



IN REPLY REFER TO:  
CMS-APOOUTIL-00134

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas  
EXECUTIVE DIRECTOR AND CEO

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Carrie K.S. Okinaga, Esq.

November 29, 2013

Ms. Charlyne Nakamura  
Hawaiian Electric Company, Inc.  
820 Ward Avenue  
Honolulu, Hawaii 96814

Dear Ms. Nakamura:

Subject: Utility Relocation Construction Agreement for the  
Kamehameha Highway Guideway Section, Contract No. CT-HRT-1400136  
Honolulu Rail Transit Project, Notice to Proceed

The Honolulu Authority for Rapid Transportation has executed Contract No. CT-HRT-1400136, Utility Relocation Construction Agreement for the Kamehameha Highway Guideway Section for the Honolulu Rail Transit Project. A copy of the contract documents is enclosed for your files.

We look forward to working with you on this project. Should there be any questions, please contact Mr. Lorenzo Garrido at (808) 768-6191.

Sincerely,

Daniel A. Grabauskas  
Executive Director and CEO

Enclosure





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/29/2013

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> MCGRIFF, SEIBELS & WILLIAMS, INC. P.O. Box 10265 Birmingham, AL 35202	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 800-476-2211      FAX (A/C, No): E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b> NAIC # INSURER A : Assoc. Elec. & Gas Ins. Serv. Ltd (AEGIS) AA-3190004	
<b>INSURED</b> Hawaiian Electric Industries, Inc. including Hawaiian Electric Co., Inc. (HECO) Attn: Charlyne Nakamura 1001 Bishop Street, Suite 2900 Honolulu, HI 96813-3480	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

**COVERAGES      CERTIFICATE NUMBER: BHNTYH8G      REVISION NUMBER:**

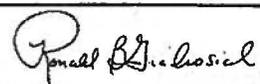
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A WC STATU-TORY LIMITS    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	EXCESS WC Excess Workers' Compensation			WC5110802P Subject to \$750,000 SIR	06/01/2013	06/01/2014	Each Accident or Each Employee for Disease \$ 35,000,000 \$ \$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 \*\*\*Associated Electric & Gas Ins. Svcs. Ltd. \*\*\*  
 This insurance contract is issued by an insurer which is not licensed by the State of Hawaii and is not subject to its regulation or examination. If the insurer is found insolvent, claims under this contract are not covered by any guaranty fund of the State of Hawaii.

RE: (1) Utility Relocation Construction Agreement between HART and HECO for the West Oahu/Farrington Highway Guideway Section of the Honolulu Rail Transit Project And  
 (2) Utility Relocation Construction Agreement between HART and HECO for the Kamehameha Highway Guideway Section of the Honolulu Rail Transit Project.

(continued next page)

<b>CERTIFICATE HOLDER</b>  Honolulu Authority for Rapid Transportation and the City and County of Honolulu Attn: Executive Director of HART 1099 Alakea Street, Suite 1700 Honolulu, HI 96813	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  

**UTILITY RELOCATION CONSTRUCTION AGREEMENT  
BETWEEN THE HONOLULU AUTHORITY FOR RAPID  
TRANSPORTATION AND HAWAIIAN ELECTRIC COMPANY, INC. FOR THE  
KAMEHAMEHA HIGHWAY GUIDEWAY SECTION OF THE  
HONOLULU RAIL TRANSIT PROJECT**

This UTILITY RELOCATION CONSTRUCTION AGREEMENT is entered into and effective this 24<sup>th</sup> day of November, 2013 (the "Agreement"), by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 ("HART"), and HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation, whose principal mailing address is P.O. Box 2750, Honolulu, Hawaii 96840 (the "UTILITY") (HART and the UTILITY collectively, are the "Parties," and individually a "Party," all as governed by the context in which such words are used).

