

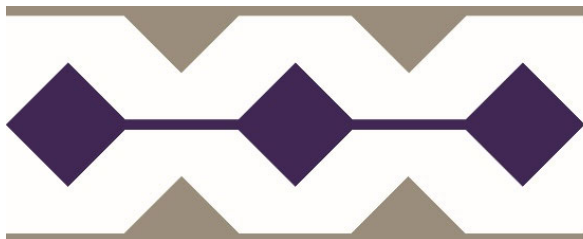
REQUEST FOR PROPOSALS
FOR
COMMUNITY-BASED RENEWABLE ENERGY PROJECTS

ISLAND OF MOLOKA‘I

NOVEMBER 22, 2021

Docket No. 2015-0389

*Appendix K-4 – Attachment COS to the Project
Specific Addendum for the Mid-Tier Standard
Form Contract: Company-Owned Site*



**Maui
Electric**

Attachment COS

COMPANY-OWNED SITE

[This Attachment sets forth the terms and conditions which shall apply if Subscriber Organization elects to utilize a Company-owned Site.]

**ATTACHMENT COS
COMPANY-OWNED SITE**

1. DESCRIPTION OF COMPANY-OWNED SITE.

A. **General.** At the request of Subscriber Organization, Company shall make available to Subscriber Organization an area on Company's property to allow performance of Subscriber Organization's obligations under this Contract, provided that Company shall make available only as much acreage as necessary for Subscriber Organization's performance (the "Company-Owned Site").

1. **During Construction of the Facility.** During such time as Subscriber Organization is actively constructing the Facility, the Company shall make available a reasonable area on Company's property, as determined by Company, for Subscriber Organization's construction activities, which shall be no larger than acres, as shown on the site plan attached as Exhibit K-1 (Site Plan) to this Attachment COS (Company-Owned Site). The Company shall work with Subscriber Organization to physically demarcate, at Subscriber Organization's expense, the boundaries of the area that will be made available to Subscriber Organization during construction of the Facility.

2. **Upon Completion of the Facility.**

a. Upon Subscriber Organization's completion of the Facility, Company shall make available to Subscriber Organization only as much area as necessary for ongoing operation of the Facility under the terms of this Contract for the remainder of the Term (the "Post-Construction Area"). The Company shall work with Subscriber Organization to physically demarcate, at Subscriber Organization's expense, the boundaries of the Post-Construction Area.

b. Upon Subscriber Organization's request during the Term of this Contract, Company, in its sole discretion, may make available to Subscriber Organization additional acreage, on a temporary basis, for Subscriber Organization's maintenance, repair or replacement of the Facility, or any portion thereof, on an as-needed basis; provided, however, that the additional acreage shall not exceed the boundaries of the area shown on the site plan attached as Exhibit K-1 (Site Plan) to this Attachment COS (Company-Owned Site). At any time during the Term, the actual available area that may be available to Subscriber Organization for such maintenance, repair or replacements activities may change in accordance with the Company's needs and then-current utilization plans for the area, all of which the Company hereby reserves in its sole and absolute discretion.

B. **[Maui only]: Private Roadway and Landscape Buffer.** The Company-Owned Site is located within a project known as the New Central Maui Generation Site Subdivision (the "Subdivision"). Subscriber Organization acknowledges and agrees that Subscriber Organization will benefit from the construction of the following improvements (the "Company Improvements") on or near the Post-Construction Area on property owned by Company within the New Central Maui Generation Site Subdivision: (i) a Private Roadway that will connect the Post-Construction Area to Pulehu Road, a public road owned by the County of Maui; (ii) a landscape buffer along Pulehu Road required to be built under the Land Use Conditions (hereinafter defined) encumbering the land within the Subdivision; and (iii) any other improvements or infrastructure required under the Land

Use Conditions. Subscriber Organization shall share in the cost to design, construct, operate, and maintain the Company Improvements, based on the Post-Construction Area, on a pro rata basis with others utilizing land within the Subdivision. Notwithstanding the foregoing, Company shall have the sole discretion to make reasonable adjustments to Subscriber Organization's share of the Company Improvements based on other uses within the Subdivision. For the purposes of this Attachment COS (Company-Owned Site), "Land Use Conditions" shall mean: (i) that certain Zoning Ordinance 2841 of the County of Maui, as reflected in related Unilateral Contract and Declaration for Conditional Zoning dated June 16, 2000 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-085696; and (ii) that certain Findings of Fact, Conclusions of Law, and Decision and Order dated June 22, 1998, issued by the Land Use Commission of the State of Hawaii in Docket No. A97-722, as reflected in the Document Listing Conditions to Reclassification of Land dated July 23, 1998 and recorded in said Bureau as Document No. 98-112111.

- C. **Utilization of Site.** Subscriber Organization shall utilize the Company-Owned Site solely in connection with and for the purposes of constructing a Facility and meeting Subscriber Organization's obligations to Company under this Contract. Subscriber Organization waives and relinquishes any right it may have under Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters ("Bankruptcy Law"), in any proceeding, whether voluntary or involuntary, under any Bankruptcy Law, or otherwise to assert the Company-Owned Site should be used for any purpose other than in connection with and for the purposes of meeting Subscriber Organization's obligations under this Contract.
- D. **Future Subdivision.** Subscriber Organization acknowledges and agrees that Company, in its sole discretion, reserves the right to subdivide the Subdivision at any time during the Term of this Contract. In the event Company exercises its right to subdivide the Subdivision, (i) Subscriber Organization agrees to share in the cost to subdivide the Subdivision on a pro rata basis with others utilizing land within the Subdivision, as determined by the Company, and (ii) Subscriber Organization and Company shall cooperate in good faith to negotiate a lease for Subscriber Organization's use of the Company-Owned Site under terms mutually agreeable to the parties consistent with this Attachment COS (Company-Owned Site).

