

# EXHIBIT 1

Draft Request for Proposals for Renewable  
Firm Capacity and Dispatchable Energy  
Resources on the island of Maui



**Maui  
Electric**

**DRAFT REQUEST FOR PROPOSALS**

**FOR**

**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

This Request for Proposals (“RFP”) is a DRAFT only. Maui Electric Company, Limited. (“Maui Electric” or “Company”) will employ a competitive bidding process to select firm renewable dispatchable generation projects consistent with the State of Hawai‘i Public Utilities Commission’s (“PUC”) Competitive Bidding Framework. Under the Competitive Bidding Framework, Maui Electric will file the initial draft RFP with the (PUC). Then, Maui Electric will seek input from prospective Proposers and other stakeholders through a Technical Conference as described in the draft RFP and will modify the draft RFP to the extent feasible to address input received in order to foster a robust competitive process. The proposed final RFP will be submitted to the PUC for approval and is subject to further revision based upon direction received from the PUC. After approval by the PUC, Maui Electric will issue the final RFP. The proposed schedule for the foregoing process is set forth in this draft RFP in Table 1.

**Table of Contents**

**Chapter 1 : Introduction and General Information ..... 1**

1.1 Authority and Purpose of the Request for Proposals ..... 1

1.2 Scope of the RFP ..... 2

1.3 Competitive Bidding Framework ..... 5

1.4 Role of the Independent Observer ..... 5

1.5 Communications Between Company and Proposers – Procedures Manual ..... 6

1.6 Company Contact for Proposals ..... 7

1.7 Proposal Submittal Requirements ..... 7

1.8 Proposal Fee ..... 7

1.9 Procedures for the Self-Build Option ..... 8

1.10 Dispute Resolution Process ..... 8

1.11 No Protest or Appeal ..... 9

1.12 Modification or Cancellation of the Solicitation Process ..... 9

**Chapter 2 : Resource Needs and Requirements ..... 10**

2.1 Performance Standards ..... 10

2.2 Attributes of Resources Requested ..... 10

2.3 Transmission and Distribution System ..... 11

2.4 Interconnection to the Company System ..... 11

**Chapter 3 : Instructions to Proposers ..... 14**

3.1 Schedule for the Proposal Process ..... 14

3.2 Company RFP Website / Electronic Procurement Platform ..... 15

3.3 Technical Conference ..... 16

3.4 Preparation of Proposals ..... 16

3.5 Organization of the Proposal ..... 17

3.6 Proposal Limitations ..... 17

3.7 Proposal Compliance and Bases for Disqualification ..... 18

3.8 Power Purchase Agreement ..... 18

3.9 Pricing Formula Requirements ..... 20

3.10 Sites Identified by the Company ..... 21

3.11 Project Description ..... 21

3.12 Confidentiality ..... 22

3.13	Credit Requirements Under the PPA .....	22
<b>Chapter 4 : Evaluation Process and Evaluation Criteria.....</b>		<b>23</b>
4.1	Proposal Evaluation and Selection Process .....	23
4.2	Eligibility Requirements .....	25
4.3	Threshold Requirements .....	25
4.4	Initial Evaluation – Price and Non-Price Analysis .....	28
4.5	Selection of the Short List.....	30
4.6	Best and Final Offer.....	31
4.7	Detailed Evaluation.....	31
4.8	Selection of the Final Award Group .....	32
<b>Chapter 5 : Post Evaluation Process .....</b>		<b>32</b>
5.1	Interconnection Requirements Study.....	32
5.2	Contract Negotiation Process.....	32
5.3	Community Outreach and Engagement .....	33
5.4	Required PUC Approvals .....	33

**List of Appendices**

Appendix A	Definitions
Appendix B	Proposer’s Response Package / IRS Data Sheet
Appendix C	Model PPA
Appendix D	Code of Conduct Procedures Manual
Appendix E	PowerAdvocate User Information
Appendix F	Mutual Confidentiality and Non-Disclosure Agreement
Appendix G	Description of Available Sites
Appendix H	[RESERVED]
Appendix I	Interconnection Facilities and Cost Information
Appendix J	Rule 19 Tariff
Appendix K	Ground Lease
Appendix L	Selection Criteria

**List of Tables**

Table 1	RFP Schedule .....	14
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**List of Figures**

Figure 1	Evaluation Workflow .....	24
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## **Chapter 1: Introduction and General Information**

Maui Electric Company, Limited. (“Maui Electric” or “Company”) seeks proposals for the supply of qualified firm capacity renewable dispatchable energy to be delivered to the Maui Electric System in accordance with this Request for Proposals (“RFP”). The total amount of Capacity being solicited for Maui is approximately forty (40) megawatts<sup>1</sup> (“MW”), over a term of 25 years. The resources acquired through this Final RFP must have Guaranteed Commercial Operations Dates that are no later than December 31, 2022.

The Company intends to contract for firm capacity renewable dispatchable generation projects under this RFP using its Model Power Purchase Agreement for Renewable Firm Capacity and Dispatchable Energy (“PPA”), which require generating resources as fully dispatchable. A copy of the Model PPA is attached hereto as Appendix C. The Company is concurrently issuing a separate RFP for variable renewable dispatchable energy for Maui.

Each successful Proposer will provide firm capacity dispatchable energy to the Company pursuant to the terms of a PPA to be negotiated between the Company and Proposer, which shall also be subject to PUC review and approval.