**RECITALS**

WHEREAS, pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973 (2000 Ed.), as amended ("RCH"), HART is a semi-autonomous public transportation authority of the City and County of Honolulu (the "City") with the authority to develop, operate, maintain and expand the City fixed guideway system;

WHEREAS, Ordinance No. 07-001 authorized the implementation of the Locally Preferred Alternative (the "LPA"), which is a fixed guideway transit system between Kapolei and the University of Hawaii ("UH") at Manoa, provided that a Minimum Operable Segment (the "MOS") of the LPA is constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West Oahu (near the Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Honolulu International Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the MOS includes the limits of the Kamehameha Highway Guideway Section of the Honolulu Rail Transit Project (the "KHG Project") in general accordance with the KHG Project alignment depicted in Exhibit B, attached hereto and incorporated herein by reference;

WHEREAS, the UTILITY owns and operates its utility facilities together with any related improvements within the limits of the KHG Project (collectively, the "Facilities");

WHEREAS, the Facilities are located in public rights-of-way within the limits of the KHG Project which are under the jurisdiction, authority, and control of the City, HART, or the State of Hawaii (the "STATE");

WHEREAS, the preliminary design for the KHG Project has identified potential conflicts between the KHG Project and the Facilities, which conflicts will require the Facilities to be relocated (vertically and/or horizontally), adjusted, removed, installed, replaced and/or protected in place (the "Rearrangement");

WHEREAS, the UTILITY has agreed to furnish all labor, materials, equipment, transportation, and supervision necessary to construct and complete the Rearrangement of Facilities arising from or related to the KHG Project in a workmanlike manner as contemplated in this Agreement, subject to the Excluded Services contained in this Agreement (collectively, the "Work");

WHEREAS, the UTILITY shall purchase the materials needed to achieve the Work contemplated by this Agreement and shall be reimbursed by HART for such purchases in accordance with the payment procedures set forth herein;

WHEREAS, prior to the execution of this Agreement HART and the UTILITY entered into a Utility Facilities Relocation and Cost Reimbursement Agreement Between the Honolulu Authority for Rapid Transportation and Hawaiian Electric Company, Inc. for the Kamehameha Highway Section of the Honolulu Rail Transit Project executed on July 11, 2012, as amended ("UFR CRA");

WHEREAS, the Parties have mutually agreed to amend the UFR CRA consistent with the terms, conditions, and survival provisions contained therein;

WHEREAS, the Parties desire to establish procedures, covenants and agreements for the construction related to the Rearrangement of Facilities which will be affected by the KHG Project under this Agreement;

WHEREAS, HART has agreed to fully reimburse the UTILITY for all reasonable actual costs that the UTILITY incurs in connection with the performance of this Agreement;

WHEREAS, the cost reimbursement under this Agreement is a sole source procurement pursuant to Hawaii Revised Statutes ("HRS") § 103D-306 (Supp. 2012) and related Hawaii Administrative Rules ("HAR"), and has been approved for Sole Source Procurement pursuant to HAR § 3-122-81, Sole Source No. 2, Hawaii Administrative Rules;

WHEREAS, for purposes of this Agreement, including Exhibits A through P attached hereto, "HART" shall herein mean and refer to the Honolulu Authority for Rapid Transportation, its officers, employees, agents, representatives, successors, assigns, and any consultant employed by HART on the KHG Project, unless otherwise specifically provided; and

WHEREAS, for purposes of this Agreement, including Exhibits A through P attached hereto, "UTILITY" shall herein mean and refer to Hawaiian Electric Company, Inc., its officers, employees, agents, representatives, successors, assigns, consultants, and any UTILITY employed by the UTILITY on the KHG Project, unless otherwise specifically provided.

## AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are hereby incorporated into this Agreement, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, HART and the UTILITY agree as follows:

### ARTICLE 1: SCOPE OF WORK

**1.1 Description of the Work.** The UTILITY agrees to furnish all labor, Materials, equipment, transportation, and supervision necessary to construct and complete the Rearrangement of Facilities arising from or related to the KHG Project in a workmanlike manner (the "Work"), subject to the exclusions set forth in Section 1.2, in accordance with the following:

- 1.1.1** This Agreement;
- 1.1.2** The Pre-Construction Agreement for the Kamehameha Highway Guideway Section of the Honolulu Rail Transit Project Between the Honolulu Authority for Rapid Transportation and Hawaiian Electric Company, Inc. dated October 4, 2013, which, upon execution of this Agreement is hereby merged into and superseded by this Agreement;
- 1.1.3** The General Conditions, attached hereto as Exhibit A ("General Conditions");
- 1.1.4** The Drawings for the KHG Project prepared by HART, its contractors, subcontractors, or consultants;
- 1.1.5** The Electrical Design Drawings prepared by the UTILITY;
- 1.1.6** The Project Schedule, attached hereto as Exhibit H; and
- 1.1.7** Any written Change Orders duly executed by the Parties in accordance with Article 10 of the General Conditions,

all of which are incorporated by reference herein and made a part hereof (collectively, the "Contract Documents"). Any conflict in the Contract Documents shall be resolved as set forth in the General Conditions.