2. **SECURITY AND ACCESS TO SITE.**

A. **During Construction of the Facility.**

- 1. **Security.** During such time as Subscriber Organization is actively constructing the Facility, Subscriber Organization at its option may secure the Company-Owned Site with fencing and gates to prevent unauthorized persons or vehicles from entering or crossing through the Company-Owned Site and/or adjacent lands owned or operated by Company. Such fencing and gating shall require the prior written approval of the Company before erecting such fencing and gating.
- 2. **Access to Company-Owned Site.** During such time as Subscriber Organization is actively constructing the Facility, Company shall provide access to the Company-Owned Site through a separate contractor's entrance, if available, or through other reasonable means as may be determined by Company in its sole discretion.

B. **Upon Completion of the Facility.**

1. **Secured Facility.** Subscriber Organization shall secure the Facility on the Company-Owned Site and prevent access to the Facility by unauthorized personnel in the same manner or higher as Company secures its power generating facilities in the county in which the Company-Owned Site is located. Notwithstanding Company's then current security procedures for its other facilities, in the event of security concerns as may be determined by the Company's security personnel, Company may require Subscriber Organization to temporarily maintain personnel at the Company-Owned Site 24 hours a day 7 days a week to monitor the security and safety of the Company-Owned Site and Facility.
 2. **Limited Access to Company-Owned Site.** Subscriber Organization shall maintain barriers on the Company-Owned Site to prevent unauthorized persons or vehicles from entering or crossing through the Company-Owned Site and/or adjacent lands owned or operated by Company.
- C. **Personnel.** At all times during the Term of this Contract, Subscriber Organization shall conduct security and background checks on all Subscriber Organization representatives, employees, independent contractors, agents, and other persons who will be allowed access to the Facility by Subscriber Organization and shall require all such persons to take periodic drug tests. Subscriber Organization shall not allow on the Company-Owned Site any persons who do not pass such security checks or drug tests. Due to the critical nature of Company's operations where the Company-Owned Site is situated, Subscriber Organization agrees that if Company, in its sole discretion and after reasonable consultation with Subscriber Organization, determines that the continued presence of any Subscriber Organization representative, employee, contractor or agent on Company property is not consistent with the best interests of Company, then in such an instance Company may request that Subscriber Organization remove such representative, employee, contractor or agent from the Company-Owned Site and Subscriber Organization shall forthwith comply with such request. Subscriber Organization may replace such representative, employee, contractor or agent with another who meets Company's standards at no additional cost to Company.
- D. **Access and Inspection.** At all times during the Term of this Contract, Company and its agents, representatives, and designees may enter the Company-Owned Site upon reasonable notice for any reason, including but not limited to the following: to (a) ascertain whether Subscriber Organization is complying with this Contract; (b) cure any failure of Subscriber Organization to comply with this Attachment COS (Company-Owned Site); (c) inspect the Company-Owned Site and any construction or improvements, including the Facility; (d) perform such tests, borings, and other analyses as Company determines may be necessary or appropriate relating to (non)compliance with any Laws or possible Hazardous Substances Discharge (hereinafter defined). Company and its designees shall not unreasonably interfere with operations of the Facility and shall comply with Subscriber Organization's reasonable instructions.

3. **Compliance.**

- A. **Generally.** Subscriber Organization shall, at Subscriber Organization's expense, in all material respects: (i) comply with all Laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Governmental Authority affecting the Company-Owned Site; (ii) comply with all rules regulating the use of and activities and conduct upon the Company's property, including the Company-Owned Site, as may be established and amended from time to time by the Company in its sole discretion; (iii) comply with the covenants, conditions, and restrictions set forth in any documents recorded against the Company-Owned Site; (iv) procure any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or

amendments to any of the foregoing as shall be necessary or appropriate under any Laws to construct and operate the Facility and to perform repair, alteration, demolition, or other work affecting the Facility (“Approvals”); and (v) comply with all Approvals.

- B. **Notice of Inspections.** Subscriber Organization shall give Company notice of any proposed inspection of the Company-Owned Site or the Facility by any Governmental Authority immediately upon Subscriber Organization’s receipt of notice of such inspection.

4. Subscriber Organization’s Investigation of the Company-Owned Site.

- A. **Investigations and Reports.** Subscriber Organization shall make such independent investigations as Subscriber Organization deems necessary or appropriate concerning Subscriber Organization’s utilization of the Company-Owned Site for the purposes of meeting Subscriber Organization’s obligations under this Contract. Notwithstanding the foregoing, if Subscriber Organization wishes to conduct an environmental or soil assessment on the Company-Owned Site, including but not limited to any Baseline Assessment conducted under Section 7(a) (Baseline Assessment) of this Attachment COS (Company-Owned Site), Company shall select the environmental or engineering consultant to conduct the investigation and shall contract with the consultant to provide the report at Subscriber Organization’s cost. The provision of any such report to Subscriber Organization shall be subject to the confidentiality provisions of Section 7(l) (Confidentiality) of this Attachment COS (Company-Owned Site).
- B. **Permits, Assurances, and Approvals.** Subscriber Organization agrees to provide Company with copies of all permits, Approvals and assurances pertaining to Subscriber Organization’s construction on the Company-Owned Site, including but not limited to building and grading permits, special management area permits, assurances from Governmental Authorities, utility commitments and service Contracts, and any permits, Approvals or assurances regarding the development or use of water, roadways, utilities or other infrastructure.
- C. **Acceptance of Company-Owned Site.** Subscriber Organization acknowledges that it has, or has had the opportunity, to inspect carefully the Company-Owned Site, and accepts the Company-Owned Site in AS IS condition WITH ALL FAULTS. Subscriber Organization further acknowledges that neither Company nor its agents or employees have made any representations or warranties of any kind whatsoever as to the suitability or fitness of the Company-Owned Site for the construction or operation of the Facility or for any other purpose, nor has Company or its agents or employees agreed to make any repairs, undertake any alterations, or construct any improvements on or with respect to the Company-Owned Site other than such Company-Owned Interconnection Facilities as Company has or may agree to build or install.
- D. **No Company Services.** Subscriber Organization acknowledges and agrees that Company is under no obligation to provide any services such as security, water, utilities or infrastructure to the Company-Owned Site.