The Company will evaluate Proposals using the evaluation and selection process and described in Chapter 4 of this RFP. The Company will evaluate and select Proposals based on both price and non-price factors that impact the Company, its customers, and communities affected by the proposed projects.

A detailed description of the technical requirements for Proposers is included in Chapter 2 of this RFP, in the Proposer’s Response Package attached to this RFP as Appendix B (and various model contracts attached as exhibits to this RFP), and on the Electronic Procurement Platform described in Section 3.2 (i.e. PowerAdvocate Platform).

All requirements necessary to submit Proposal(s) are provided in this RFP. All capitalized terms used in this RFP shall have the meaning set forth in the Glossary of defined terms attached hereto as Appendix A. Capitalized terms that are not included in Appendix A shall have the meaning ascribed herein.

### **1.1 Authority and Purpose of the Request for Proposals**

1.1.1 This RFP is issued in response to Order No. 34856 issued on October 6, 2017 in Docket No. 2017-0352 as part of a procurement process established by the State of Hawai‘i Public Utility Commission (“PUC”).

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<sup>1</sup> The resource need for the island of Maui identified in the Company’s PSIP Update Report: December 2016 identified 40 MW of qualified firm capacity to replace the generating capacity of Kahului Power Plant by 2022.

- 1.1.2 This RFP is subject to Decision and Order (“D&O”) No. 23121 in Docket No. 03-0372 (To Investigate Competitive Bidding for New Generating Capacity in Hawai‘i), which sets forth the PUC’s Framework for Competitive Bidding (“Framework” or “Competitive Bidding Framework”).
- 1.1.3 All Proposals submitted in response to this RFP shall utilize qualified Renewable Energy resource(s) as defined under the Hawai‘i Renewable Portfolio Standards (“RPS”).<sup>2</sup> By statute, “Renewable energy” means energy generated or produced using the following sources: (1) wind; (2) the sun; (3) falling water; (4) biogas, including landfill and sewage-based digester gas; (5) geothermal; (6) ocean water, currents, and waves, including ocean thermal energy conversion; (7) biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste; (8) biofuels; and (9) hydrogen produced from renewable energy sources. HRS §269-91.
- 1.1.4 Proposers should thoroughly review the Hawaiian Electric Companies’ Power Supply Improvement Plans (“PSIPs”), filed in Docket No. 2014-0183 on December 23, 2016 (“PSIP Update Report: December 2016”).
- 1.1.5 Consistent with the PSIP Update Report: December 2016, the primary purpose of this RFP is to obtain firm capacity renewable dispatchable energy to enable the Company to continue to transform Maui’s power supply portfolio from fossil fuel-based generation by retiring Kahului Power Plant to new renewable-based generation in a manner that will continue to lower costs for customers. The Company does not have a predetermined preference for a particular renewable energy source or technology and acknowledges that the requirements of this RFP may be satisfied by a portfolio of generation resource options. The Company believes this approach allows for flexibility and encourages Proposers to develop and submit a broad range of innovative Proposals.
- 1.1.6 This RFP is intended to elicit Proposals that will enable Maui Electric to obtain renewable energy generation at a competitive, reasonable cost with reliability, viability and operational characteristics consistent with the Company’s long-term planning and energy policy requirements.

## 1.2 **Scope of the RFP**

- 1.2.1 Consistent with the resource needs identified for the island of Maui, as stated in the Company’s PSIP, the Company seeks Proposals for the supply of approximately forty (40) megawatts (“MW”) of qualified firm capacity renewable dispatchable generation to be provided under the terms of a PPA to be negotiated between the Company and the Proposer.

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<sup>2</sup> RPS requirements in Hawai‘i are codified as Hawai‘i Revised Statutes (“HRS”) 269-91 through 269-95.

- 1.2.2 An additional attribute which the Company seeks is locational in order to mitigate the following transmission deficiency -- the Company has identified that its 69 kV transmission line between the Kihei and Wailea substations may experience under-voltage and possible voltage collapse in the event of a loss of transmission line (N-1 contingency) in south Maui. Accordingly, any Proposal able to site a Facility with an approximate twenty (20) MW capacity situated between the Wailea and Kihei substations will be considered a positive attribute if it is able to serve as a non-transmission alternative to mitigate these potential voltage issues. The capacities for this Facility is not an addition to the forty (40) megawatts that the Company is seeking.
- 1.2.3 To avoid increasing the size of contingency events and to ensure system reliability requirements, no single point of failure from the Facility shall result in a decrease in net electrical output greater than thirty (30) MW.
- 1.2.4 Rather than defining the specific technology to be Proposed in response to this RFP (such as combustion turbine, combined cycle, internal combustion engine, steam unit, etc.), this RFP identifies the attributes and Performance Standards that the renewable resources will need to provide in order to: (1) maintain the proper function of the Maui Electric System; (2) meet statutory RPS requirements; (3) satisfy Company's capacity planning criteria; and (4) increase the flexibility of the Maui generation mix to accommodate greater quantities of renewable energy resources.
- 1.2.5 This RFP targets Proposals for projects that can achieve Commercial Operations on or before December 31, 2022.
- 1.2.6 Proposer will determine the project site for its Proposal. However, the Company will offer its Waena site<sup>3</sup> as one potential project site for consideration by Proposers. Only one firm Facility will be allowed at the Waena site. Description of the Waena site can be found in Appendix G (Description of Available Sites).
- 1.2.7 Whether a proposal utilizes the Waena site or not, a successful Proposer will be required to own and operate its Facility during the term of the PPA and will be responsible for all costs and expenses for the development, construction, operation and maintenance of the Facility (see Attachment B of the Model PPA), including completion of an Interconnection Requirement Study ("IRS"), land acquisition,<sup>4</sup> permitting, financing and construction of all Interconnection Facilities, fuel supply and fuel inventory.
- 1.2.8 For purposes of this RFP, the Company shall only consider Proposals for Facilities located on the Island of Maui.

