

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813
November 22, 2010

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

Authorization to Enter Into a Memorandum of Agreement and Use and Occupancy Agreement between the State of Hawaii, Department of Land and Natural Resources, and the State of Hawaii, Department of Transportation Regarding the Construction of Job No. F46C732C, Kokee/Waimea Canyon State Park Water System Improvements, Makaha Ridge to Puu Ka Pele, Kauai, Hawaii

The Department of Land and Natural Resources (DLNR), desires to enter into a Memorandum of Agreement (MOA) and Use and Occupancy Agreement (UOA) to construct Job No. F46C732C, Kokee/Waimea Canyon State Park Water System Improvements, Makaha Ridge to Puu Ka Pele, Kauai, Hawaii.

The Land Board approved the construction contract on July 25, 2008 for the sum of \$1,487,507.20 to Goodfellow Bros., Inc., to install approximately 5,900 linear feet of 6-inch waterline and appurtenances along Kokee Road from Makaha Ridge to Puu Ka Pele picnic area, inclusive of new service laterals to existing service connections. The new 6-inch water line will replace the existing 4-inch line.

The Department of Transportation (DOT) requires compliance with its pipeline abandonment policy. In July 2009, DLNR requested an exemption to the policy, and on April 16, 2010, DOT approved this request. Subsequently, DOT informed DLNR that: 1) a MOA was required for leaving the existing 4-inch waterline in place in certain sections of their roadway and right-of-way (ROW); and 2) an UOA was required to allow for the placement of the new 6-inch waterline and appurtenances in their roadway and ROW. As part of its approval of the exemption, DOT is requiring DLNR to sign a conditional agreement for the UOA prior to its execution. This agreement identifies conditions of approval as defined by the Highways Division, DOT, defining specific requirements involving highway and ROW issues.

MOA No. 89 and UOA No. 89 are currently in draft form. Both DOT and DLNR received their preliminary legal review of the documents, which will require the attachment of respective cadastral exhibits that delineate the areas of the DOT roadway and ROW affected by the project. These exhibits are pending. Prior to the execution of the agreements, DOT is requiring the signing of the conditional agreement from Highways.

In accordance with Chapter 343, HRS, and Chapter 11-200, HAR, the Exemption list for the State of Hawaii, Department of Land and Natural Resources, Division of State Parks, dated December 4, 1991, exempts this project from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs, or maintenance of existing structures, facilities, equipment or topographical features, involving the negligible or no expansion or change of use beyond that previously existing." Item 2. of Exemption Class 1 states "Roads, road structures, roadways and trails – within developed maintained portions of State Parks".

RECOMMENDATION:

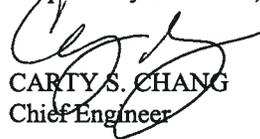
1. That the Board authorize the Chairperson to sign the UOA conditional agreement, final MOA, Final UOA, and other related documents; subject to review and approval by the deputy Attorney General.

Requested by:



DANIEL S. QUINN, Administrator
Division of State Parks

Respectfully submitted,



CARTY S. CHANG
Chief Engineer

Approved For Submittal:



LAURA H. THIELEN, Chairperson

ITEM L-4

Project: Kokee Road, G-3328-01-63, TMK: (4) 1-4-03
Waimea Canyon State Park, Makaha Ridge to Puu Ka Pele, Kauai
Water line installation in portion of Right-of-Way
(In connection with Use and Occupancy Agreement No. 89)

MEMORANDUM OF AGREEMENT NO. 89

THIS Memorandum of Agreement (MOA), effective as of _____20____, by and between the STATE OF HAWAII, by its Director of Transportation (hereinafter referred to as the **DOT**), whose business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii 96813, and the STATE OF HAWAII, Board of Land and Natural Resources, whose mailing address is P.O. Box 621, Honolulu, Hawaii 96809 (hereinafter referred to as the **DLNR**).

RECITALS:

WHEREAS, the **DOT** is the owner of those certain parcels of land upon which Kokee Road at Waimea, Kauai, Hawaii (hereinafter referred to as the "Highway") is situated, designated as Tax Map Key No. (4) 1-4-03: Road, and are more particularly shown on Exhibit "A" and "B" attached hereto and made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, the **DLNR** desires to install new water lines (hereinafter referred to as the "Facility"), while leaving in place the existing lines within a portion of the Property, as shown on Exhibit A attached hereto and incorporated herein by reference for the purpose of installing/constructing, operating and maintaining its water line connection, Kokee Road, Waimea, Kauai, Hawaii, Job No. F46C732C, and

WHEREAS, the **DLNR** desires to leave in place the 4-inch cast iron waterlines on, within, under and across the Property, on Kokee Road from Makaha Ridge to Puu Ka Pele, as shown on Exhibit B attached hereto and incorporated herein by reference (hereinafter the "Old Facilities"); and

WHEREAS, with the heightened awareness of environmental concerns related to and arising from abandoned pipelines and due to the increasing problem of unidentified, abandoned pipelines on DOT property, the DOT has effected a Pipeline Removal Policy as of September 24, 2002, prohibiting the abandonment of pipelines and utilities' facilities on all DOT properties, including the highway right-of-ways; and

WHEREAS, the DLNR desires a waiver to the Pipeline Removal Policy, which states "DOT will no longer allow the abandonment of any pipelines or utility facilities, on DOT properties, including the highway rights-of-way"; and

WHEREAS, the DOT is willing to allow the DLNR to occupy or continue to occupy the Property for the Old Facilities over the Property and further provided that the DLNR fully complies with the terms and conditions set forth below,

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

AGREEMENT:

1. Right to Leave in Place the Old Facilities. The DLNR is allowed to leave in place the Old Facilities as shown in Exhibits A and B made of cast iron pipes and shall repair the Old Facilities on, within, under, over and across the Property provided that the DLNR must submit to the DOT prior to or within one month of the effective date of this MOA the following:

A. A report confirming the material composition of the Old Facilities being left in place. The report must be done in compliance with paragraph 2, below.