**1.2 Exclusions to the Work.** The Parties agree that the Work does not include the following construction services:

**1.2.1 Infrastructure Work,** which includes but is not limited to:

- 1.2.1.1** Excavation;
- 1.2.1.2** Duct line construction;
- 1.2.1.3** Concrete pad construction;
- 1.2.1.4** Manhole construction; and
- 1.2.1.5** Handhole construction; and

**1.2.2** The assumptions, qualifications, limitations, and clarifications contained in the Infrastructure Design Drawings, as defined in the General Conditions attached hereto.

all of which shall be collectively referred to as “Excluded Services”. HART agrees that the Excluded Services shall be performed by HART, its Design-Build Contractor, subcontractors, or consultants.

**1.3 Exhibits to Agreement.** The Exhibits attached to this Agreement and incorporated and made a part hereof by this reference, specifically:

- EXHIBIT A – GENERAL CONDITIONS
- EXHIBIT B – MAP DEPICTING KHG PROJECT ALIGNMENT
- EXHIBIT C – UTILITY NOT-TO-EXCEED COST ESTIMATE
- EXHIBIT D – FACILITIES IDENTIFIED FOR REARRANGEMENT
- EXHIBIT E – CONTRACTOR’S INFRASTRUCTURE CONSTRUCTION COST ESTIMATE
- EXHIBIT F – SAMPLE OF INVOICE AND DETAILED STATEMENT OF COSTS
- EXHIBIT G – CERTIFICATE OF CURRENT COST OR PRICING DATA
- EXHIBIT H – KHG PROJECT SCHEDULE
- EXHIBIT I – SURVEYOR’S METES AND BOUNDS GUIDELINES
- EXHIBIT J – FEDERAL CLAUSES
- EXHIBIT K – CERTIFICATION REGARDING LOBBYING
- EXHIBIT L – RESERVED
- EXHIBIT M – RESERVED
- EXHIBIT N – CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS
- EXHIBIT O – MATERIALS LIST
- EXHIBIT P – ITEMS MADE IN THE USA

## ARTICLE 2: CONTRACT TIME

2.1 Project Schedule. HART and the UTILITY agree that the Project Schedule attached hereto as Exhibit H shall constitute the Contract Time for the UTILITY's performance of the Work. The Parties acknowledge and agree that the Project Schedule, including the UTILITY's determined design and construction durations, are incorporated by reference into this Agreement as material terms, provided that following execution of this Agreement, the Parties shall negotiate in good faith to reduce the UTILITY's design and construction durations in order to minimize any discrepancies pertaining to the Contract Time and the planned Project completion date.

2.2 Priority of Work. The UTILITY shall have the right to decide the time, sequence, and priority in which the Work shall be performed and all other matters relative to the timely and orderly performance of the Work consistent with the Project Schedule.

2.3 Time Is of the Essence. Time is of the essence for both Parties to this Agreement, and the Parties mutually agree to take all reasonable actions to timely perform the Work provided for in the Contract Documents as may be completed in accordance with the Project Schedule.

2.4 Commencement of the Work. The UTILITY shall commence its Work upon the execution of this Agreement upon receipt of a written Notice to Proceed from HART.

2.5 Substantial Completion of the Work. Subject to adjustments of the Contract Time and the Substantial Completion Date as provided for in the Contract Documents, the UTILITY shall achieve substantial completion of the Work by no later than September 2016, unless extended by Change Order (the "Substantial Completion Date").

2.6 Changes in the Work. Adjustments to the Contract Time on account of changes in the Work shall be determined and made in accordance with Article 10 of the General Conditions.