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<sup>3</sup> The Waena site consists of 65.7 acres located along Pulehu and Waiko roads in central Maui (TMK 3-8-03:23 and 3-8-03:24). The site is zoned Heavy Industrial. Approximately 15 acres will be allotted for use with this RFP.

<sup>4</sup> See Section 3.11 regarding Sites Identified by Company.

- 1.2.9 Generation must be provided from either new facilities or from the demonstrated expansion of existing eligible facilities.
- 1.2.10 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without relying on or being conditioned upon the completion or implementation of any other Project submitted in response to this RFP or any other RFP.
- 1.2.11 Proposer will build, finance and operate the desired Facility. The successful Proposer will be required to execute a PPA in the form of the Model PPA, as defined and described in Section 3.8 below. Under the Model PPA, the Company shall retain all rights to fully dispatch the full capacity, including real and reactive power of the Facility (see Section 3.3 of the Model PPA).
- 1.2.12 The Company will submit a Self-Build Option as permitted under the Framework.
- 1.2.13 Term of the PPA will be twenty five (25) years. Proposer will operate and maintain the Facility for the term of the PPA.
- 1.2.14 Proposer will pursue all available applicable tax credits and, if available, will adjust its Proposal pricing accordingly to pass the benefit of the tax credits on to Company's customers (see Appendix C Model PPA).
- 1.2.15 Payments under the PPA will be made by the Company to the Seller as set forth in the Model PPA.
- 1.2.16 Project will interconnect to the Company's System either at the 23 kV or the 69 kV level and not on a radial circuit. The 69 kV level is preferred. Interconnection Requirements and IRS process are set forth in Section 5.1 below.
- 1.2.17 The Proposer's proposed Interconnection Facilities shall be compatible with the Company System and must meet the requirements set forth in the IRS and the Model PPA. The PPA may be revised to reflect the results of the IRS. The Proposer shall be responsible for all costs related to the design and installation of all Interconnection Facilities. The control and coordination requirements of the power flow from the Generator(s) will be determined by the IRS and may consist of and include fiber optic communications facilities provided by the Proposer to the Point of Interconnection.
- 1.2.18 A combined total of 40 MW is required for the reasons described in Section 1.2.1. The minimum capacity that will be considered in this RFP is 2.64 MW-net. However, Proposals with capacity less than 40 MW will require other projects to be received and then evaluated as part of a portfolio of Proposals in order to meet the 40 MW need, as opposed to larger Proposals that meet the 40 MW need individually.
- 1.2.19 If selected, Proposers shall be responsible for the decommissioning of the Project and the restoration of the Site upon the expiration of the PPA, as described in Attachment G, Section 7 of the Model PPA. In addition to the requirement in the PPA, decommissioning responsibilities should also include developing and implementing a



program for the recycling to the fullest extent possible, or otherwise proper disposal, of installed infrastructure. Proposer should describe its decommissioning plan, including programs for recycling of installed infrastructure, if any, and how Site restoration to its original ecological condition will be guaranteed in the event of default by the Proposer in the applicable Site Control documentation.

### 1.3 **Competitive Bidding Framework**

- 1.3.1 Consistent with the Framework, this RFP outlines the Company's requirements in relation to the resources being solicited, the procedures for conducting the RFP process, and includes information and instructions to prospective Proposers participating in and responding to this RFP.

Contingency Plan and Parallel Plan. As required by Section VI of the Framework, the Company will undertake a Contingency Plan to respond in a reasonable timeframe if the competitive bidding process relative to this RFP unexpectedly fails to produce a viable Proposal or Proposals. In addition, the Company will undertake a Parallel Plan that is capable of being implemented, to the extent feasible, after an appropriate amount of planning, which may or may not be the Self-Build Option(s). In the event that a Proposer(s), other than the Company, is selected under this RFP, the Company will periodically update its Contingency Plan (and Parallel Plan, if necessary), to address the potential risk that the Proposer's Project(s) may be delayed or not completed. The Company intends to propose a competing proposal satisfying the requirements of this RFP. In accordance with the Framework, the Company will implement and adhere to a PUC-approved Code of Conduct to avoid self-dealing in both fact and perception. The Company's additional steps in this regard are more particularly described in Section 1.9 below.

### 1.4 **Role of the Independent Observer**

- 1.4.1 Part III.C.1 of the Framework sets forth the circumstances under which an Independent Observer is required in a competitive bidding process. In particular, the Framework provides that "[a]n Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by Proposers) in response to a need that is addressed by its RFP, or when the Commission otherwise determines." As noted in Section 1.2.12 above, the Company intends to submit a Proposal for a Self-Build Option in response to the generation needs solicited in this RFP. Accordingly, the PUC has retained an Independent Observer to oversee and monitor the process for this RFP. The Independent Observer will coordinate with PUC staff throughout the RFP process to ensure that the RFP process is undertaken in a fair and unbiased manner.