5. Construction, Maintenance and Interference.

- A. **Construction.** At Subscriber Organization’s sole cost and expense, Subscriber Organization shall construct the Facility in accordance with the requirements of this Contract. Subscriber Organization shall not commence any demolition, construction, reconstruction, restoration, or other work affecting the Company-Owned Site, including construction of the Facility (“Construction”) until it has the applicable necessary Approvals. Prior to commencement of any Construction, Subscriber Organization shall cause each entity involved in such Construction, who is a direct contractor of Subscriber Organization and who has mechanic lien rights under Chapter 507 of the Hawaii Revised Statutes, to deliver to Company a performance and payment bond in a form

acceptable to Company and from a surety reasonably acceptable to Company, covering the faithful performance of such entity's contract with the Subscriber Organization and the payment of all obligations arising thereunder, and naming Company as an obligee. Subscriber Organization shall complete Construction of the Facility within the time periods required by this Contract. Subscriber Organization shall pay for all Construction when and as required by the parties that perform such Construction. All improvements that Subscriber Organization constructs on the Company-Owned Site other than Company-Owned Interconnection Facilities shall be the property of the Subscriber Organization for the Term of this Contract.

- B. **Plans and Specifications.** Subscriber Organization shall promptly provide Company with plans and specifications or surveys (including working plans and specifications and "as-built" plans and specifications and surveys) for any Construction.
- C. **Applications.** Upon Subscriber Organization's request, Company shall, without cost to Company, promptly join in and execute any Application (hereinafter defined) as Subscriber Organization reasonably requests, provided that: (i) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with applicable Laws) upon Company; (ii) no uncured Event of Default exists; and (iii) Subscriber Organization reimburses Company's attorneys' fees and costs. Promptly upon Subscriber Organization's request and without charge (except reimbursement of Company's attorneys' fees and costs), Company shall furnish all information in its possession that Subscriber Organization reasonably requests for any Application. For the purposes of this Attachment COS (Company-Owned Site), "Application" shall mean any Contract, application, certificate, document, or submission (or amendment of any of the foregoing): (i) necessary or appropriate for any Construction allowed under this Attachment COS (Company-Owned Site), including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or such other instrument as Subscriber Organization may from time to time reasonably request for such Construction; (ii) to enable Subscriber Organization from time to time to seek any Approval or to use and operate the Facility in accordance with this Contract; or (iii) otherwise reasonably necessary and appropriate to allow Subscriber Organization to meet its obligations under this Attachment COS (Company-Owned Site).
- D. **Obligation to Maintain.** Subscriber Organization shall remove trash and debris from the Company-Owned Site and the adjoining sidewalk, if any, and maintain them in a reasonably clean condition.
- E. **Interference.** The Company-Owned Site is located on or adjacent to property and infrastructure owned and operated by Company. Subscriber Organization acknowledges and agrees that such property and infrastructure includes Company's existing communications configurations, equipment, and frequencies that exist on or adjacent to the Company-Owned Site as of the Effective Date ("Pre-existing Communications"). Subscriber Organization shall not construct, install, operate, use, maintain, repair, or remove any new or existing equipment that will materially interfere with the Pre-existing Communications and shall be responsible for resolving any technical interference problems between the Facility and the Pre-existing Communications. Subscriber Organization additionally agrees to ensure that the Facility complies with any commercially reasonable communications requirements, specifications or rules developed by Company and provided to Subscriber Organization with respect to the Company-Owned Site throughout the Term of this Contract. Subscriber Organization shall inform and obtain Company's prior written approval before replacing any of its communications equipment or communications service providers (including internet equipment and internet service providers).

6. Prohibited Liens.

- A. **Subscriber Organization's Covenant.** Subscriber Organization shall not permit any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Subscriber Organization (or anyone claiming through Subscriber Organization) ("Prohibited Lien") to attach to the Company-Owned Site or to any adjacent land owned by the Company. If a Prohibited Lien is filed, Subscriber Organization shall, within 30 Days after receiving notice from Company of such filing (but in any case within 15 Days after Company notifies Subscriber Organization of commencement of any application for a mechanic's lien or foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Subscriber Organization shall thereafter prosecute such action with reasonable diligence and continuity. If Company receives notice of any such filing, then Company shall promptly notify Subscriber Organization. Nothing in this Contract shall be construed to obligate Subscriber Organization regarding any lien that results from any act or omission by Company.
- B. **Protection of Company.** Nothing in this Contract shall be deemed or construed in any way to constitute Company's giving Subscriber Organization any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Company-Owned Site. Subscriber Organization shall indemnify Company against any claims arising out of Construction undertaken by Subscriber Organization or anyone claiming through Subscriber Organization, and against all Prohibited Liens.