2.7 Delay. If the progress of the UTILITY's Work is substantially delayed without the fault or responsibility of the UTILITY, and the UTILITY's Work cannot be reasonably compressed or resequenced to eliminate the impact of such delay, then the Contract Time for the UTILITY's Work shall be extended by Change Order. The Contract Time and the UTILITY's completion deadline, if any, including the Project Schedule may be modified only if the delay impacts the completion deadline. The following are examples of delay:

2.7.1 Intentional or negligent acts by HART during the UTILITY's performance of the Work;

2.7.2 Default by HART of any obligations under this Agreement;

- 2.7.3 Acts or omissions, or defaults in performance of any of HART's separate contractors, subcontractors, or consultants involved in any portion of the KHG Project that affect the UTILITY's performance of the Work;
- 2.7.4 Force majeure events as provided in Article 24 of the General Conditions;
- 2.7.5 Unforeseen conditions;
- 2.7.6 Actual or threatened legal action that reasonably requires the UTILITY to incur delays in defending itself, HART, or the Project, and/or to mitigate the potential for third-party claims for damages; and
- 2.7.7 Any other conditions, events, or circumstances not within the reasonable control of the UTILITY which causes an actual delay in the UTILITY's performance of the Work.

Adjustments to the Contract Time on account of any cause described in 2.7.1 through 2.7.7 above shall be determined in accordance with Article 10 of the General Conditions.

### ARTICLE 3: REIMBURSEMENT FOR THE WORK

- 3.1 One Hundred Percent (100%) Reimbursement of All Actual Costs for the Work. This Agreement constitutes a cost-reimbursement contract, and subject to the provisions of this Agreement, HART agrees to reimburse the UTILITY for one hundred percent (100%) of the UTILITY's costs incurred for the performance and completion of the Work under this Agreement. All actual costs incurred by the UTILITY shall only be charged once to HART, and shall be recovered only once by the UTILITY.
- 3.2 Construction Cost Estimate. The Construction Cost Estimate is provided by the UTILITY and HART for budgeting/planning purposes only. The Construction Cost Estimate shall consist of the total value of the labor, Materials, equipment, and overhead incorporated or consumed to perform the Work, including the following:
  - 3.2.1 The UTILITY's Not-To-Exceed Cost Estimate of total reimbursable costs to be incurred in connection with the UTILITY's performance of the Work under this Agreement (including the reimbursable costs referenced in Section 3.5 herein); and
  - 3.2.2 The Contractor's Infrastructure Construction Cost Estimate, which consists of the value of Infrastructure Work attributable to the UTILITY's infrastructure, and the Contractor's extra work as defined by the UTILITY's Electrical Design Drawings.
- 3.3 The UTILITY's Not-To-Exceed Cost Estimate for the Work performed and/or provided by the UTILITY under this Agreement is THIRTEEN MILLION AND NO/100 DOLLARS (\$13,000,000.00), which includes costs associated with Work performed by

the UTILITY and/or any contractor hired by the UTILITY, and any Materials purchased by the UTILITY. The UTILITY's Not-To-Exceed Cost Estimate for the Work performed and/or provided by the UTILITY is based on the UTILITY's best estimate of the actual costs to be incurred in performing the Work under this Agreement. Upon execution of this Agreement, the UTILITY shall sign and submit to HART a Certificate of Current Cost or Pricing Data in the form attached hereto as Exhibit G.

3.4 HART agrees to provide the Contractor's Infrastructure Construction Cost Estimate related to the Infrastructure Work for inclusion into the Construction Cost Estimate. Any changes requested by the UTILITY to the Not-To-Exceed Cost Estimate shall be accomplished by Change Order in accordance with Article 10 of the General Conditions, which consent shall not be unreasonably withheld by HART.