- 1.4.2 The role of the Independent Observer, as described in the Framework, will include the following:

- Monitor all steps in the competitive bidding process
- Monitor communications (and communications protocols) with Proposers
- Monitor adherence to the Company's Code of Conduct

- Submit comments and recommendations, if any, to the PUC concerning the RFP
- Review the Company's Proposal evaluation methodology, models, criteria, and assumptions
- Review the Company's evaluation of Proposals
- Advise the utility on its decision-making
- Monitor contract negotiations with Proposers
- Report to the PUC on monitoring results during each stage of the competitive bidding process
- Provide an overall assessment of whether the goals of the RFP were achieved

1.4.3 The Independent Observer for this RFP is listed below:

**[NAME, ADDRESS, CONTACT INFO]**

### 1.5 **Communications Between Company and Proposers – Procedures Manual**

- 1.5.1 Communications and other procedures under this RFP are governed by the "Procedures Manual," developed by the Company as required by the Framework, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the RFP process. The Company's Procedures Manual is attached hereto as Appendix D (Code of Conduct Procedures Manual for the Competitive Bidding Program).
- 1.5.2 Pursuant to the Procedures Manual, all pre-Proposal communication with prospective Proposers, including the Company's Self-Build Team and any Affiliate Team (as those terms are defined in the Procedures Manual), will be conducted via the Company's website, Electronic Procurement Platform and/or electronic mail ("Email") as specified in the Procedures Manual. Any Email to the Company must be sent to the address specified in Section 1.6 below (the "RFP Email Address"). Any correspondence sent to any other Email address will not receive a response. Frequently asked questions submitted by prospective Proposers and the answers to those questions may be posted on the Company website or sent through the Electronic Procurement Platform to registered individuals. The Company reserves the right to respond only to comments and questions it deems are appropriate and relevant to the RFP, in its sole discretion.
- 1.5.3 After submission of Proposals, all correspondence between the Company and Proposers will be coordinated by the Energy Contract Manager identified in Section 1.6. During this post-Proposal submission period, the Company may have communications and meetings with individual Proposers for purposes of clarifying Proposals.
- 1.5.4 Each Proposer must execute a Mutual Confidentiality Agreement and Non-Disclosure Agreement ("NDA") attached hereto as Appendix F. All confidential information will be transmitted to the requesting party via the RFP Email address and/or the Electronic Procurement Platform, only after receipt of such fully executed NDA by a requesting

party. Notwithstanding the execution of a NDA by a requesting party, the Company reserves the right, in its sole discretion, not to disclose certain confidential information.

- 1.5.5 Except as expressly permitted and in the manner prescribed in the Procedures Manual, any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP is prohibited and may constitute grounds for disqualification.

**1.6 Company Contact for Proposals**

The Energy Contract Manager and primary contact for this RFP is:

Kevin Kuo  
Energy Contract Manager  
Hawaiian Electric Company, Inc.  
Central Pacific Plaza Building, 21<sup>st</sup> Floor  
220 South King Street  
Honolulu, Hawai'i 96813

RFP Email Address: [mauifirmrfp@hawaiianelectric.com](mailto:mauifirmrfp@hawaiianelectric.com)

**1.7 Proposal Submittal Requirements**

- 1.7.1 Detailed requirements regarding the form and organization of the Proposal are set forth in Chapter 3 of this RFP. Proposals shall be submitted in the form of the Proposer's Response Package attached hereto as Appendix B (Proposer's Response Package) pursuant to Chapter 3 of this RFP.
- 1.7.2 By submitting a Proposal in response to this RFP, each Proposer certifies that the Proposal has been submitted in good faith and without fraud or collusion with any other person or entity. Proposer shall submit with each Proposal a Certificate of Non-Collusion in the form provided on the Electronic Procurement Platform.
- 1.7.3 Proposals shall be submitted via the Electronic Procurement Platform and must be received (confirmed by a time and date stamp) by 2:00 pm Hawai'i Standard Time (HST) on the date shown in the RFP Schedule in Section 3.1, Item 11, below. Incomplete Proposals, as determined by the Electronic Procurement Platform, will not be considered. No hard copies of the Proposals will be accepted.

**1.8 Proposal Fee**

- 1.8.1 The Proposers are required to tender a non-refundable Proposal Fee of \$10,000 for each proposal submitted.
- 1.8.2 Proposers may submit multiple Proposals if a Proposal Fee is paid for each separate Proposal. Proposals that contain variations or options for different Project types, contract structure, technology or sites could constitute a separate Proposal and require an additional Proposal Fee, as determined by the Company, in its sole discretion.

Proposals in which all of the proposed Generators are not located on the same site shall be required to submit a separate Proposal Fee for each site.

- 1.8.3 The Proposal Fee shall be in the form of a cashier's check made payable to Maui Electric Company, Limited and delivered to the Company's Energy Contract Manager by 2:00 pm HST, on the same day shown in the RFP Schedule in Section 3.1, Item 11, below, the same day that the Proposal is due. Failure to submit the Proposal Fee by the specified deadline will result in disqualification of the Proposer's Proposal.