7. Hazardous Substances.

- A. **Baseline Assessment.** At Subscriber Organization's request, Company shall obtain a Phase I and/or Phase II Environmental Assessment (hereinafter defined), at Subscriber Organization's sole cost, revealing the environmental conditions of the Company-Owned Site prior to Subscriber Organization's commencement of Construction on the Company-Owned Site ("Baseline Assessment") and, subject to the confidentiality provisions of Section 7.L (Confidentiality) of this Attachment COS (Company-Owned Site), shall provide Subscriber Organization with a copy of the results of the Baseline Assessment. Any Hazardous Substances (hereinafter defined) not disclosed in any Baseline Assessment and discovered on the Company-Owned Site after the Effective Date shall be presumed to be present as a result of Subscriber Organization's utilization of the Company-Owned Site during the Term, unless Subscriber Organization shall prove, by clear and convincing proof, that the Hazardous Substances: (i) were present on the Company-Owned Site prior to the Term; (ii) migrated onto the Company-Owned Site as the result of the activities of a third party; or (iii) are present on the Company-Owned Site as the result of Company's improper actions.
1. For the purposes of this Attachment COS (Company-Owned Site): (A) "Phase I Environmental Assessment" means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Company that meets or exceeds the minimum requirements outlined in the then current version of the American Society of Testing and Materials Standard E 1527-00 (Standard Practice of Environmental Site Assessments: Phase I Environmental Site Assessment Process); and (B) "Phase II Environmental Assessment" means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Company that goes beyond the investigations of a Phase I Environmental Assessment and involves sampling and testing of the Company-Owned Site, including (1) an asbestos survey conducted according to the standards of the Asbestos Hazard Emergency Response Act protocol; (2) testing of any transformers on

the Company-Owned Site for PCBs; (3) testing for lead based paints; (4) soil and groundwater sampling to measure the effect of any actual or suspected release or discharge of Hazardous Substances on the Company-Owned Site; and (5) such other sampling and testing reasonably necessary to determine the environmental condition of the Company-Owned Site.

2. For the purposes of this Attachment COS (Company-Owned Site), “Hazardous Substances” shall include flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Laws, including any material, substance or waste that is: (A) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (B) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., as amended; (C) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. or any so-called “superfund” or “superlien” law; (D) defined as a “pollutant” or “contaminant” under 42 U.S.C. §9601(33); (E) defined as “hazardous waste” under 40 C.F.R. Part 260; (F) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; or (G) subject to any other Laws regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

B. Compliance with Environmental Law. Subscriber Organization shall keep and maintain the Company-Owned Site, including the land, the air above the land, the surface and run-off water on the land, and the groundwater under the land, in compliance with, and shall not cause or permit the Company-Owned Site or any portion of the Company-Owned Site to be in violation of any Laws regarding: (i) air, environmental, ground water, soil conditions, or threatened or endangered species; or (ii) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances (“Environmental Law”).

C. Use of Hazardous Substances. Subscriber Organization shall not cause or allow any deposit, discharge, generation, release, or spill of Hazardous Substances at or from the Company-Owned Site, or that arises at any time from Subscriber Organization’s operation of the Facility or any activities conducted on the Company-Owned Site or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Company-Owned Site, whether or not caused by Subscriber Organization or the Company and whether occurring before or after the Effective Date (“Hazardous Substances Discharge”), except (i) in the ordinary course of Subscriber Organization’s business (ii) in accordance with the instructions of the manufacturer and for the purpose described in such instructions, and (iii) in strict compliance with all applicable Environmental Law. Subscriber Organization shall not install or remove any tank or combination of tanks (including pipes connected to the tanks) used to contain an accumulation of Hazardous Substances, and the volume of which (including the volume of the underground pipes connected to the tanks) is ten percent or more beneath the surface of the ground (“Underground Storage Tank”) on, within, under or about the Company-Owned Site without first obtaining Company’s written approval. Subscriber Organization shall not accept hazardous waste (as defined under any Environmental Law) generated off the Company-Owned Site for any purpose, including treatment, storage or disposal.