B. A centerline description with applicable map delineating location/placement of lines left in place.

2. Environmental Investigations and Assessments. The DLNR, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Property to determine the presence of any hazardous substance on, in, or under the Property as may be directed by the DOT, in its sole discretion, or by any federal, state or county agency or authority. The extent and number of any environmental investigations

and assessments, including all testing and analyses incident thereto, shall be determined by the **DOT** or the federal, state or county agency or authority directing said investigations and assessments to be conducted. The **DLNR** shall retain a competent, certified and qualified person or entity that is satisfactory to the **DOT** to conduct said investigations, assessments, testing, and analysis incident thereto. The **DLNR** shall cause said person or entity conducting those assessments, investigations, test and analyses to provide the **DOT** and/or governmental authority with the written results of all assessments, investigations, tests and analyses. Pursuant to this Agreement, the **DLNR** may be required to have environmental assessments conducted as aforesaid, in order to determine the condition of the Property and the extent of remediation that may be required. The extent of those assessments, the substances for which the soil and/or groundwater are to be tested and the time within which those assessments are to be:

A. Disposal/Removal. If hazardous substances are found to be present, which hazardous substances were caused by the Old Facilities or use thereof, or by the **DLNR'S** activities on the Property, the **DLNR** shall cause such hazardous substances to be removed and transported from the Property for disposal solely by duly licensed hazardous substance transporters to duly licensed facilities for final disposal as required by all applicable environmental laws. The **DLNR** shall provide the **DOT** with copies of documentary proof including manifests, receipts or bills of lading, which reflect that said hazardous substances have been properly removed and disposed of in accordance with all environmental laws.

B. Remediation. In the event that any contamination by any hazardous substance(s) is determined to be present on the Property, which contamination was caused by the Old Facilities or use thereof, or by the **DLNR'S** activities on the Property, the **DLNR** shall, at its sole expense and cost, remediate the Property of any hazardous substance(s). This duty to remediate includes strict compliance with all environmental laws, as well as any directives by the **DOT** to the **DLNR** to remediate such hazardous substance(s). This duty to remediate shall include replacement of any materials, such as soils, so removed, with material that is satisfactory to the **DOT** and/or governmental authority, as the case may be.

3. Permits. The **DLNR** shall obtain all applicable permits from the **DOT** and all other governmental agencies for any removal and upkeep work for or related to the Old Facilities on, within, under, over, or across the Property prior to commencing any work.

4. Work Completion. Upon the completion of any work performed in, on, under, over, or across the Premises, the **DLNR** shall remove therefrom all equipment and unused or surplus materials, if any, and shall restore the Property and any other affected areas to a condition satisfactory to the **DOT**.

5. Repair. The **DLNR** shall not damage, undermine or otherwise destroy any portion of **DOT** property, including without limitation, any Highway facilities or improvements or any property or facilities of other Highway tenants situated on or near the Property or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The **DLNR**, shall at its sole cost and expense, repair, restore and reconstruct any portion of the Property which may be damaged, undermined or destroyed by the presence of the Old Facilities, including any and all affected facilities, improvements, equipment and appurtenances.

6. No Obstruction. The **DLNR** shall not construct, replace, repair or maintain any landscaping or any portion of the Old Facilities on, within, under, over or across the Property in such a manner as to: (a) unnecessarily obstruct traffic; (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the Highway in accordance with Hawaii Administrative Rules Chapter 105 of Title 19; (c) otherwise constitute a hazard to users of the Highway, as determined by the **DOT**; (d) unreasonably obstruct Highway operations; or (e) unreasonably obstruct operations of other Highway tenants.

7. Reservation of Rights. The **DOT** reserves unto itself the full use and enjoyment of the Property and to grant to others rights and privileges for any and all purposes affecting the Property, all without charge by and without the consent of the **DLNR**, provided that such use by the **DOT** and/or third parties does not unreasonably interfere with the **DLNR'S** rights to use the Property per this Agreement. The **DLNR** shall take steps necessary to ensure that the **DLNR'S** use and occupancy of the Property

does not cause any substantial interference with the DOT'S existing operations in or near the Property.

8. DOT Work Within or Affecting the Premises. If the DOT decides to perform work of any kind within, on, over, under, across, near, or affecting the Property, the DOT will coordinate such work with the DLNR. The DLNR shall cooperate with the DOT'S performance of such work.

9. Assignment. Except as may be required by law, the DLNR'S right under this Agreement and in the Old Facilities shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the DOT. In giving any such consent, the DOT need not release the DLNR from any liabilities or obligations hereunder.

10. Default.

A. Notice of default. If the DLNR defaults on or otherwise fails to materially perform its obligations under this Agreement, the DOT will issue a written notice of default to the DLNR by hand-delivery or first-class mail.

B. Time to cure defaults. Any and all defaults or material failures to perform contained in such notice of default must be resolved and remedied to the DOT'S reasonable satisfaction within thirty (30) days of the date of the DOT'S written notice to the DLNR or such further time as may be authorized by the DOT in writing. In cases when, through no fault of the DLNR, it is not possible to cure a default within 30 days of the DOT'S notice of default, then the DLNR'S obligations under this section shall be deemed satisfied if the DLNR commences within 30 days of the notice of default efforts necessary to result in curing the default as soon as reasonably possible. The DLNR'S failure to remove the Old Facilities in substantial accordance with the plans and specifications approved by the DOT shall be deemed a default of this Agreement.

C. DOT remedies for failures to cure. If the DLNR fails to cure said defaults or failures to perform within the required time period, the DOT itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any reasonable and necessary costs and expenses incurred in performing said cure or remedy to the DLNR, who shall immediately pay said costs and expenses to the DOT upon receiving notice from the DOT. If the DLNR fails to cure said defaults to perform

within the required time period, the DOT may terminate this Agreement and the DLNR'S rights under this Agreement. If the DLNR defaults or fails to perform as required under this Agreement, the DOT shall be entitled to all remedies available under this Agreement and by law, which remedies shall be cumulative and not exclusive.

11. Termination. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written agreement of the parties hereto. This Agreement shall also be deemed terminated upon the DLNR'S removal of the Old Facilities from the Premises in compliance with this Agreement.

12. Hazardous Materials.

A. DOT pre-approval required. The DLNR shall not cause or permit the presence, escape, disposal, discharge or release of any hazardous materials except as permitted by law, which prohibition includes, but is not limited to, oil, fuel, and PCB spillage or leakage, waste oil disposal and pollution of any water attributable to the DLNR'S: (a) operation and activities on or connected with the Property; or (b) use and occupancy of the Property. The DLNR shall not allow the storage or use of such materials in any manner not sanctioned by law for the storage and use of such materials, nor allow to be brought onto and/or into the Property any such materials except to use in the ordinary course of the DLNR'S business.