## 1.9 Procedures for the Self-Build Option

The Company intends to offer a Self-Build Option in response to this RFP pursuant to the Framework. See Framework § VI.A.

- 1.9.1 The Framework provides that the procedures developed for an RFP shall call for arms-length dealing with regard to employees, agents and representatives of the Company who are developing a Self-Build Option (the "Self-Build Team") and those employees, agents and representatives of the Company who perform the evaluation of the RFP (the "Evaluation Team"). The Company's Code of Conduct and Procedures Manual submitted to the PUC in Docket No. 2017-0352 on October 23, 2017 are in place to safeguard against and address concerns associated with potential perceived preferential treatment or preferential access to information. A copy of the Procedures Manual is attached hereto as Appendix D. The Independent Observer will assist the PUC in ensuring that the established procedures and the terms of the Code of Conduct are followed and administered fairly such that no preferential treatment or preferential access to information will be provided to the Self-Build Team by the Evaluation Team. Pursuant to the Framework and as set forth in the RFP Schedule, the Company will provide the Proposal for the Self-Build Option(s) to the Independent Observer through the Electronic Procurement Platform a minimum of one (1) Day before other Proposals are due.

## 1.10 Dispute Resolution Process

- 1.10.1 If disputes arise under the RFP, the provisions of this Section 1.10 and the dispute resolution process established in the Framework shall control. See Part V of the Framework.
- 1.10.2 A Proposer or Proposers who challenge or contest any aspect of the RFP process must first attempt to resolve their concerns with the Company and the Independent Observer via a meeting of all interested parties ("Initial Meeting"). The Independent Observer will seek to work cooperatively with the parties to resolve any disputes or pending issues, and may offer to mediate (but with no decision making authority) the Initial Meeting to resolve disputes prior to such issues coming before the PUC.
- 1.10.3 Any and all disputes arising out of or relating to the RFP which remain unresolved for a period of twenty (20) Days after the Initial Meeting takes place may, upon the agreement of the Proposer and the Company, be submitted to confidential mediation in Honolulu, Hawai'i, pursuant to and in accordance with the Mediation Rules,

Procedures, and Protocols of Dispute Prevention Resolution, Inc. (“DPR”) (or its successor) or, in its absence, the American Arbitration Association then in effect (“Mediation”). The Mediation shall be administered by DPR. If the parties agree to submit the dispute to Mediation, the Proposer and the Company shall each pay fifty percent (50%) of the cost of the Mediation (i.e. the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own Mediation costs and attorney’s fees.

- 1.10.4 If settlement of the dispute is not reached within sixty (60) Days after commencement of the Mediation, or if after the Initial Meeting, the parties do not agree to submit any unresolved disputes to Mediation, then as provided in the Framework, the Proposer seek determination of the issue by the PUC.
- 1.10.5 In accordance with the Framework, the PUC will serve as the arbiter of last resort for any disputes relating to this RFP involving Proposers. The PUC will use an informal expedited dispute resolution process to resolve the issue within thirty (30) Days, as described in Parts III.B.8 of the Framework. There shall be no right to hearing or appeal from this informal expedited dispute resolution process.
- 1.10.6 If any Proposer initiates a dispute resolution process for any dispute or claim arising under or relating to this RFP other than permitted by the Framework and Section 1.10 of this RFP (e.g. arbitration or court proceeding), then such Proposer shall be responsible for any and all attorney’s fees and costs that may be incurred by the Company or PUC in order to resolve such claim.

**1.11 No Protest or Appeal**

Subject to Section 1.10 of this RFP, no Proposer or other person will have the right to protest or appeal any award of a Project made by the Company.

**1.12 Modification or Cancellation of the Solicitation Process**

- 1.12.1 Unless otherwise expressly prohibited, the Company may, at any time up to final award, in consultation with the Independent Observer, postpone, withdraw and / or cancel any requirement, term or condition of this RFP, including deferral of the award of any contract, and / or cancellation of the award all together, all of which shall be without any liability to the Company.
- 1.12.2 The Company may modify this RFP subject to requirements of the Framework, i.e., review by the Independent Observer and submission to the PUC with thirty (30) Days’ notice before the modified RFP may be issued, unless the PUC directs otherwise. See Section IV.B.10 of the Framework. The Company will follow the same procedure for any Proposed postponement, withdrawal or cancellation of the RFP or any portion thereof.

## **Chapter 2: Resource Needs and Requirements**

### **2.1 Performance Standards**

Proposals must meet the Performance Standards set forth in the Model PPA. Such Performance Standards are specified in Appendices of the Model PPA and in particular Attachment B and Attachment G. To the extent that certain Performance Standards in the Model PPA are blank, such standards may be dependent on the generation resource of the selected Proposal. The Company will consider and determine the requirements of such standard in conjunction with negotiations on the final terms of the PPA and the results of the IRS.

