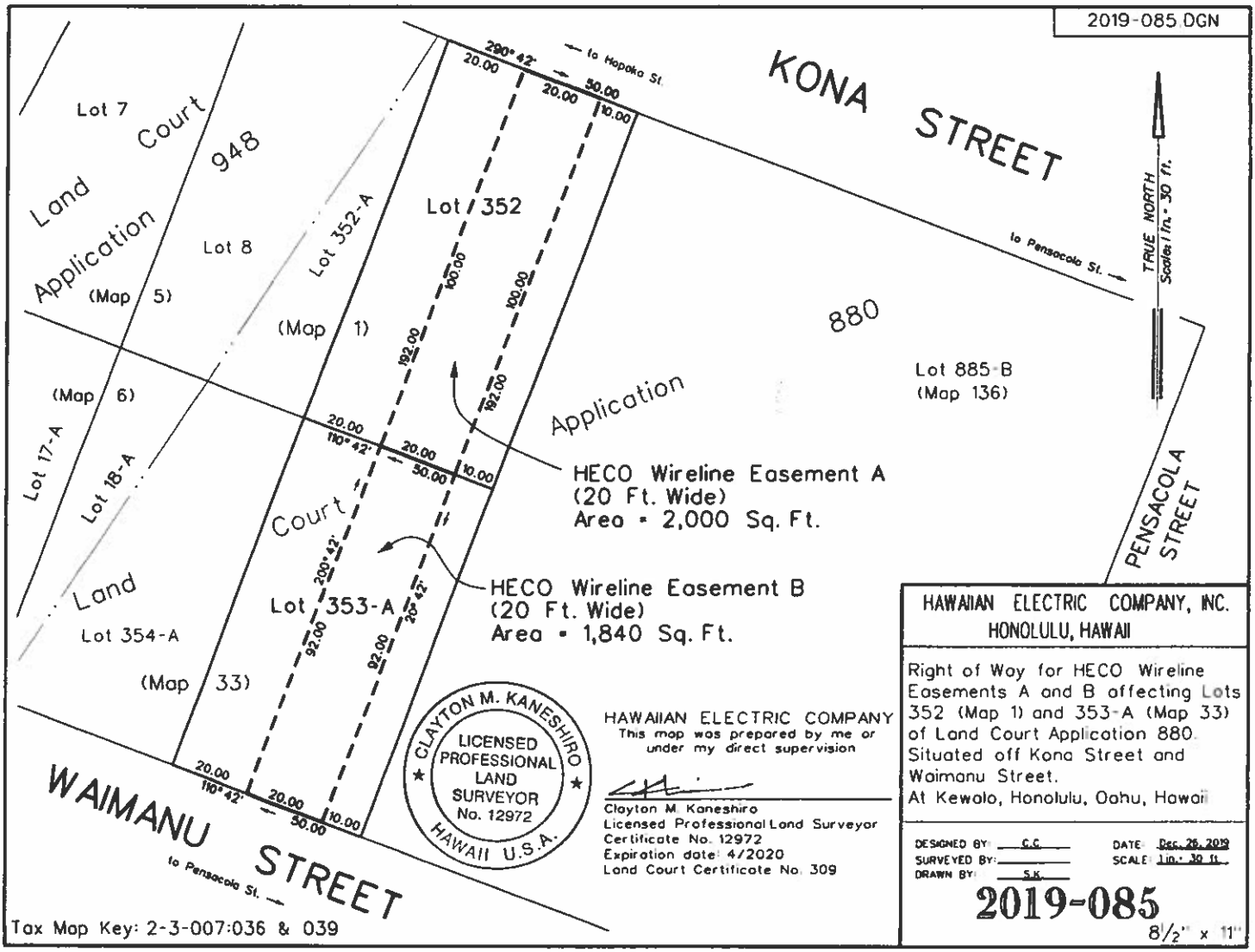
LOT 352, area 5,000 square feet, more or less, Section 2, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 880 (amended) of Bishop Trust Company, Limited.

EXHIBIT B

All of that certain parcel of land situate at Kewalo, City and County of Honolulu, State of Hawaii, described as follows:

LOT 353-A, area 4,600 sq. ft., more or less, Section 2 as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 880 of Bishop Trust Company, Limited.