B. The DLNR'S best knowledge and belief. If any lender or governmental agency shall ever reasonably require testing to ascertain whether or not the DLNR has caused or permitted the escape, disposal, discharge or release of hazardous materials, then the DLNR shall be responsible for the sole costs thereof. In addition, the DLNR shall execute affidavits, representations and the like from time to time at the DOT'S reasonable request concerning the DLNR'S best knowledge and belief regarding the presence of hazardous materials on, within or under the Property and/or the escape, disposal, discharge or release of hazardous materials therefrom.

C. "Hazardous materials" definition. For purposes of this Agreement, the DLNR acknowledges and agrees that the following terms shall have the following meanings:

"Environmental Laws" shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards,

directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the United States Environmental Protection Agency and the Hawaii Department of Health. ("DOH")

"Hazardous Substance" shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCB5), methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by the DOH or federal authorities.

For the purpose of this Agreement "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Federal Clean Water Act. all as amended, or any other federal, state or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

D. The DLNR'S clean-up obligation. Upon termination of this Agreement, the DLNR shall, at the DLNR'S sole cost and expense, clean-up to levels satisfactory to the State of Hawaii Department of Health ("DOH") and/or the United States Environmental Protection Agency ("EPA") any hazardous materials released onto the Property by the DLNR or its contractors in violation of section 12.A above. This section shall not be construed to require the DLNR to clean up or respond to any hazardous materials released by any other party (excluding the DLNR and the DLNR'S

contractors) including, but not limited to, the **DOT**, the **DOT'S** contractors or agents, or any other Highway tenants.

E. Protection of waters. The **DLNR** shall maintain and employ reasonable debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to ocean waters, streams or waterways resulting from the activities or operations of the **DLNR** and the **DLNR'S** authorized agents on, within, over, through, across, under or connected with the Property, and shall take immediate corrective action in the event of an unauthorized release of hazardous materials by the **DLNR**, its contractors, or agents to immediately remove or correct the cause of such release, and shall immediately clean the Property and affected areas and surrounding waters of such pollutant or contaminant to levels satisfactory to the **DOH** and/or **EPA**, all at the **DLNR'S** own cost and expense. This section shall not be construed to require the **DLNR** to clean up or respond to any hazardous materials that may be discovered on the Property, provided that the **DLNR** can show to the satisfaction of the **DOT** provided that the hazardous materials discovered by the **DLNR** were not the result of spills or related to the **DLNR'S** use of the property.

13. Removal or relocation of Old Facilities. Notwithstanding Section 264-33, Hawaii Revised Statutes, if all or any portion of the Old Facilities must be removed due to construction, reconstruction or maintenance of the Property, the **DLNR** shall be responsible for the removal of the Old Facilities from the Property deemed necessary by the **DOT**, without cost and expense to the **DOT**.

14. Removal upon Termination. Upon any full or partial termination or cancellation of this Agreement, or upon the cessation of use of any particular portion of its facilities, the **DLNR**, at its sole cost and expense, shall:

A. Remove and restore. With the exception of paragraph 1 of this Agreement, the **DLNR** shall remove any and all portions of the Old Facilities, installed or constructed on, within, under, over and across the Property and any improvements, equipment, facilities, components and appurtenances relating thereto and reasonably restore that portion of the Property altered by the Old Facilities to as good a condition as existed prior to the commencement of this Agreement, to the reasonable satisfaction of the **DOT**, and if the **DLNR** fails to do so, the **DLNR** shall be solely responsible for all

reasonable costs and expenses incurred by the DOT in completing and accomplishing such restoration, including but not limited to, any costs the DOT incurs in removing and disposing of the Old Facilities; or

15. Compliance with Laws. The DLNR, at all times during the term of this Agreement, shall secure all necessary permits and shall comply with all applicable requirements of the federal, state, and county authorities and shall observe all applicable federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or federal-aid highways.

16. DOT'S Right to Act. In the event the DLNR fails for any reason to comply with any of its duties under this Agreement or under any environmental laws within the time set for doing so, or within a reasonable time as determined by the DOT, the DOT shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. The DLNR hereby grants access to the Property at all reasonable hours to the DOT, its authorized agents designated by the DOT, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the DOT in performing said acts or duties shall be the sole responsibility of the DLNR and the DLNR agrees to immediately reimburse all such costs and expenses to the DOT.

17. Amendments. Neither this Agreement, nor any provision hereof, may be amended, discharged, or terminated orally, nor must any such amendments be made except by an instrument in writing, signed by the parties hereto.

18. Binding effect. All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, officers, authorized agents, and employees or any person acting for an on their behalf.

19. Singular, Plural. All words used in the singular shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

20. Headings. The headings and captions herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement to which they may pertain.

21. Special Conditions.

A. The **DLNR** shall not be allowed to abandon any existing waterline until it first certifies that the waterline does not contain any hazardous environmental material.

B. The **DLNR** shall accept full responsibility for any abandoned waterlines and shall agree to remove the abandoned waterlines, at its own cost, if the **DOT** determines that the waterlines need to be removed. The **DLNR** shall be responsible for 100% of all removal costs even if the removal is being done as part of a future highway improvements project.

C. Upon completion of the project, the **DLNR** shall submit two (2) sets of as-built plans showing the lines that will be left in place as well as the newly installed lines to our Kauai District Office.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

By _____
Name _____
Title _____

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON:

DEPARTMENT OF TRANSPORTATION
STATE OF HAWAII

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Deputy Attorney General

Date

APPROVED AS TO FORM:

Deputy Attorney General

Date

Revised Version 4-7-08
Project: Kokee Road, G-3328-01-63,
TMK: (4) 1-4-03:Rd, Waimea Canyon State
Park, Makaha Ridge to Puu Ka Pele, Kauai,
Water line installation in portion of right-of-way
(In connection with MOA No. 89)

USE AND OCCUPANCY AGREEMENT NO. 89

THIS AGREEMENT made this _____ day of _____, 2010, by and between the STATE OF HAWAII, by its Director of Transportation (hereinafter referred to as the "DOT"), and the STATE OF HAWAII, Board of Land and Natural Resources, whose mailing address is P.O. Box 621, Honolulu, Hawaii 96809 (hereinafter referred to as the "DLNR").