### **2.2 Attributes of Resources Requested**

A list of the desired attributes is described generally below. The descriptions associated with this partial list are intended to provide the Proposer with background information specific to Company and are not ranked or selected according to priority or importance. The attributes described below are more particularly described and specified in the Model PPA. In the event of any inconsistency between the descriptions below and the terms and conditions of the Model PPA, the Model PPA shall control. Proposers are encouraged to consult the Model PPA for further details regarding any of the attributes described below. Proposers are strongly encouraged to offer Proposals with the following attributes:

- 2.2.1 Firm Capacity – Each Generator shall provide defined and steady amounts of Firm Capacity.
- 2.2.2 Dispatchable – The output of the resources shall be fully controllable by Company from moment to moment via automatic generation controls (“AGC”) or other means specified by the Company as described in Attachment B of the Model PPA. Each Generator shall be fully Dispatchable between its minimum and maximum output range whenever it is in operation.
- 2.2.3 Cycling - The Facility generating unit(s) may be shut down and restarted as many times per day as deemed appropriate by Company pursuant to Company Dispatch.
- 2.2.4 Ramp Rate – Each Generator shall be capable of ramping up and down in response under Company’s control system to help balance supply (generation) and demand (system load) and maintain a constant system frequency. Higher ramp rate is desirable.
- 2.2.5 Black-Start Capability – The Facility proposed by the Self-Build team proposal shall have Black-Start Capability (i.e., capability of starting up on a completely de-energized utility grid and contributing to system restoration). For evaluation purposes, pricing for the Black-Start Capability will be itemized separately in the Self-Build Option.
- 2.2.6 Modes of Operation - Generators with Black-Start Capability shall have the capability to operate in either isochronous or governor droop modes with the ability to transition from one mode to the other on the fly.

- 2.2.7 Interconnection - The Proposers' proposed Interconnection Facilities shall be connected to the Company's 23 kV or 69 kV level and not on a radial circuit. 69 kV level is preferred.
- 2.2.8 Generator Inertia - The Company needs to replace the inertia that will be lost with the retirement of the Kahului Power Plant. The aggregate amount of inertia, expressed as an H-constant, for the four existing generating units at the Kahului Power Plant is approximately 15.25 MJ/MVA. Proposers need to specify the amount of inertia that will be provided by their proposed project. Higher Generator inertia is desirable.
- 2.2.9 Planned Outage – The Facility planned outages should not exceed 20 MW.
- 2.2.10 Single Point of Failure - The failure of any Generator (which may consist of multiple Generators) must not result in a decrease in net electrical output greater than thirty (30) MW.
- 2.2.11 Fault Current – The Proposer shall specify the amount of fault current that will be provided by their proposed project.

## 2.3 Transmission and Distribution System

- 2.3.1 The Company's transmission system consists of 69,000 volt (69 kV) and 23,000 volt (23kV) lines. The distributions system consists of 12,500 volt (12 kV) and 4,160 volt (4 kV) lines. The system also includes transmission and distribution substations, SCADA equipment and an energy management system.
- 2.3.2 The impact to the transmission and distribution system of a generating resource is highly dependent on many variables such as geographic location, circuit configuration, transmission and distribution line capabilities, growth rates, and customer use.
- 2.3.3 Company information regarding the relative remaining capacity of transmission circuits on Maui may be made available to Proposers only after execution of a NDA. Non-confidential information has been published in the Companies' December 23, 2016 PSIP Update Report beginning on page N-56 of Appendix N. Proposers should perform their own evaluation of project locations and the Company does not guarantee any project output or ability to connect based on such information. Proposers are invited to meet with the Company prior to submitting a Proposal to discuss specific questions regarding a particular Proposal. **Please direct inquires to Interconnection Services at [Interconnection.services@hawaiianelectric.com](mailto:Interconnection.services@hawaiianelectric.com)**
- 2.3.4 Additional site-specific information will be provided in the IRS process.

## 2.4 Interconnection to the Company System

- 2.4.1 The means of interconnection between a proposed Facility and the Company System is a critical consideration for all Proposers. The Proposers' proposed Interconnection Facilities shall be compatible with the Company System. Proposers shall demonstrate that all proposed Projects adequately consider their impacts on the performance and

reliability of the Company System. The design of the Interconnection Facilities, including power rating, Point(s) of Interconnection with the Company System, and scheme of interconnection, shall meet Company standards and be designed such that with the addition of the Facility, the Company system can meet all relevant Transmission Planning Criteria<sup>5</sup> and any amendments thereto.

- 2.4.2 The Interconnection Facilities includes both: (1) Seller-Owned Interconnection Facilities; and (2) Company-Owned Interconnection Facilities.
- 2.4.3 Tariff Rule 19, a copy of which is attached hereto as Appendix J, establishes provisions for Interconnection and Transmission Upgrades. The tariff provisions are intended to simplify the rules regarding who pays for, installs, owns and operates interconnection facilities in the context of competitive bidding. The Company uses the breaker-and-a-half scheme for its transmission switching station as shown in Attachment A of Tariff Rule 19. Proposers should follow this scheme for purposes of their estimates.
- 2.4.4 Selecting a site for new generation and / or transmission line terminus has cost impacts to the Company's System. The Proposer shall be responsible for all costs required to interconnect a Project to the Company System, including all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities.
- 2.4.5 Proposers are required to include in their pricing proposal all costs for interconnection and transmission upgrades or distribution upgrades expected to be required between their Facility and their proposed Point of Interconnection See Appendix I (Interconnection Facilities and Cost Information). Selected projects will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities.
- 2.4.6 Proposers are required to include in their Proposal a \$/kW-mo. Capacity Charge Payment amount per \$100,000 of actual interconnection costs (de-escalator). The Company will use the \$/kW-mo. figure along with the Proposer's interconnection cost estimate (or, in the Company's discretion, the Company's estimate) in the initial economic analysis of the Proposal.
- 2.4.7 All projects will be screened for general readiness to comply with the requirements for interconnection. Proposals selected to the Final Award Group will be subject to further study in the form of an Interconnection Requirements Study. The IRS process is further described in Section 5.1 of this RFP. The IRS will provide information including, but not limited to, a power systems analysis and identification of equipment, costs, and schedule to evaluate the upgrades necessary to interconnect the proposed

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<sup>5</sup> Transmission Planning Criteria is further described in the Companies' December 23, 2016 PSIP Update Report on beginning on page O-11 of Appendix O.