EXHIBIT C



HAWAIIAN ELECTRIC COMPANY
This map was prepared by me or under my direct supervision

Clayton M. Kaneshiro
Licensed Professional Land Surveyor
Certificate No. 12972
Expiration date: 4/2020
Land Court Certificate No. 309

HAWAIIAN ELECTRIC COMPANY, INC.
HONOLULU, HAWAII

Right of Way for HECO Wireline Easements A and B affecting Lots 352 (Map 1) and 353-A (Map 33) of Land Court Application 880.
Situated off Kona Street and Waimanu Street.
At Kewalo, Honolulu, Oahu, Hawaii

DESIGNED BY: C.C. DATE: Dec. 26, 2019
SURVEYED BY: SCALE: 1 in. = 30 ft.
DRAWN BY: S.K.

2019-085

8½" x 11"

EXHIBIT D

EASEMENT A:

Being a portion of Lot 352, as shown on Map 1, of Land Court Application 880.

Beginning at the northeast corner of this parcel of land, and along the south side of Kona Street, the direct tie from the northwest corner of Lot 885-B, as shown on map 136, of Land Court Application 880, by true azimuth and distance being 110°42' 10.00 feet, thence running by azimuths measured clockwise from True South:-

1.	20°42'	100.00 feet along the remainder of Lot 352, as shown on Map 1, of Land Court Application 880;
2.	110°42'	20.00 feet along Lot 353-A, as shown on Map 33, of Land Court Application 880;
3.	200°42	100.00 feet along the remainder of Lot 352, as shown on Map 1, of Land Court Application 880;
4.	290°42'	20.00 feet along the south side of Kona Street to the point of beginning and containing an area of 2,000 square feet.

EASEMENT B:

Being a portion of Lot 353-A, as shown on Map 33, of Land Court Application 880.

Beginning at the southeast corner of this parcel of land, and along the north side of Waimanu Street, the direct tie from the southwest corner of Lot 885-B, as shown on map 136,

of Land Court Application 880, by true azimuth and distance being 110°42' 10.00 feet, thence running by azimuths measured clockwise from True South:-

1.	100°42'	20.00 feet along the north side of Waimanu Street;
2.	200°42'	92.00 feet along the remainder of Lot 353-A, as shown on Map 33, of Land Court Application 880;
3.	290°42'	20.00 feet along Lot 352, as shown on Map 1, of Land Court Application 880;
4.	20°42'	92.00 feet along the remainder of Lot 353-A, as shown on Map 33, of Land Court Application 880 to the point of beginning and containing an area of 1,840 square feet.



By: _____

Clayton M. Kaneshiro
Licensed Professional Land Surveyor
Exp. 4/30/20

Exhibit E

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By: ☐ Mail ☑ Pickup

Hawaiian Electric Company, Inc.
Survey Division
P. O. Box 2750
Honolulu, HI 96840-0001

This document contains ___ pages.

HECO WO# 6080607

TITLE OF DOCUMENT(S): R/W 2019-085

NON-EXCLUSIVE GRANT OF EASEMENT

PARTIES TO DOCUMENT:

GRANTOR(S): CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous City agency

GRANTEE(S): HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation

DESCRIPTION: Those certain premises situated off Kona Street, at Kewalo, Honolulu, Oahu, Hawaii, being a portion of Lot 352, as shown on Map 1, and Lot 353-A, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 880 of Bishop Trust Company, Limited, and covered by Transfer Certificate of Title Nos. 1,107,877 and 1,085,844.

Tax Map Key: (1) 2-3-007: 036 & 039
Address: 1174 Waimanu Street and 1163 Kona Street, Honolulu, Hawaii 96814

NON-EXCLUSIVE GRANT OF EASEMENT

THIS GRANT, made this _____ day of _____, 20____, by and between the **CITY AND COUNTY OF HONOLULU** for the use and benefit of the **HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**, a semi-autonomous City agency, whose principle place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 (the "Grantor"), and **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, whose principal place of business is 1099 Alakea Street, Suite 2200, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii 96840 (the "Grantee"),

WITNESSETH THAT:

The Grantor, in consideration of the sum of Ten Dollars ($10.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, grants and conveys unto the Grantee a perpetual and non-exclusive right and easement to construct, reconstruct, access, operate, maintain, repair, replace and remove manholes, underground wirelines and such other appliances and equipment (the "Grantee's Facilities") as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communication and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor's land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon, across and through those certain premises situated off Kona Street, at Kewalo, Honolulu, Oahu, Hawaii, being a portion of Lot 352, as shown on Map 1, and Lot 353-A, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 880 of Bishop Trust Company, Limited, and covered by Transfer Certificate of Title Nos. 1,107,877 and 1,085,844 ("Property"); and limiting said use to Easement A & B being 20 ft. wide, containing areas of 2,000 square feet and 1,840 square feet, respectively, shown on HECO R/W 2019-085 and further described in Exhibit A, attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the Grantee, forever.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee's use of the granted premises, Grantee's Facilities, or Grantee's access to and maintenance of Grantee's Facilities. The Grantor further reserves the right to exercise or grant similar or compatible rights or easements to others without the consent of the Grantee; provided, however, that such rights or easements shall be used in a manner that will not unreasonably interfere with the Grantee's Facilities or access, determined in the Grantor's reasonable discretion. The Grantor shall not at any time during the term of this Grant of Easement erect or place, or allow to be erected or placed by a third party, any foundation of any building or structure of any kind below the surface of the Easement Area, or at any time erect or place, or allow to be erected or placed by a third party, any building or structure of any kind on the surface of the Easement Area, without the written consent of the Grantee. In its exercise of the reserved rights herein, the Grantor shall not interfere with the Grantee's right to use, travel over and across, improve, maintain, replace and repair the

Easement Area and the facilities and equipment of the Grantee within the Easement Area or the adjacent public road right of way, as the case may be. Such limitations on Grantor's use of the Easement Area shall include, but not be limited to; the installation and maintenance of any vegetation or landscaping that may interfere with Grantee's right to access, use and travel over and across the Easement Area.

AND the Grantee hereby covenants and agrees that:

1. **Due Care and Diligence.** It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

2. **Indemnification.** The Grantee will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by the Grantee's failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee's failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

A. **Installation of Improvements**. Grantee, at Grantee's expense, shall be responsible for installation of Grantor's infrastructure required for the Honolulu Rail Transit Project ("HRTP") on the Property ("Construction Obligation"). The Construction Obligation shall be completed by the earlier of (a) the date of Grantor's need for such improvements, as identified in notice from Grantor to Grantee and (b) the date that Grantee has advised Grantor that the Grantee's Facilities will be installed, provided that Grantee shall provide one hundred eighty (180) days prior written notice to Grantor of the commencement of the construction of Grantor's Facilities. The Construction Obligation shall include without limitation, construction of the infrastructure improvements identified on Utility Relocation drawings Nos. UP1595, UP1596A, UP1695(HEP), UP1695(HEP)A, UP1695(HEST), UP1695(HEST)A, UP1695B(HEP), UP1695B(HEP)A, UP1695B(HEST), UP1695(HEST)A, UP3660B, UP3672 and shall be limited to the following:

(i) concrete manholes, concrete encased conduits and such other appurtenances as may be necessary for relocation of the 46kV and 12kV lines affected by the HRTP. Excludes installation of any electrical cable and equipment. Grantee shall stub out conduits at the locations shown on the Grantor's Utility Relocation drawings referenced above

(ii) backfill with suitable material or low strength concrete material (also identified as CLSM); and

(iii) mandrel testing of Grantee's Facilities to acceptance by Grantee.

B. Reduction of Impact to the Property. Grantee's exercise of its rights under this Agreement and the construction of Grantee's Facilities shall be completed in a manner which minimizes the impact to the use of the Property by others, including without limitation, Grantor and Grantor's contractors. Grantee acknowledges that the Property is currently being used for construction as a staging yard. Prior to construction, Grantee shall provide to Grantor a plan to minimize the impact of Grantee's activities of the Property.

C. Relocation Expenses. Grantee shall be responsible for all reasonable costs incurred to effectuate the relocation of Grantor's contractor (who is currently using the site), provided that in no event shall such costs exceed ONE HUNDRED THOUSAND DOLLARS ($100,000). The reimbursement of said costs shall be made to HART promptly upon submission of appropriate documentation by Grantor in accordance with executed MOU.