RECITALS:

WHEREAS, the DOT is the owner of those certain parcels of land upon which Kokee Road at Waimea, Kauai, Hawaii (hereinafter referred to as the "Highway") is situated, designated as Tax Map Key No. (4) 1-4-03: Road, and are more particularly shown on Exhibit "A" and "B" attached hereto and made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, the DLNR desires to occupy a portion of the Property, as described on Exhibit "C", attached hereto and incorporated herein by reference, (hereinafter referred to as the "Premises"), for the installation, construction, operation and maintenance of six (6) inch water lines (said water line project, together with all improvements, equipment, facilities, components and appurtenances related thereto, is hereinafter referred to as the "Project") and

WHEREAS, the DOT does not object to granting the DLNR use and occupancy rights over the Premises provided the DLNR fully complies with the terms and conditions set forth below,

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

AGREEMENT:

1. Grant of Use and Occupancy Rights. The **DOT** hereby grants the **DLNR** the non-exclusive right to use and occupy the Premises for the purpose of installing, constructing, operating and maintaining the Project.

2. Right to Install the Project. The **DLNR** may install and maintain the Project on the Premises provided that the **DLNR** obtains the **DOT'S** prior written approval for the plans and specifications for the Project and any subsequent alterations thereto prior to commencing the installation of any portion of the Project. The **DLNR** shall be solely responsible for all costs and expenses incurred during the Project, including but not limited to, all design, planning, engineering, installation, alteration and maintenance costs and expenses.

3. Work Permit. The **DLNR** shall obtain a permit from the **DOT** for any installation, construction, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work.

4. Work Completion. Upon the completion of any work performed in or on the Premises by the **DLNR**, the **DLNR** shall remove there from all equipment and unused or surplus materials, if any, and shall restore the Premises and any other affected areas to a condition satisfactory to the **DOT**.

5. Maintenance. The **DLNR** shall, at its sole cost and expense during the installation and construction, keep the Premises and the Project in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all necessary repairs to the Project, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.

6. Repair. The **DLNR** shall not damage, undermine or otherwise destroy any portion of the **DOT'S** property, including without limitation, any Highway facilities or improvements or facilities of other Highway tenants situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The **DLNR** shall, at its sole cost and expense, repair, restore and reconstruct that portion of

said DOT'S property so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

7. No Obstruction. The DLNR shall not construct, replace, repair or maintain any landscaping or any portion of the Property on, within, under, over or across the Premises in such a manner as to: (a) unnecessarily obstruct traffic; (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the Highway; (c) otherwise constitute a hazard to users of the Highway, as determined by the DOT; (d) obstruct Highway operations; or (e) obstruct operations of Highway tenants on the Property or near the Premises.

8. Reservation of Rights. The DOT reserves unto itself the full use and enjoyment of the Premises and to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of the DLNR, provided that such use by the DOT and/or third parties does not unreasonably interfere with the DLNR'S rights to use the Premises under this Agreement. The DLNR shall take steps necessary to ensure that the DLNR'S exercise of the rights and privileges granted hereunder does not cause any substantial interference with the DOT'S operations in or near the Premises.

9. DOT Work Within or Affecting the Premises. If the DOT decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the DOT will coordinate such work with the DLNR. The DLNR shall not prevent the DOT from performing such work; provided, however, that the DOT will take certain protective measures to assure that such work does not unreasonably interfere with the DLNR'S use of the Premises.

10. Indemnity. The DLNR shall at all times with respect to the Project and the Premises use due care for public safety. It is strictly understood that the DOT shall in no way be held liable for any claims, damages and causes of action or suits resulting from any acts or omissions of the DLNR.

11. Assignment. The DLNR'S rights under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the DOT. In

giving any such consent, the **DOT** need not release the **DLNR** from any liabilities or obligations hereunder.

12. Default.

a. Notice of default. If the **DLNR** defaults on or otherwise fails to perform the **DLNR'S** obligations under this Agreement, the **DOT** will issue a written notice of default to the **DLNR** by hand-delivery or first-class mail.

b. The **DLNR** to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the **DOT'S** satisfaction within 30 days of the date of the **DOT'S** written notice to the **DLNR** or such further time as may be authorized by the **DOT** in writing. The **DLNR'S** failure to construct the Project in accordance with the plans and specifications approved by the **DOT** shall be deemed a default of this Agreement.

c. **DOT'S** remedies for failure to cure. If the **DLNR** fails to cure said defaults or fails to perform within the required time period, the **DOT** itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the **DLNR**, who shall immediately pay said costs and expenses to the **DOT** upon receiving notice from the **DOT**. If the **DLNR** fails to cure said defaults or fails to perform within the required time period, the **DOT** may terminate this Agreement and the **DLNR'S** rights under this Agreement to use the Premises and the Property. Upon such termination and at the **DOT'S** option, the Project will thereafter belong to the **DOT**. If the **DLNR** defaults or fails to perform as required under this Agreement, the **DOT** shall be entitled to all remedies available under this Agreement and by law, which remedies shall be cumulative and not exclusive.

14. Abandonment. This Agreement and all of the **DLNR'S** rights hereunder shall terminate, without any action on the part of the **DOT**, in the event of non-use or abandonment by the **DLNR** of the Premises, or any portion thereof, for a period of one (1) year.

15. Termination. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written

agreement of the parties hereto (or by the DOT, in its sole discretion, upon giving 60 days written notice to the DLNR by hand-delivery or first-class mail).

16. Hazardous Materials.

a. **Definitions.** For purposes of this Agreement, the DLNR acknowledges and agrees that the following terms shall have the following meanings:

“Environmental Laws” shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the United States Environmental Protection Agency and the Hawaii Department of Health. (“DOH”)

“Hazardous Substance” shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCB5), methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by the DOH or federal authorities.

b. **The DLNR’S Activities and Duties.**

b. 1 **Compliance with Environmental Laws.** The DLNR agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to its occupancy, activities, operations, and use of the Project and the Premises. This duty shall survive the expiration or termination of this Agreement, which means that the DLNR’S duty to comply with Environmental Laws shall include complying with all Environmental Laws that may in the future apply, or be determined to apply, to the

occupancy and activities of the **DLNR** on the Premises after the expiration or termination of this Agreement. Failure of the **DLNR** to comply with any Environmental Laws shall constitute a breach of this Agreement for which the **DOT** may, in its sole discretion, terminate this Agreement, exercise its remedies under this Agreement, including remediation of any condition on behalf of the **DLNR** at the **DLNR'S** expense under subparagraph 16.b.5 below (Environmental Investigations and Assessments), subparagraph 16.b.6 below (Remediation) and subparagraph 16.b.7 below (Restoration and Surrender of Premises), and take any other action at law or in equity that the **DOT** deems appropriate.