- D. **List of Hazardous Substances.** On the Effective Date and on each anniversary of the Effective Date, and at any other time Company requests, Subscriber Organization shall provide Company with a written list identifying any Hazardous Substances then used, stored, or maintained upon the Company-Owned Site, the use and approximate quantity of each such material, a copy of any material safety data sheet (MSDS) issued by the manufacturer thereof, written information concerning the removal, transportation, and disposal of the same, and such other information as Company may reasonably require or as may be required by Law.
- E. **Notice of Disturbance of Any Hazardous Substances.** Subscriber Organization shall provide Company 30 Days' prior notice before commencing any activities, including repair or remodeling of the Facility or the Company-Owned Site or installation or removal of any personal property from the Company-Owned Site, which could result in the disturbance of any Hazardous Substances. Together with such notice, Subscriber Organization shall advise Company of protective measures to be taken by Subscriber Organization to ensure that Hazardous Substances shall not be released and to ensure compliance with Environmental Law. Subscriber Organization shall comply with all reasonable conditions (including adequate assurance of financial resources to comply with Environmental Law) that may be imposed by Company in connection with Subscriber Organization's proposed activities.
- F. **Hazardous Substances Claims.** Subscriber Organization shall immediately notify Company of: (i) any Hazardous Substances Claims (hereinafter defined); or (ii) Subscriber Organization's discovery of any occurrence or condition of the Company-Owned Site which could subject Subscriber Organization or Company to any liability, or restrictions on ownership, occupancy, transferability or use of the Company-Owned Site under any Environmental Law. For the purposes of this Attachment COS (Company-Owned Site), "Hazardous Substances Claims" shall mean (i) any actual, alleged or threatened Hazardous Substances Discharge; (ii) any and all enforcement, cleanup, removal, mitigation, remediation or other government actions instituted, contemplated or threatened pursuant to Environmental Law affecting the Company-Owned Site; and (iii) all claims made or threatened by any third party against Subscriber Organization or the Company-Owned Site relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substances.
- G. **Remediation and Removal.** Except for the use of Hazardous Substances permitted by this Attachment COS (Company-Owned Site), Subscriber Organization shall cause any Hazardous Substances Discharge to be: (i) remediated on-site in accordance with applicable Environmental Law; or (ii) removed from the Company-Owned Site for remediation or disposal and to be transported solely by duly licensed Hazardous Substances transporters to duly licensed disposal facilities for final disposition to the extent required by and in accordance with applicable Environmental Law. Subscriber Organization shall deliver to Company copies of any hazardous waste manifest reflecting the proper disposition of such Hazardous Substances. Except in emergencies or as otherwise required by Law, Subscriber Organization shall not take any remedial or removal action in response to a Hazardous Substances Discharge without first notifying Company.
- H. **Proceedings on Hazardous Substances Claims; Indemnity.** Subscriber Organization shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Substances Claims without first notifying Company of Subscriber Organization's intention to do so and affording Company the opportunity to join and participate as a party if Company so elects in such proceedings. Subscriber Organization shall be solely responsible for and shall indemnify Company against any Hazardous Substances Claims, including: (i) the costs of any required or necessary removal, repair, cleanup or remediation of the Company-

Owned Site, and the preparation and implementation of any closure, removal, remedial or other required plans; and (ii) all reasonable costs and expenses incurred by Company in connection therewith, including legal costs.

I. Assurance of Performance.

1. **Company's Phase II Environmental Assessment.** Company may, but shall not be required to, engage such contractors as Company determines to be appropriate to perform from time to time a Phase II Environmental Assessment, including environmental sampling and testing, of: (A) the Company-Owned Site, the surrounding soil and any adjacent areas, and any ground water located under or surface water located adjacent to the Company-Owned Site or any adjoining property; (B) Subscriber Organization's compliance with all Environmental Law and the provisions of this Attachment COS (Company-Owned Site); and (C) the provisions made by Subscriber Organization for carrying out any removal or remedial action that may be required by reason of the nature of Subscriber Organization's business and operations on the Company-Owned Site.
2. **Cost of Assessment.** All costs and expenses incurred by Company in connection with any such Phase II Environmental Assessment shall be paid by Company, except that if any such Phase II Environmental Assessment shows that: (A) the environmental condition of the Company-Owned Site has materially declined in comparison to any Baseline Assessment; (B) Subscriber Organization has failed to comply with the provisions of this Attachment COS (Company-Owned Site) with respect to Hazardous Substances; (C) the Company-Owned Site (including surrounding soil and any underlying groundwater or adjacent surface water) has become contaminated due to operations or activities not attributable to the Company; or (D) an event that is the basis for a Hazardous Substances Claim occurred during the Term, then all of the costs and expenses of such assessment shall be paid by Subscriber Organization.
3. **Conducting Assessment.** Each Phase II Environmental Assessment shall be conducted: (A) only after advance notice of such assessment has been provided to Subscriber Organization at least 10 Days prior to the date of the assessment; and (B) in a manner reasonably designed to minimize the interruption of Subscriber Organization's operations and use of the Company-Owned Site. Company shall repair any substantial damage to the Company-Owned Site or to the Facility that is directly caused by Company (but not the environmental consultant) during the Phase II Environmental Assessment.

J. Subscriber Organization's Obligations Prior to End of Term.

1. **Subscriber Organization's Phase I and Phase II Environmental Assessment Deposit.** No later than 18 months prior to the date upon which this Contract terminates, i.e., the end of the Term, Subscriber Organization shall deposit with Company a sum equal to the then current estimated cost of conducting a Phase I and Phase II Environmental Assessment of the Company-Owned Site. Company shall hold such sum for Subscriber Organization and shall apply or reimburse such sum as provided in this section.
2. **Phase I (or Phase II) Environmental Assessment.**
 - a. No later than the beginning of the last year of the Term, or immediately upon earlier termination of the Term, Company shall cause a Phase I Environmental Assessment of the Company-Owned Site to be conducted and may apply the sums previously deposited by Subscriber Organization to pay for such assessment.. If the assessment costs more than the amount of the deposit, Subscriber Organization shall pay to Company, upon demand, the difference. If the assessment costs less than the amount of the deposit, and if the Phase I

Environmental Assessment does not identify areas of concern that in Company's reasonable judgment indicate that further investigation is required, Company shall, no later than 30 Days after payment in full of the cost of the Phase I Environmental Assessment, return to Subscriber Organization a sum equal to the amount by which the deposit exceeds the actual costs of such assessment. In addition, no later than the end of the Term, Subscriber Organization shall (1) cause all Hazardous Substances previously owned, stored or used by Subscriber Organization to be removed from the Company-Owned Site and disposed of in accordance with all Environmental Law; and (2) remove any Underground Storage Tanks or other containers installed or used by Subscriber Organization to store any Hazardous Substances on the Company-Owned Site, and repair any damage to the Company-Owned Site caused by such removal.