Project into the Company System, individually or on a portfolio basis. The results of the completed IRS, as well as any mitigation measures identified, will be incorporated into the terms and conditions of a final executed PPA. The Proposer must provide all Proposal information required to complete the IRS with the Proposal, as described in Appendix B. Any additional information required must be provided no later than 15 days after request by the Company.

**Chapter 3: Instructions to Proposers**

**3.1 Schedule for the Proposal Process**

Table 1 provides the proposed schedule for the RFP process (“RFP Schedule”). The Company reserves the right to revise the RFP Schedule, as necessary. Changes to the RFP Schedule will be posted to the RFP Website.

**Table 1  
RFP Schedule**

<b>Milestone</b>	<b>Schedule Dates</b>
(1) PUC Opens RFP Docket	October 6, 2017
(2) Draft RFP is filed	October 23, 2017 <sup>6</sup>
(3) Technical Conference Webinar	November 3, 2017
(4) 1 <sup>st</sup> Round of Stakeholder Comments submitted to Companies	November 17, 2017
(5) Companies Filing of Proposed Final RFP and Model PPA	December 21, 2017
(6) 2 <sup>nd</sup> Round of Stakeholder Comments submitted to Commission	January 12, 2018
(7) Completion of Commission review period of Proposed Final RFPs	January 29, 2018
(8) Commission approves Final RFP and Model PPA	30 days after (7) <sup>7</sup>
(9) Final RFP is issued	5 business days after (8)
(10) Proposal due for Self-Build Option	1 day before (11) at 2:00 pm HST
(11) Proposals due for all Other Proposals	110 days after (9) at 2:00 pm HST
(12) Selection of Short List	30 days after (11)
(13) Publication of BAFO Information	5 business days after (12)
(14) Self-Build Option BAFO due (if any)	1 business day before (15)
(15) Other Proposers’ BAFOs due	5 business days after (13)
(16) Selection of Final Award Group	120 days after (15)
(17) Contract Negotiations Start	5 business days after (16)

<sup>6</sup> Subsequent dates are dependent on the procedural schedule set by the PUC.

<sup>7</sup> The Framework for Competitive Bidding Company intends to request PUC approval of the Proposed Final RFP and Model PPA within 30 days of filing of the Proposed Final RFP. The Framework for Competitive Bidding, adopted by the Commission through Order No. 23121, filed on December 8, 2006 in Docket No. 03-0372, summarized in an Order issued on February 24, 2011 in Docket No. 2011-0038, and cited throughout Order No. 34856, provides for a thirty day period for Commission review and approval of the RFPs. The Companies propose expanding this review period as shown here in order to allow additional time, given that the review falls during the holidays.

### 3.2 Company RFP Website / Electronic Procurement Platform

3.2.1 The Company has established a website for general information to share with potential Proposers. The website is located at the following link:

[www.hawaiianelectric.com/competitivebidding](http://www.hawaiianelectric.com/competitivebidding)

The Company will provide general notices, updates, schedule and other information on the RFP website throughout the process. Proposers should check the website frequently to stay abreast of any new developments. This website will also contain the link to the Electronic Procurement Platform utilized by the Company for the receipt of Proposals. The Company will send updates posted on the website through the Electronic Procurement Platform.

3.2.2 “Sourcing Intelligence,” developed by Power Advocate is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP. Proposers who do not already have an existing account with PowerAdvocate, and intend to submit a Proposal for this RFP, will need to register as a “Supplier” with PowerAdvocate.

3.2.3 There are no license fees, costs, or usage fee to Proposers for the use of the PowerAdvocate Platform.

3.2.4 Proposers can register for a new account by clicking on the “Registration” button on the PowerAdvocate website at the following address:

[www.poweradvocate.com](http://www.poweradvocate.com)

See Appendix E for user information and instructions on PowerAdvocate’s Sourcing Intelligence procurement platform.

3.2.5 In order to complete the registration, the Proposer will need to review and accept Power Advocate’s Terms of Use. The Terms of Use are available online and a copy is also attached for convenience in Appendix E (PowerAdvocate User Information).

3.2.6 Once a Proposer has successfully registered as a Supplier with PowerAdvocate, the Proposer shall request access to the subject RFX<sup>8</sup> event from the Company Contact via email through the RFP Email Address. The email request must list the Supplier name under which the Proposer has registered with PowerAdvocate. Once the RFX event is opened, Proposers will have online access to general notices, RFP-related documents, and other communications via Sourcing Intelligence, and may begin to submit their Proposal.

3.2.7 Proposals shall be accepted only through the PowerAdvocate Platform.

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<sup>8</sup> RFX event is the terminology used in Sourcing Intelligence to describe the RFP event.