b. 2 Hazardous Substances. The **DLNR** shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its employees, agents, guests, contractors or third persons, on the Premises without first obtaining the written consent of the **DOT** (which consent may be withheld by the **DOT** in its absolute discretion) and comply with all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities, and comply with all provisions of this Agreement.

b. 3 Notice to the **DOT**. The **DLNR** shall keep the **DOT** fully informed at all times regarding all matters related to any Environmental Laws affecting the **DLNR** relating to the Premises. This duty shall include, but not be limited to, providing the **DOT** with a current and complete list and accounting of all Hazardous Substances of every kind which are present in, on or about the Premises by or as a result of the **DLNR**, together with evidence that the **DLNR** has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority, under any authority or Environmental Laws. The **DLNR** shall provide said list and accounting at the commencement of the Agreement and shall update said list and accounting whenever any Hazardous Substance not accounted for on said list is or becomes present in, on, or about the Premises by the **DLNR** or otherwise. The **DLNR** shall also provide immediate written notice of any investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so,

communicated in any way to the **DLNR** by any federal, state, or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the **DOT** shall include copies of all written communications from any federal, state, or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the **DLNR**. At least 30 days prior to termination of this Agreement, or termination of the use and occupancy of the Premises by the **DLNR**, whichever occurs first, the **DLNR** shall provide the **DOT** with written evidence satisfactory to the **DOT** that the **DLNR** has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the **DOT** pursuant to subparagraph 16.b.5 (Environmental Investigations and Assessments) of this provision, or by any governmental agency responsible for enforcement of the Environmental Laws.

b. 4. Disposal/Removal. Except the possession and handling of Hazardous Substances for which the **DLNR** is exempt and those Hazardous Substances for which the **DLNR** has obtained all currently required permits to transport or use certain Hazardous Substances on the Premises, including written permission from the **DOT**, the **DLNR** shall cause any Hazardous Substances resulting from the **DLNR'S** use to be removed and transported from the Premises for disposal solely by duly licensed hazardous substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. The **DLNR** shall provide the **DOT** with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that, said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws.

b. 5. Environmental Investigations and Assessments. The **DLNR**, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as may be reasonably directed from time to time by the **DOT**, or by any federal or state authority. The extent and number of any environmental investigations and assessments shall be determined by

the **DOT** or the federal or state authority directing said investigations and assessments to be conducted, and the **DLNR** shall retain a competent and qualified person or entity that is satisfactory to the **DOT** or governmental authority, as the case may be, to conduct said investigations and assessments. The **DLNR** shall direct said person or entity to provide the **DOT** or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the **DOT** and the governmental authority at the sole expense of the **DLNR**, written results of all tests on said samples upon completion of said testing. In any event, the **DLNR** shall have the option to conduct environmental assessments as aforesaid prior to or at the time of termination of this Agreement in order to determine the condition of the Premises.

b. 6. Remediation. In the event that any Hazardous Substance is used, stored, treated, or disposed on the Premises by the **DLNR**, or handled, discharged, released by the **DLNR** or determined to be present on the Premises by or as a result of the **DLNR'S** actions, the **DLNR** shall, at its sole expense and cost, remediate the Premises of such Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with subparagraph 16.b.4 (Disposal/Removal) of this provision. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the **DOT** to the **DLNR** to remediate such Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is reasonably satisfactory to the **DOT** and governmental authority, as the case may be.

b. 7. Restoration and Surrender of Premises. The **DLNR** hereby agrees to timely surrender the Premises upon termination of the Agreement and, prior thereto, shall restore the Premises to the same condition as the Premises existed at the commencement of this Agreement, as determined by the **DOT**. Said surrender and restoration shall be at the sole cost and expense of the **DLNR**. This duty to restore the Premises includes remediation as described in the previous subsection. Subject to subparagraph 18.b (**DOT'S** option), this duty also includes, but is not limited to, the removal of all of the **DLNR'S** improvements, including, without limitation, pipes, pipelines, tanks, containers, equipment, and appurtenances of any kind that the **DLNR**

has installed or erected on the Premises. In the event the **DLNR** does not timely restore the Premises to a satisfactory condition, as determined by the **DOT**, the **DLNR** understands and agrees that the **DOT** may exercise its rights under subparagraph 16.b.9 (**DOT'S** Right to Act), and until such time as the restoration is completed to the satisfaction of the **DOT**, the **DLNR** shall be liable for any damages and costs that the **DOT** may have incurred, including penalties, fines, and assessments related to the Premises which may be imposed on the **DOT** or the **DLNR** by any governmental authority.

b. 8 Tanks, Pipelines; Inspections and Repairs. Unless the **DOT** specifically agrees in writing prior to their installation, all pipes, pipelines, tanks, containers, or conduits of any kind that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type, hereafter referred to as a "facility", must be installed above ground level in such manner that allows for periodic inspection and maintenance of the facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the facility. The **DLNR** shall provide the **DOT** with prior notice of the **DLNR'S** intent to install a facility to allow the **DOT** ample time, as reasonably determined by the **DOT**, to inspect the plan for installation of such a facility. Said facility shall not be installed unless and until the facility and its manner of installation are approved by the **DOT**. Within 90 days of the commencement of this Agreement, or commencement of possession of the Premises by the **DLNR**, whichever first occurs, the **DLNR** shall submit a contingency plan covering the **DLNR'S** facilities if any, and as applicable, to control and remedy any spill, discharge, or leak from any **DLNR** facility on the Premises during the term of this Agreement, which plan shall include the cleanup of all Hazardous Substances that may be spilled, discharged, or leaked, to the satisfaction of the **DOT**. The **DLNR** shall also submit to the **DOT** a plan for the **DLNR** to conduct, or have conducted, regular inspections of all the **DLNR'S** facilities, if any, on the Premises for the purpose of prevention of any leak, discharge, or spill from said facilities. Said contingency plan and inspection plan are subject to the approval of the **DOT**. The **DLNR** shall timely obtain and maintain in effect all required permits, licenses, and approvals for such facilities from any governmental authority. Failure to submit said

plans, to comply with said plans, or obtain and maintain any required permits, licenses, or approvals constitutes a breach of this Agreement, giving the **DOT** the right to immediately terminate this Agreement, take possession of the Premises, and pursue any other remedy available to the **DOT**.