- b. If Company's Phase I Environmental Assessment identifies areas of concern that in Company's reasonable judgment indicate that further investigation is required, Company shall cause a Phase II Environmental Assessment of the Company-Owned Site to be conducted and may apply the sums previously deposited by Subscriber Organization to pay for such assessment. If the assessment costs more than the amount of the deposit, Subscriber Organization shall pay to Company, upon demand, the difference. If the assessment costs less than the amount of the deposit, Company shall, no later than 30 Days after payment in full of such costs, return to Subscriber Organization a sum equal to the amount by which the deposit exceeds the actual costs of such assessment. Subscriber Organization expressly acknowledges and agrees that Subscriber Organization's covenant and obligation to pay all costs and expenses associated with any Phase II Environmental Assessment required under this section, whether commissioned by Subscriber Organization or Company, shall survive termination of this Contract.

K. Clean-up.

1. **Environmental Report.** If any written report containing results of any Phase I Environmental Assessment ("Environmental Report") shall: (A) reveal that the environmental condition of the Company-Owned Site has materially declined in comparison to the Baseline Assessment; or (B) Subscriber Organization has materially violated any warranty, representation, or covenant of this Attachment COS (Company-Owned Site); or (C) recommend the repair, closure, remediation, removal or other clean-up (collectively, the "Clean-up") of any Hazardous Substances found on or about the Company-Owned Site, and if Company determines that Subscriber Organization is responsible for such Clean-up, then:
 - a. Company shall provide Subscriber Organization with a copy of such Environmental Report and with a written explanation of the reasons why Company believes that Subscriber Organization is responsible under the principles of this section for conducting the Clean-up identified in such Environmental Report.
 - b. If, within 30 Days after receiving a copy of such Environmental Report and such written statement, Subscriber Organization fails either (1) to complete the Clean-up, or (2) with respect to any Clean-up which cannot be completed within such 30-Day period, fails to proceed with reasonable diligence to complete such Clean-up as promptly as practicable, then Company shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Governmental Authority, and to recover all of the costs and expenses of such Clean-up from Subscriber Organization from the date Company incurred such costs and expenses until paid in full.

2. **Emergency.** If the Environmental Report reveals a situation which, in Company's sole discretion, constitutes an emergency, then Company shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Governmental Authority, and to recover all of the costs and expenses of such Clean-up from Subscriber Organization from the date Company incurred such costs and expenses until paid in full.
3. **Submission of Report to Government.** To the extent required by Laws, Company shall be entitled to submit the Environmental Report to any Governmental Authority.
4. **Completion of Clean-up Before Termination.** Subscriber Organization shall complete Clean-up prior to termination of this Contract, and shall fully comply with all Environmental Law and requirements of any Governmental Authority over the Clean-up, including any requirement to file such assessment, mitigation plan, risk assessment or other information with any such Governmental Authority prior to such termination.
5. **Subscriber Organization's Inability to Complete.** Should any such Clean-up for which Subscriber Organization is responsible not be completed or should Subscriber Organization not receive any Approvals regarding the Company-Owned Site or areas adjacent to the Company-Owned Site required under Environmental Law prior to the expiration or sooner termination of this Contract, including any extensions of this Contract, then Subscriber Organization shall deposit with Company an amount of money equal to the balance of the estimated costs of the Clean-up.

L. Confidentiality.

1. **Keeping Information Confidential.** Except if required to do so by Law, or compelled by subpoena or discovery proceedings in any legal action or governmental proceeding, Subscriber Organization agrees that Subscriber Organization shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site, to any person, including any Governmental Authority, without the prior written consent of Company. Upon completion of any Clean-up of the Company-Owned Site, Subscriber Organization shall deliver and return to Company, all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site whether provided to Subscriber Organization by Company or not.
2. **Scope of Obligation.** Subscriber Organization's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site, include but are not limited to Subscriber Organization's officers, employees, agents, attorneys, environmental consultants and contractors. Subscriber Organization's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site, shall survive the termination of this Contract.

- M. Copies of Environmental Reports.** Subscriber Organization shall provide Company with a copy of any and all environmental assessments, audits, studies and reports regarding Subscriber Organization's past or current activities on the Company-Owned Site or the environmental condition of the Company-Owned Site within 30 Days of Subscriber Organization's receipt of such materials. Subscriber Organization shall be obligated to provide Company with a copy of such

materials without regard to whether they are generated by Subscriber Organization or prepared for Subscriber Organization, or how Subscriber Organization comes into possession of such materials.

- N. **Survival of Contracts.** The covenants of this section, including the indemnification provision, shall survive the expiration or termination of this Contract, or any termination of Subscriber Organization's utilization of the Company-Owned Site.