3.5 Subject to the indemnification contained in Article 25 of the General Conditions, HART's reimbursement of costs to the UTILITY for the Work shall include but not be limited to:

3.5.1 Actual labor costs, including overhead costs, incurred by the UTILITY for salaries or wages for engineering, design, project management, construction management, contract administration, construction services, as-built drawings review, and site observations;

3.5.2 Costs paid or incurred by the UTILITY for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the labor costs;

3.5.3 Payments made by the UTILITY to retained Subcontractors or in accordance with the requirements of the subcontracts;

3.5.4 Actual and overhead costs of Materials purchased, as applicable and supported by the UTILITY, including any and all associated taxes, including, but not limited to, sales taxes and general excise taxes;

3.5.5 Costs of Materials in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess Materials, if any, shall become the UTILITY's property at the completion of the Work; provided, however, that the UTILITY shall provide HART with a reimbursement credit for any such excess useable Materials that become the property of the UTILITY. Any amounts realized from such sales shall be credited to HART;

3.5.6 Costs of transportation, receipt, testing, preparation, acceptance, storage, installation, maintenance, dismantling and removal of Materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned

by the UTILITY's laborers that are provided by the UTILITY at the site and fully consumed in the performance of the Work. Costs of Materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the UTILITY shall mean fair market value;

- 3.5.7 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the UTILITY at the site and related costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any UTILITY-owned item may not exceed the purchase price of any comparable item. Rates of UTILITY-owned equipment and quantities of equipment shall be subject to HART's prior approval;
- 3.5.8 Costs of removal and proper, legal disposal of debris from the site of the Work;
- 3.5.9 Costs for reproductions, graphics, postage, mailings, advertisements, meeting facilities, facsimile transmissions, long-distance telephone calls, parcel delivery charges, telephone service at the site, and other direct expenses necessitated by the Work for the KHG Project;
- 3.5.10 Costs for payments made by the UTILITY to the UTILITY's consultants in connection with this Agreement;
- 3.5.11 Premiums for insurance purchased by the UTILITY, if any, that can be directly attributed to this Agreement;
- 3.5.12 Costs incurred by the UTILITY arising out of HART's failure to adequately and properly perform the community relations obligations contained in this Agreement;
- 3.5.13 Costs for payments made by the UTILITY to investigate and evaluate claims by the UTILITY's customers for whether accidental or intentional, arising out of, connected, with, or relating to interruption of service, property damage and other claims arising from the Work in connection with the KHG Project;
- 3.5.14 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the UTILITY is liable;
- 3.5.15 Fees for witnessing tests required by the Contract Documents or for which the UTILITY reasonably requests in connection with the review, inspection, and acceptance of the Work by HART and the UTILITY;
- 3.5.16 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims

for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the UTILITY resulting from such suits or claims and payments of settlements made with HART's consent;

- 3.5.17 Costs for electronic equipment and software, directly related to the Work with HART's prior approval;
- 3.5.18 Legal, mediation, and litigation costs, including attorneys' fees, other than those arising from disputes between HART and UTILITY, reasonably incurred by the UTILITY in connection with this Agreement in the performance of the Work after execution of the Agreement;
- 3.5.19 That portion of the reasonable expenses of the UTILITY's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work;
- 3.5.20 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property;
- 3.5.21 Costs of repairing or correcting damaged or nonconforming Work executed by the UTILITY, Subcontractor(s) or suppliers;
- 3.5.22 Costs of the storage of Materials temporarily stored at the UTILITY's Storage Facilities as a result of the failure of HART, its UTILITY, or Subcontractor(s)' failure to timely receive Materials;
- 3.5.23 Costs incurred by the UTILITY for delays in shipment or delivery of Materials ordered;
- 3.5.24 Costs for uncovering Infrastructure Work, as specified in Article 16 of the General Conditions;
- 3.5.25 Costs for the UTILITY's Construction Manager, including but not limited to necessary associated costs such as jobsite trailer, power, water, telephone, and internet service to the trailer, office furnishings, and office equipment;
- 3.5.26 Costs for accounting services, including auditing services, that may be reasonably necessary at any time for the KHG Project to meet HART's needs and interests;
- 3.5.27 Costs or damages, to the extent permitted by law, caused by HART or its officers, employees, or independent contractors, in the scope of their employment, and incurred by the UTILITY, provided that HART's liability for such cost or damage has been determined by a court or agreed to by HART;