b. 9. **The DOT'S Right to Act.** In the event the **DLNR** fails for any reason to comply with any of its duties under this Agreement or under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the **DOT**, the **DOT** shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. The **DLNR** hereby grants access to the Premises at all reasonable hours to the **DOT**, its authorized agents and anyone designated by the **DOT**, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the **DOT** in performing said acts or duties shall be the sole responsibility of the **DLNR** and the **DLNR** hereby agrees to immediately pay to the **DOT** all of such costs and expenses incurred by the **DOT** in performing said acts or duties, subject to legislative funds. This obligation shall extend to any costs and expenses incident to enforcement of the **DOT'S** right to act, including litigation costs, attorney fees, and the costs and fees for collection of said costs, expenses, or liability, subject to legislative appropriation.

b. 10. **Release and Indemnity.** The **DLNR** hereby agrees to release the **DOT**, its officers, employees, authorized agents, successors, and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or governmental authority against the **DLNR** by reason of any Hazardous Substance that may be present by or as a result of **DLNR'S** use of the Premises by whatever means on, in or under the Premises including any fines or penalties assessed against the **DOT** for the **DLNR'S** non-compliance with any Environmental Laws.

b. 11. **Burden of Proof.** In all instances covered in this Paragraph 16 (Hazardous Materials), the **DLNR** accepts the burden of establishing that it is not responsible for the existence of Hazardous Materials on the Premises. If the **DLNR** cannot establish that it is not responsible for the existence of Hazardous

Materials on the Premises, the **DLNR** shall be deemed responsible for the existence of the Hazardous Materials.

17. Removal of Improvements. If the **DOT** decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the **DLNR** shall be responsible for the removal of all or any portion of the Project from the Premises deemed necessary by the **DOT**, without cost and expense to the **DOT**, within 30 days from the date the **DOT** requests such removal or such longer period of time as may be approved in writing by the **DOT**. In the event it becomes necessary for the **DOT** to destroy, remove or alter all or any portion of the Project, the **DOT** shall not be obligated to replace or restore those portions of the Project so destroyed, removed or altered and the **DLNR** waives any and all right to compensation therefore.

18. Removal upon Termination. Upon any full or partial termination or cancellation of this Agreement, the **DLNR** shall, at the **DLNR'S** sole cost and expense:

a. Remove and restore. Remove any and all portions of the Project installed or constructed on, within, under, over or across the Premises and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Premises to as good a condition as existed prior to the commencement of this Agreement, satisfactory to the **DOT**, and if the **DLNR** fails to restore the Premises to a condition satisfactory to the **DOT**, the **DOT** shall have the right to charge the **DLNR**, and the **DLNR** shall be solely responsible for, any and all costs and expenses incurred by the **DOT** in completing and accomplishing such restoration, including, but not limited to, any costs the **DOT** incurs in removing and disposing of the **DLNR'S** property, subject to legislative appropriation; or

b. DOT'S option. At the **DOT'S** option, abandon in place the Project and any improvements, equipment, facilities, components and appurtenances relating thereto.

19. Compliance with Laws. The **DLNR**, at all times during the term of this Agreement, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force,

including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or federal-aid highways.

20. Binding Effect. All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, authorized agents, and employees or any person acting for and on their behalf.

21. Singular, Plural. All words used herein the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

22. Headings. The headings and captions herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement to which they may pertain.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

STATE OF HAWAII
DEPT. OF TRANSPORTATION

By _____
Name: _____
Its: _____

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON:

STATE OF HAWAII
BOARD OF LAND AND NATURAL
RESOURCES

By _____
Name: _____
Its: _____

APPROVED AS TO FORM:

Deputy Attorney General

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Date: _____

LINDA LINGLE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 636
TECHNICAL DESIGN SERVICE, ROOM 688

RIGHT-OF-WAY BRANCH, ROOM 691

TRAFFIC BRANCH, ROOM 602

MOTOR VEHICLE SAFETY OFFICE, ROOM 511



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
601 KAMOKILA BOULEVARD, ROOM 691
KAPOLEI, HAWAII 96707

BRENNON T. MORIOKA
DIRECTOR

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

IN REPLY REFER TO:
HWY-RM
3.87645

April 8, 2010

The Honorable Laura H. Thielen, Chairperson
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Ms. Thielen:

**SUBJECT: KOKEE ROAD, FROM MAKAHA RIDGE TO PUU KA, WAIMEA, KAUAI,
JOB NO. F46C732C, TMK (4) 1-2-02:RD,
REQUEST FOR USE AND OCCUPANCY FOR WATER LINE**

We have conceptually completed our review and continue to process your request subject to the following conditions:

1. The Department of Land and Natural Resources (DLNR) shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments.
2. DLNR's rights under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Department of Transportation (DOT).
3. DLNR shall execute a Use and Occupancy Agreement for the installation, occupancy and maintenance of its water lines and any appurtenances. Use of the water line will not be allowed until the U&O Agreement has been finalized.
4. DLNR shall submit two (2) copies of metes and bounds descriptions of the subject area along with a parcel map, which will be used as exhibits to the Use and Occupancy Agreement. When preparing the metes and bounds description, please indicate the agreement as "Use and Occupancy Agreement No. 89" in the legal description and parcel map. A copy of surveyor's guidelines with a sample is attached.