8. Archeological and Historical Items.

- A. **Discovery of Items.** In the event any human remains, artifacts, historical items, or any of them (collectively the "Discovered Items") are discovered on the Company-Owned Site, Subscriber Organization shall, at Subscriber Organization's sole expense and subject to the approval of Company, be responsible to: (i) cause all excavation in the immediate area which may damage the Discovered Items and the potential historic site to cease; (ii) cause the site to be stabilized and secured to temporarily protect the Discovered Items against damage, theft, or both; (iii) cause the Discovered Items to be left untouched so that their archaeological or historical context may be accurately documented; and (iv) cause the discovery to be reported immediately to Company and to Governmental Authorities as required by applicable Laws. If the artifacts or historical items are found without human remains, and leaving the artifacts or historical items in their stabilized and secured site poses a substantial risk of loss or damage to all or part of them, and their removal is therefore necessary, Subscriber Organization shall cause such removal and shall cause any tampering with the artifacts, the historical items, and the site to be minimized as much as possible.
- B. **Human Remains.** In the case of the discovery of human remains, Subscriber Organization shall, at Subscriber Organization's sole expense and in addition to the duties set forth in this section, cause to be prepared and executed a mitigation plan acceptable to Company and to Governmental Authorities possessing jurisdiction over such matters. Subscriber Organization shall also be responsible to obtain written verification that the mitigation plan has been successfully implemented.
- C. **Company's Reservation.** If any Discovered Items are discovered, then Company shall have the right at all reasonable times to enter the Company-Owned Site upon reasonable notice for the purposes of searching for, exploring for, and removing any of the Discovered Items for preservation as permitted by applicable Laws. All objects, antiquities and specimens of Hawaiian or other ancient art or handicraft or of prehistoric, historic or archaeological interest found on the Company-Owned Site belong to and at all times shall remain the property of Company.
- D. **No Studies by Subscriber Organization.** No archaeological studies or historic preservation studies may be sought to be conducted in or on the Company-Owned Site by Subscriber Organization or anyone acting by or through Subscriber Organization. If Subscriber Organization wishes to conduct such studies, or if Subscriber Organization is required by applicable Laws to permit such studies (Subscriber Organization to provide bases for conclusion that such Laws mandate any such requested studies), Subscriber Organization shall obtain Company's prior written consent and shall permit Company, at its option, to commission such studies as required, or Company may permit Subscriber Organization to commission such studies provided that Subscriber Organization shall provide Company with prior notice of the commencement of such studies. If Subscriber Organization commissions such studies, Subscriber Organization shall upon completion of such studies cause a complete copy of the results of such studies to be provided to Company at the earliest opportunity but no later than 15 days after its issuance.

9. Transfers.

- A. **Company's Right to Convey.** Company may transfer title to the Company-Owned Site from time to time at any time without prior notice to, or consent from, Subscriber Organization, provided that any such transfer is subject to Subscriber Organization's right to utilize the Company-Owned Site under this Contract. Company will promptly notify Subscriber Organization of such a transfer.
- B. **Subscriber Organization's Limited Right.** Subscriber Organization may only transfer the rights to utilize the Company-Owned Site under this Attachment COS (Company-Owned Site) to a permitted assignee of all of the rights and obligations of the Subscriber Organization under this Contract. Any attempt by Subscriber Organization to separately transfer the rights to utilize the Company-Owned Site under this Attachment COS (Company-Owned Site) shall be void. Any permitted assignee of Subscriber Organization shall assume all obligations and liabilities of Subscriber Organization under this Attachment COS (Company-Owned Site). No transfer shall affect any obligations of Subscriber Organization or rights of Company under this Attachment COS (Company-Owned Site).

10. End of Term.

- A. **Right of First Refusal.** Provided that the CBRE Program has been extended by the PUC beyond its current twenty-year term, the Subscriber Organization shall have a right of first refusal to negotiate an extension to the Contract (including the license to use the Company-Owned Site) for an extended term coinciding with the extended term of the CBRE Program. The terms and conditions of the extended term of the Contract shall be subject to the CBRE Program parameters as extended.
 - 1. Subscriber Organization shall provide Company with written notice of its intent exercise its right of first refusal prior to the later to occur of: (a) one (1) year prior to the end of the Term of the Contract; or (b) thirty (30) days after the PUC issues its order extending the CBRE Program. If Subscriber Organization fails to exercise its right of first refusal by such date, Subscriber Organization's right of first refusal shall expire and be of no further force and effect.
 - 2. If Subscriber Organization timely exercises its right of first refusal, Subscriber Organization and Company shall have three (3) months (the "Negotiation Period") to negotiate the terms and conditions of the extended term of the Contract. The Parties may extend the Negotiation Period by written agreement between the Parties, provided, however, that the Negotiation Period shall not extend beyond the original end of the term of the Contract. If the Parties fail to reach agreement on an extended Contract by the end of its original term, the Contract shall terminate and be of no further force and effect and the remaining provisions of this Section 10 (End of Term) shall apply. If the extended Contract is subject to PUC approval prior to becoming effective, the Parties shall, if they are able to do so, come to agreement on the extended Contract and Company shall file the application for approval of the extended Contract on or prior to the end of the original term of the Contract. The Contract shall be deemed extended on a month-to-month basis during the pendency of the application for approval of the extended Contract. The Parties may negotiate amended terms to the Contract for the period after the completion of the original term through the effective date of the extended Contract.
 - 3. If the CBRE Program is extended later than four (4) months prior to the end of the original term of the Contract, Subscriber Organization shall nonetheless retain its right of first refusal and the time to exercise such right and the minimum 3-month Negotiation Period. The original term of the Contract shall be deemed extended on a month-to-month basis during the pendency of the Negotiation Period and, if an extended Contract is agreed to, the application for approval of the extended Contract (if PUC approval is required). The Parties may negotiate amended

terms to the Contract for the period after the completion of the original term through the effective date of the extended Contract.