D. Condemnation. If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee.

E. Survey; Amendment. If the Easement Area is delineated and shown on a Land Court map, the Grantor and Grantee agree to execute and deliver an appropriate amendment of this Grant of Easement to partially terminate the easement as to the entire lot or parcel except as to the easement(s) as set forth on the Land Court Map for all purposes under this Grant of Easement.

F. Landscaping. The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant.

G. Warranty of Title. The Grantor, for itself, its heirs and assigns, covenant with the Grantee, its successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and have good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land.

H. Abandonment. If the Grantee shall at any time in the future abandon or remove the Grantee Facilities from the Easement Area and shall fail, within two (2) consecutive years thereafter, to use or reinstall Grantee Facilities within the Easement Area, then in such events, the rights granted and the obligations imposed hereunder shall thereupon terminate without any action on the part of the Grantor; provided, however, that in the event of an abandonment as contemplated by this Section E (Abandonment), the Grantee shall have no obligation to remove the Grantee Facilities or any part thereof from the Easement Area.

I. Default. If Grantee breaches any provision of this Agreement, then Grantor shall provide Grantee with written notice of such failure, specifying the default in reasonable detail. Grantee shall promptly commence to cure such default. If Grantee shall at any time fail to comply with the terms and conditions of this Agreement, or otherwise default in the performance of any of Grantee's obligations under this Agreement, and fail to cure such

default(s) within 30 calendar days after delivery of written notice thereof by Grantor, then, in addition to all other rights and remedies to which Grantor is entitled at law or in equity, Grantor shall have the unilateral right to terminate this Agreement and all of Grantee's rights hereunder upon written notice to Grantee, and Grantor shall be entitled to recover from Grantee all costs and expenses incurred in connection with such default, including, without limitation, reasonable attorneys' fees and court costs. If the default is such that more than thirty (30) days would be reasonably required to perform such action or comply with any term or provision hereof, then Grantor shall not exercise its right to terminate so long as Grantee commences performance or compliance within the fifteen (15) day period and diligently and continuously proceeds to complete such performance or achieve compliance.

J. No Liability. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be liable to the Grantor or any other grantee of the Easement Area for any loss (including loss of electrical service), or any or damage to any property, or injury (including death) to any person resulting from such third party's use of the Easement Area in a manner that unreasonably interferes with the Grantee's use of the Easement Area, Grantee's Facilities, or Grantee's access to and maintenance of Grantee's Facilities except to the extent the Grantee is grossly negligent.

K. **Definitions.** All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine, feminine or neuter gender, as the context of this grant shall require. The term "person" shall mean an individual, partnership, association, trust, corporation or other entity as the context may require.

L. Parties in Interest. The covenants contained in this Agreement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns. Each of the parties which constitute the Grantee covenants for itself and not for the other party.

M. Counterparts. The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

[Signatures begin on the following page]

IN WITNESS WHEREOF the undersigned have executed this instrument as of the day and year first above mentioned.

CITY AND COUNTY OF HONOLULU for the use and benefit of the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous City agency

By:_____
Name: Lori M. K. Kahikina
Title: Executive Director and CEO

Grantor

Approved as to Form and Legality

By:_____
Deputy Corporation Counsel

Approved as to Content:

By:_____
Krista Lunzer, Director of Transit Property Acquisition and Relocation

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20___, before me personally appeared Lori M. K. Kahikina, to me known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing _____-page instrument entitled Grant of Easement, dated _____, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities. This acknowledgement is deemed to include my Notary Certification.

_____
Notary Signature

Type or print name:_____
Notary Public, First Circuit, State of Hawaii

My commission expires:_____

[Affix Seal]

APPROVED
Legal Form:

By _____

Land & Rights of Way

By _____

HAWAIIAN ELECTRIC COMPANY, INC.,
a Hawaii corporation

By _____
Name: ERIN P. KIPPEN
Title: Vice President

Grantee

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

HECO

On this _____ day of _____, 20____, before me appeared ERIN P. KIPPEN, to me personally known, who, being by me duly sworn, did say that such person is the Vice President of **HAWAIIAN ELECTRIC COMPANY, INC.,** a Hawaii corporation, and that said _____-page instrument entitled Grant of Easement, dated _____, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

_____
Notary Signature

Type or print name: _____
Notary Public, First Circuit, State of Hawaii

My commission expires:_____

[Affix Seal]