- 3.5.28 Preparation of pre-bid packages, evaluation of potential subcontractor qualifications as a condition of participation in pre-bid conferences, participation in conferences and communications with qualified pre-bid subcontractors, and other design support services as required during bidding;
- 3.5.29 Development of technical specifications for the Work and for incorporation into the subcontracts for the Work;
- 3.5.30 Development of electrical construction cost estimates and construction schedules for the Work and for incorporation into the subcontracts for the Work;
- 3.5.31 Conferences and communications with HART and its consultants on coordination, schedule, and construction of the Work;
- 3.5.32 Conferences and communications with HART's contractors, including, but not limited to, Kiewit Infrastructure West Co. and Ansaldo Honolulu JV, and HART's subcontractors on coordination, schedule, and construction for the Work;
- 3.5.33 Attendance of UTILITY personnel or UTILITY subcontractors at mandatory HART safety classes or other education requirements related to the Work;
- 3.5.34 Safety equipment required by HART, its contractors, subcontractors, or consultants, for Work within their job sites, that is above and beyond equipment already utilized by UTILITY and its employees and agents, including, but not limited to, amber strobe lights for vehicles to be used by the UTILITY for the Work. Personal protective equipment is expressly excluded from this provision.
- 3.5.35 Preparation for and retention of consultants for the Work, including, but not limited to, Tom Harrington/TLH Project Management, LLC;
- 3.5.36 Costs associated with review of documents or assistance provided by the UTILITY that is related to easement compensation, rental charges for rights of entry or other temporary land rights and, if any, associated charges in connection with acquisition of easements and land rights for Rearrangement Facilities, which pursuant to Section 4.2.4 of the General Conditions, land rights are HART's sole and exclusive responsibility to obtain;
- 3.5.37 Costs associated with the early procurement of Materials at the request of HART as provided in Section 5.1.7 of the General Conditions; and
- 3.5.38 Other reasonable actual costs incurred by the UTILITY in the performance of the Work.

3.6 Development and Formation of the Agreement. Notwithstanding the description of HART's reimbursement obligations above, the Cost Estimate will provide for a reimbursable

allowance not to exceed SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) to be available to the UTILITY for work related to the development, formation, and execution of this Agreement, including but not limited to legal review. Any funds remaining in this reimbursable allowance at the end of this Agreement shall revert back to HART. The Parties agree that upon execution of the Agreement, the UTILITY's reasonable actual costs for the development and formation work, not to exceed \$75,000, shall be reimbursed from this allowance.

3.7 Payments. HART shall make payments to reimburse the UTILITY for actual costs incurred pursuant to this Article 3, as provided in Article 3 of the General Conditions.

ARTICLE 4: CANCELLATION, SUSPENSION,  
OR TERMINATION OF THE WORK

4.1 This Agreement may be cancelled, suspended, or terminated by either HART or the UTILITY as provided for in Article 29 of the General Conditions.

4.2 Costs of cancellation, suspension, or termination may be recovered by the UTILITY in accordance with Article 29 of the General Conditions.

ARTICLE 5: NOTICES

5.1 All notices required or permitted under this Agreement shall be given in writing and delivered as provided for in Section 4.4 of the General Conditions.

5.2 Notices shall be provided to:

IF TO HART: Honolulu Authority for Rapid Transportation  
1099 Alakea Street, Suite 1700  
Honolulu, Hawaii 96813  
Attention: Mr. Lorenzo Garrido

IF TO THE UTILITY: Hawaiian Electric Company, Inc.  
P.O. Box 2750  
Honolulu, Hawaii 96840  
or  
820 Ward Avenue  
Honolulu, Hawaii 96814  
Attention: Ms. Charlyne Nakamura

ARTICLE 6: MISCELLANEOUS

5.1 Definitions. Unless otherwise provided, the Definitions set forth in the General Conditions shall be incorporated by reference herein.

**5.2 Entire Contract.** The Contract Documents and any documents incorporated pursuant thereto shall constitute the entire understanding between the Parties, superseding any and all previous understandings, oral or written, pertaining to the Work. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided to one party by any representative of the other party. The Parties agree that the terms of this Agreement do not modify or alter the Utility Relocation Design Services Agreement Between the Honolulu Authority for Rapid Transportation and Hawaiian Electric Company, Inc. for the Kamehameha Highway Guideway Section of the Honolulu Rail Transit Project.