5. DLNR shall submit plans for work done within the State Highway Right-of-Way to our Planning Office for review and approval.
6. DLNR shall submit four (4) sets of construction plans to our Kauai District Office for review and approval.
7. DLNR shall provide proof of H.R.S. Chapter 343-5 compliance (E.A. or E.I.S. documentation) when submitting the application for Permit to Perform Work upon State Highways.
8. DLNR shall provide PROOF OF WAIVER from the State of Hawaii, Department of Transportation's Pipeline Abandonment Policy, which allows the existing water lines to be abandoned in the State Highway Right-of-Way.
9. DLNR shall bear all costs of servicing and maintaining its facilities and shall not perform such work from the through traffic lanes during peak traffic and high volume hours, except in emergencies and then only under the condition that such work shall be performed most expeditiously and with the least possible interference with free flow of traffic and safe operation of highway facilities.
10. A final signed report by an inspector and the responsible Engineer of Record shall be submitted to the Highways Right-of-Way Branch stating that the job site observations were conducted and all work relating to the structural items (provide a list for clarity) constructed within the DOT'S Right-of-Way were, to the best of their knowledge in conformance with the approved plans and specifications and the applicable workmanship provisions. The document shall be submitted prior to placing the installation into service.
11. Upon completion of the project, DLNR shall submit two (2) sets of "as-built" plans to our Kauai District Engineer.
12. DLNR, at its own expense, must remove, relocate, replace, reconstruct or adjust its facilities in accordance with the provisions of H.R.S. Chapter 264-33 should the State Highways Division require the area for any future highway projects.
13. DLNR shall be responsible for pothole repairs up to one year after completion should the pavement restorations fail as a result from the open trenching method in installing the water line, laterals and appurtenances.
14. DLNR shall coordinate the construction schedule of this project with our Kauai District Office to minimize possible conflicts with our scheduled highway construction and maintenance projects in the area.

15. The Highways Division reserves the right to add or impose additional conditions as reasonably necessary to mitigate adverse impacts to the DOT.

If DLNR is in agreement with the above conditions, please return the acceptance portion of this letter with an authorized signature to our office. If we do not receive the signed acceptance portion within 30 days from the date of this letter, we will assume DLNR is no longer interested in pursuing this matter.

Should you have any questions, please call me at 692-7331 or you can e-mail me at katja.m.jordan-king@hawaii.gov.

Very truly yours,



KATJA JORDAN-KING
Right-of-Way Agent
Property Management Section

=====

ACCEPTANCE

The undersigned hereby accepts the above conditions as determined by the State of Hawaii, Department of Transportation letter (ref. HWY-RM 3.87645) dated April 8, 2010.

Signature

Laura H. Thielen

Print Name

Chairperson

Title

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Date: _____

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

July 25, 2008

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

**Approval for Award of Construction Contract – Job No. F46C732C,
Kokee/Waimea Canyon State Park Water System Improvements,
Waterline Makaha Ridge to Puu Ka Pele,
Kauai, Hawaii**

Bids for the subject project were received and opened on June 27, 2008, the results and recommendations are as follows:

<u>Bidder</u>	<u>Total Sum Bid</u>
Goodfellow Bros., Inc.	\$ 1,487,507.20
Earthworks Pacific, Inc.	\$ 1,871,470.00
Jennings Pacific LLC	\$ 1,872,645.50
Koga Engineering & Construction, Inc.	\$ 2,087,995.00

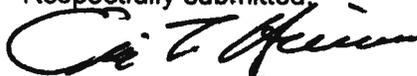
The project replaces approximately 1.11 miles of existing water main on Kokee Road from Makaha Ridge to Puu Ka Pele picnic area and reestablishes existing laterals and service connections.

Funds for this project are available from Act 160, SLH 2006, Item H-8.03 and have been released by the Governor.

RECOMMENDATION:

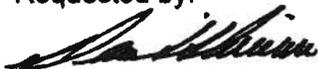
Recommend that the Board award DLNR Job No. F46C732C, Kokee/Waimea Canyon State Park Water System Improvements, Waterline Makaha Ridge to Puu Ka Pele, Kauai, Hawaii to the Contractor, Goodfellow Bros., Inc. for the proposal amount of \$ 1,487,507.20. Also, recommend that the Board authorizes the Chairperson, subject to review and approval by the Attorney General, to enter into a contract and sign the necessary documents to implement the project.

Respectfully submitted,



ERIC T. HIRANO
Chief Engineer

Requested by:



DANIEL S. QUINN, Administrator
Division of State Parks

Approved For Submittal:



LAURA H. THIELEN, Chairperson

Approved by the Board of
Land & Natural Resources
at the meeting held on

JUL 25 2008

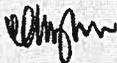
ITEM L-2

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
MEMORANDUM

HWY-RM
3.87653

TO: DIR DATE: 04/09/10

THRU: HWY

FROM: HWY-R 

SUBJECT: KOKEE ROAD, KOKEE/WAIMEA CANYON STATE PARK WATER
SYSTEM IMPROVEMENTS, KAUAI, HAWAII, JOB NO. F46C732C,
REQUEST FOR EXEMPTION TO PIPELINE ABANDONMENT POLICY

The Department of Land and Natural Resources (DLNR) is requesting an exemption to the Department of Transportation's Pipeline Abandonment Policy. The DLNR is proposing to install a new 6" water main from Makaha Ridge to Puu Ka Pele and abandon the existing 4" cast iron water line. Their request is contained in the enclosed Memorandum dated July 23, 2009.

HWY-K is in favor of granting the exemption requested by DLNR per letter HWY-K 4.090739, dated August 6, 2009.

RECOMMEND:

APPROVAL

DISAPPROVAL

DEFER

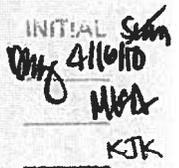


BRENNON T. MORIOKA, Ph.D., P.E.
Director of Transportation

4-16-10
DATE

ATTACHMENTS:

1. DLNR Memorandum, dated July 23, 2009
2. HWY-K Memorandum, dated August 6, 2009

INITIAL 
KJK

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 23, 2009

DIR 1093
LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
RUSSELL Y. TSUJI
FIRST DEPUTY
KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND RECREATION
BUREAU OF PERMITTING
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DEPT OF TRANSPORTATION
7/28/09 JUL 28
HIGHWAYS DIVISION

MEMORANDUM

TO: Mr. Brennon Morioka
Director
Department of Transportation

FROM: *Laura H. Thielen, Chairperson*

SUBJECT: Job No. F46C732C, Kokee/Waimea Canyon State Park Water System Improvements, Kauai, Hawaii, Waterline Makaha Ridge to Puu Ka Pele

2009 JUL 28 A 8:52
DIRECTOR'S OFFICE
DEPT. OF
TRANSPORTATION

This is to request an exemption from the pipe abandonment policy of the Department of Transportation, State of Hawaii ("DOT") for the subject project. The Division of State Parks, Department of Land and Natural Resources ("DLNR") will be replacing 1.11 miles of its existing waterline along Waimea Canyon Road ("Road") between the storage tank at Makaha Ridge to the picnic facilities at the Puu Ka Pele Lookout (Refer to the attached plan sheet C - 3). The existing 4-inch cast iron waterline will be replaced with 6-inch ductile iron waterline, including improvements for service laterals, fire safety, and appurtenances.