- B. Improvements.** Upon the termination of this Contract, or in the event this Contract is declared null and void under the Null and Void Rights of this Contract (“Contract Termination”), Subscriber Organization shall have the option to: (i) at its sole cost and expense, remove all Subscriber Organization-owned improvements, including the Facility and the Subscriber Organization-Owned Interconnection Facilities (“Improvements”) from the Company-Owned Site, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed Improvements; or (ii) if Subscriber Organization does not desire to keep the Improvements, offer the Improvements to Company at a price equal to the salvage value of the Improvements as determined or supported by an appraiser agreeable to the Parties. If the Company does not wish to purchase the Improvements or if the Parties are unable to come to agreeable terms for the purchase and sale of the Improvements, Subscriber Organization, at its sole cost and expense, shall remove all of the Improvements from the Company-Owned Site, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed infrastructure.
- C. Subscriber Organization’s Removal of Improvements.** If Subscriber Organization elects to or is required to remove the Improvements upon termination of the Contract, Subscriber Organization shall have reasonable access to the Company-Owned Site for a period of up to ninety (90) Days after termination of this Contract to dismantle, pack and remove the Improvements from the Company-Owned Site (the “Removal Period”). Subscriber Organization shall work promptly and diligently to remove the Improvements. The Removal Period shall automatically terminate upon the earlier to occur of: Subscriber Organization’s completion of removal of the Improvements from the Company-Owned Site or ninety (90) Days after the termination of the Contract. The surviving obligations of this Contract shall apply during the Removal Period, including Subscriber Organization’s obligations to provide insurance and to indemnify Company.
- D. Company’s Removal of Improvements.** If Company determines that Subscriber Organization is not making diligent efforts to remove the Improvements, or if Company has operational concerns over the removal of the Improvements, Company shall notify Subscriber Organization of Company’s intention to remove the Improvements at Subscriber Organization’s cost. Company shall provide Subscriber Organization at least five (5) Days notice of Company’s election to remove the Improvements at Subscriber Organization’s cost. Upon completion of such removal by Company, Company shall draw upon Operating Period Security for reimbursement of such costs, or if such security is not available, invoice Subscriber Organization for such costs.
- E. Restoration of the Company-Owned Site.** After Contract Termination and removal of Subscriber Organization’s Improvements by Subscriber Organization or by Company, as the case may be, Subscriber Organization shall, at its sole cost and expense, restore the Company-Owned Site to its condition prior to Subscriber Organization’s Construction. Restoration pursuant to this Section shall be completed within 90 Days of Contract Termination, or as otherwise agreed to by both Parties in writing.
- F. Assignment of Rights; Orderly Transfer.** If Company purchases the Improvements under the provisions of Section 10.B. (End of Term) of this Attachment COS (Company-Owned Site), Subscriber Organization shall assign to Company, without recourse, and give Company copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Facility. The parties shall cooperate to achieve an orderly transfer of the Improvements from

Subscriber Organization to Company, including delivery of such books and records (or copies thereof) as Company reasonably requires.

11. Miscellaneous.

- A. **Modification.** The parties reserve the right to modify this Attachment COS (Company-Owned Site) by mutual agreement set forth in writing. Such modifications shall not be considered amendments to this Contract requiring PUC approval.
- B. **Security.** Subscriber Organization acknowledges and agrees that Subscriber Organization's performance under this Attachment COS (Company-Owned Site) is secured by both the Development Period Security and the Operating Period Security. Any costs and expenses due to Company, or reimbursable to Company, may at Company's option, be paid or reimbursed to Company from the applicable Development Period Security or Operating Period Security.
- C. **Confidential Information.** Without limitation of the obligations set forth elsewhere in this Contract, each party (including its officers, directors, employees, representatives, brokers, attorneys and advisers) shall, except as otherwise provided by applicable Laws, or in connection with proceedings before the State of Hawaii Public Utilities Commission or other Governmental Authority with jurisdiction over the Company-Owned Site or this Contract, or in connection with the evaluation for financing, or as part of disclosure to its affiliates, attorneys, consultants, and advisers in order to conduct its business or proceedings to enforce this Attachment COS (Company-Owned Site) or this Contract, keep the contents of this Attachment COS (Company-Owned Site) and any information related to the Company-Owned Site, Subscriber Organization and the Subscriber Organization's utilization of the Company-Owned Site pursuant to this Attachment COS (Company-Owned Site) confidential, whether or not marked as "confidential" (collectively, the "Confidential Information"). The Confidential Information shall not include any information publicly known, or which becomes publicly known, other than through the acts of a party to the Contract, or any of their respective officers, directors, employees, representatives, brokers, attorneys or advisers. Subscriber Organization may retain possession of all or any part of the Confidential Information to the extent such Confidential Information relates solely to the Facility and Subscriber Organization's operation of the Facility.
- D. **No Real Property Interest Conveyed.** Notwithstanding anything to the contrary contained herein, this Contract shall not result in the conveyance or transfer to Subscriber Organization, directly or indirectly, expressly or impliedly, or give rise to, any real property right, title, or interest.

DRAFTING NOTES:

1. **ATTACHMENT COS MAY BE REVISED TO ACCOUNT FOR MATTERS SUCH AS THE SPECIFICS OF THE SITE IN QUESTION, SUBSCRIBER ORGANIZATION'S FACILITY AND ANY NECESSARY ACCESS ARRANGEMENTS THROUGH COMPANY'S FACILITIES.**
2. **PROVISIONS OF THE CONTRACT CONCERNING MATTERS SUCH AS LAND RIGHTS, SCOPE OF INDEMNIFICATION AND DRAWS UPON DEVELOPMENT PERIOD SECURITY OR OPERATING PERIOD SECURITY WILL BE REVISED TO ACCOUNT FOR ATTACHMENT COS.**

EXHIBIT K-1
SITE PLAN

[TO BE DETERMINED]