**5.3 Counterparts.** The Parties agree that this Contract may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. This Contract may also be executed by exchange of executed copies via facsimile or other electronic means, such as PDF, in which case, but not as a condition to the validity of the Contract, each Party shall subsequently send the other Party by mail the original executed copy. A Party's signature transmitted by facsimile or similar electronic means shall be considered an "original" signature for purposes of this Contract.

**5.4 Exception to Statute.** The Parties expressly agree that HRS Section 264-33 (1993) shall not apply to this Agreement. HART hereby waives all rights to seek application and enforcement of HRS Section 264-33 to the Work performed under this Agreement. Due to the special nature of the KHG Project, and pursuant to the terms of this Agreement, HART has agreed to reimburse the UTILITY for all reasonable actual costs incurred in the performance of the Work for the KHG Project for the limited purpose of effecting the Work with the greatest expedition and least interference with the operations of either of the Parties. The terms of this Agreement shall carry no precedential value with respect to other matters not covered by this Agreement. In the event a court of competent jurisdiction determines that HRS Section 264-33 is not waivable, this Agreement shall be voidable within the sole discretion of the UTILITY if the Parties cannot agree to acceptable alternative terms and conditions governing the non-sharing of costs as provided for under this Agreement.

[Remainder of page intentionally left blank]

HART-12 (11/11)

## Certificate

The attached contract for Utility Relocation Construction Agreement between Honolulu Authority for Rapid Transportation and Hawaiian Electric Company, Inc. for the Kamehameha Highway Guideway (KHG) Section

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds will be available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. CT-HRT-1400136

FUND Transit Fund (690)

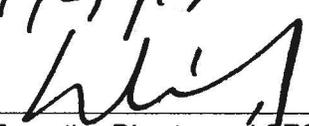
ACCOUNT NO. \_\_\_\_\_

690/7790-14 = \$7,800,000.00 (4263)

695/7790-14 = \$5,200,000.00 (pending  
issuance of G.O. bonds)

HONOLULU, HAWAII

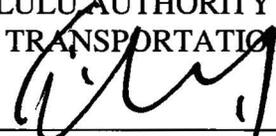
Date: 11/29/13

  
\_\_\_\_\_  
Executive Director and CEO

Honolulu Authority for Rapid Transportation

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

HONOLULU AUTHORITY FOR  
RAPID TRANSPORTATION

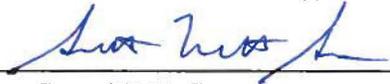
  
By: Daniel A. Grabauskas  
Title: Executive Director and CEO

APPROVED AS TO FORM AND  
LEGALITY:

  
Deputy Corporation Counsel

HAWAIIAN ELECTRIC COMPANY, INC.

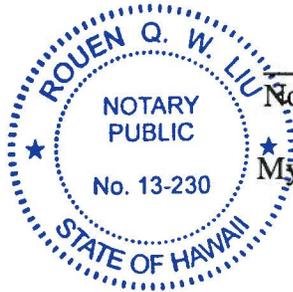
  
By: Colton K. Ching  
Title: Vice President, Energy Delivery

  
By: Scott W.H. Seu  
Title: Vice President, Energy Resources &  
Operations

 11/27/13  
By: Dan V. Giovanni  
Title: Senior Vice President Operations

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

On this 27 day of November, 2013, before me appeared Colton K. Ching, Scott W. H. Seu, and Dan V. Giovanni, personally known to me, who, being by me duly sworn, did say that such persons are the Vice President, Energy Delivery, Vice President, Energy Resources & Operations, and Senior Vice President Operations of Hawaiian Electric Company, Inc., a corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said officers severally acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.



Rouen Q. W. Liu  
Notary Public, State of Hawaii  
My commission expires: 7/14/17

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Utility Relocation Construction Agreement between the Honolulu Authority for Rapid Transportation and Hawaiian Electric Company, Inc. for the Kamehameha Highway Guideway section of the Honolulu Rail Transit Project

Undated at time

Doc. Date:    of signing    No. of Pages: 176 Jurisdiction: First Circuit

Rouen Q. W. Liu  
Signature of Notary

11/27/13  
Date of Certificate

Rouen Q. W. Liu  
Printed Name of Notary