We believe that our exemption request will augment the State's responsibility to ensure public safety and protect environmental resources based upon the following:

1. The removal of the existing 4-inch waterline will jeopardize the shoulder of the Road as sections of the pipeline are within narrow corridors of approximately 3-feet between the roadway and top of slope. Excessive excavation of approximately 36 inches below grade from removal and installation activities will impact these shoulder corridors and may undermine the integrity of the Road. The abandonment of the waterline in place will eliminate the need for excessive excavation and maintain the structural stability of the Road.
2. The existing waterline was installed in the 1960s and adjacent ironwood and native Koa trees with extensive trunk and root systems have grown substantially next to the line. Removal of these sections of the waterline will jeopardize these species as trenching may require significant root system and/or tree removal which will severely impact the arboreal resources and visual resources along the Road.

Mr. Brennon Morioka
July 23, 2009
Page 2

3. A section of the existing waterline traverses across the Road, this removal will significantly impact traffic along the Road, creating unsafe road conditions for vehicles of park users; park staff; recreational lot lessees; U.S. Navy, NASA and Air Guard staff that utilize the Road daily.
4. We believe that the existing 4-inch cast iron waterline, if abandoned in place, will not result in significant environmental impacts to the DOT right of way.
5. DLNR, at its own expense, will remove any section of the abandoned waterline should the need arise in the future.

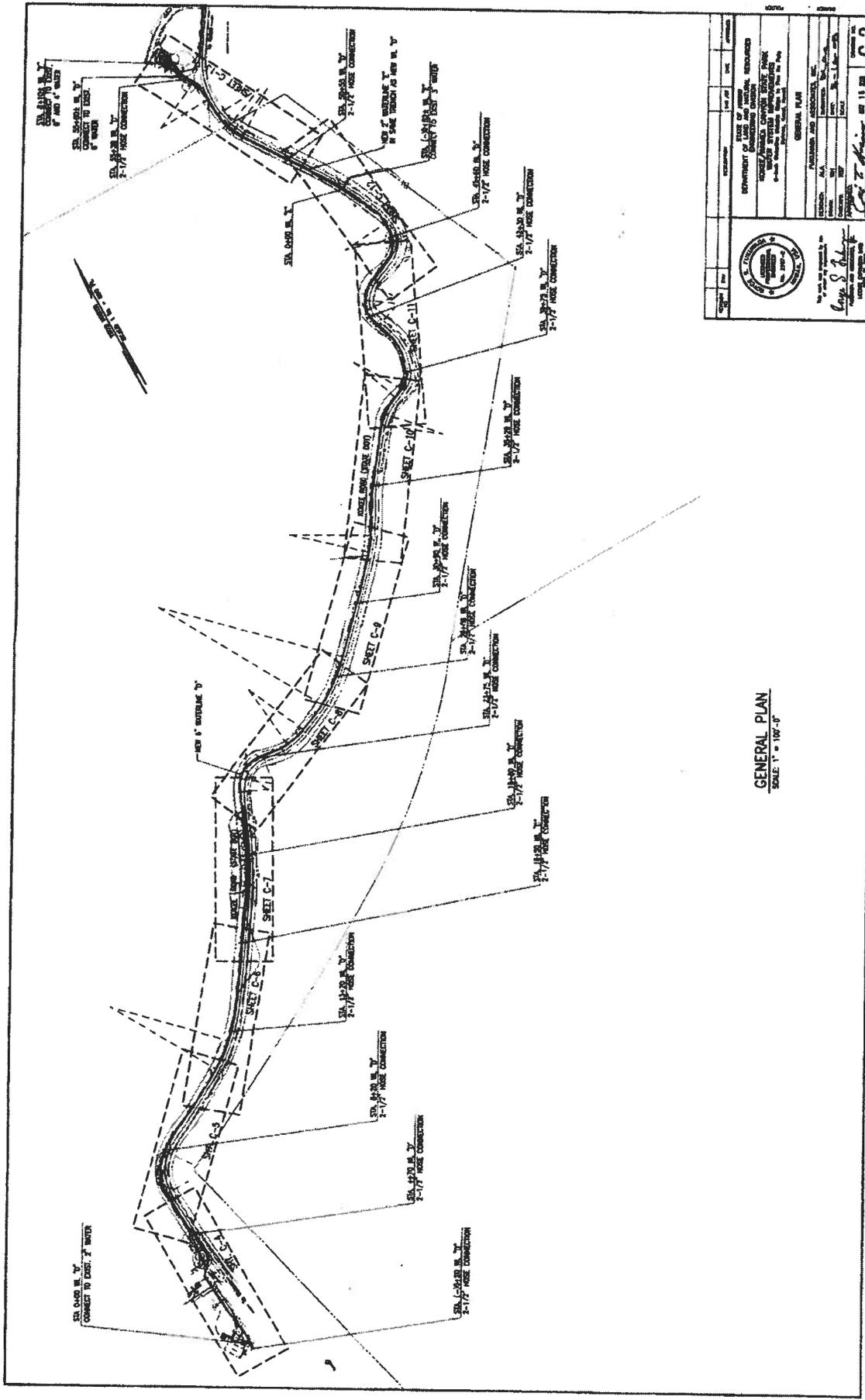
We have completed the design for this project and construction is planned for September – October of this year.

We request your favorable response for our exemption request, and we appreciate your expedient attention and response to this matter.

If there are any questions on this project, please feel free to contact Gayson Ching at (808) 587-0232 or Russell Kumabe at (808) 587-0305.

Attachment

c: Engineering
State Parks
Kauai District Engineer



GENERAL PLAN
SCALE 1" = 100'-0"

PROJECT NO.	DATE	SCALE	SHEET NO.	OF 16 SHEETS
1000	11/15/00	1" = 100'-0"	C-3	
DEPARTMENT OF LAND AND NATURAL RESOURCES WATER RESOURCES DIVISION CANAL SYSTEMS SECTION GENERAL PLAN				
PROJECT TITLE: <i>Canal System</i> DRAWN BY: <i>[Signature]</i> CHECKED BY: <i>[Signature]</i> DATE: 11/15/00				

JOB NO. F48C732C
SHEET NO. 4 OF 16 SHEETS