- 3.2.8 Proposals must be submitted through Sourcing Intelligence by 2:00 pm Hawai'i Standard Time (HST) on the date shown in the RFP Schedule in Section 3.1. Sourcing Intelligence will not accept the submittal of late information for this RFX event. It is the Proposer's sole responsibility to ensure that its complete information has been submitted on time. Any proposal information that is merely SAVED, but not SUBMITTED will not be considered.
- 3.2.9 All Proposals must be prepared in accordance with the procedures and format specified in the RFP and the RFX event. Proposers are also required to respond to all questions and provide all information requested in the RFP and the RFX event, as applicable. This process is intended to provide an orderly, consistent and fair evaluation of the Proposals.

### 3.3 **Technical Conference**

- 3.3.1 The Company is open to ideas and feedback on these draft RFP documents and on the RFP process in general to facilitate that feedback. The Company will hold a Technical Conference (webinar) in accordance with the Competitive Bidding Framework to discuss the provisions and requirements of this and other RFPs being offered in parallel for prospective Proposers and other stakeholders. The Technical Conference will allow stakeholders to ask questions and better understand the Companies' proposed competitive bidding process and draft documents. Such opportunity will then allow the stakeholders to provide more refined and detailed feedback regarding the process and draft documents.
- 3.3.2 The Company encourages any party interested in submitting a Proposal to attend the Technical Conference. This Technical Conference will be held on November 3, 2017 as described in the Schedule in Section 3.1 above. Parties interested in attending the Technical Conference should check the RFP Website for updates or further announcements on the time of the Technical Conference. An electronic version of the webinar will be made available on demand via the RFP website listed in Section 3.2.1 above. Prospective Proposers may submit written questions in advance regarding the proposed RFP to the RFP Email Address set forth in Section 1.6. The Company will attempt to answer such questions during the Technical Conference. No answers to questions will be sent or posted prior to the Technical Conference. The Company will respond only to questions it deems relevant and reserves the right not to respond to questions. The Company will endeavor to address questions and comments during the Technical Conference and may, but is not required to, post or send select written responses subsequent to the Technical Conference. In the event a conflict exists between any oral and post-conference written response, the post-conference written response shall control.

After PUC approval and issuance of the final RFP, the Company may hold a Proposers' Conference to clarify any aspect of the RFP for potential Proposers. If the Company elects to hold such a conference, the date and time will be posted on the RFP Website.

### 3.4 **Preparation of Proposals**

- 3.4.1 Each Proposer shall be solely responsible for reviewing the RFP (including all attachments and links) and for thoroughly investigating and informing itself with respect to all matters pertinent to this RFP, the Proposer's Proposal and Proposer's anticipated performance under the PPA.
- 3.4.2 Proposers shall rely only on official information provided by the Company in this RFP when preparing their Proposal. The Company will rely only on the information included in the Proposals and additional information from Proposers solicited by the Company to evaluate the Proposals received.
- 3.4.3 Each Proposer shall be solely responsible for and shall bear all of its costs incurred in the preparation of its Proposal and / or its participation in this RFP, including, but not limited to, all costs incurred with respect to the review of the RFP documents, attending meetings with the Company, Site visits, third-party consultant consultation, and investigation and informing itself with respect to matters pertaining to its Proposal and this RFP, and any costs associated with the same shall not be reimbursed by the Company to any Proposer, including the selected Proposer(s).
- 3.4.4 Each Proposal shall contain the full name and business address of the Proposer and shall be signed by an authorized officer or agent<sup>9</sup> of the Proposer.

### 3.5 **Organization of the Proposal**

Appendix B (Proposer's Response Package) provides information for submitting Proposal information through the PowerAdvocate Platform.

Proposer shall be required to agree to the use of electronic signature within the Power Advocate Platform and provide an electronic signature on the appropriate certification form for the Proposal.

### 3.6 **Proposal Limitations**

Proposers expressly acknowledge that Proposals are submitted subject to the following limitations:

The RFP does not commit or require the Company to award a contract, pay any costs incurred by a Proposer in the preparation of a Proposal, or procure or contract for products or services of any kind whatsoever. The Company reserves the right, in its sole discretion, to accept or reject, in whole or in part, any or all Proposals submitted in response to this RFP, to negotiate with any or all Proposers eligible to be selected for award, or to withdraw or modify this RFP in whole or in part at any time.

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<sup>9</sup> Proposer's officer or agent must be authorized, in writing, via Proposer's organizational documents (i.e., Articles of Incorporation, Articles of Organization, By-laws, etc.), resolution or similar documentation.

- Company reserves the right, in its sole discretion, to request additional information from any or all Proposers relating to their Proposals or to request Proposers to clarify the contents of their Proposals. Proposers that are not responsive to such information requests may be eliminated from further consideration upon consultation with the Independent Observer.
- Company reserves the right, in its sole discretion, to solicit additional Proposals from Proposers after reviewing the initial Proposals. Other than as provided herein, no Proposer will be allowed to alter its Proposal or add new information to a Proposal after the due date for submission of Proposals. Company reserves the right, in its sole discretion, to solicit additional Proposals from Proposers after reviewing the initial Proposals. Other than as provided herein, no Proposer will be allowed to alter its Proposal or add new information to a Proposal after the due date for submission of Proposals.
- All material submitted in response to this RFP shall become the sole property of the Company, subject to the terms of the NDA.

### 3.7 **Proposal Compliance and Bases for Disqualification**

Proposers may be deemed non-responsive and / or Proposals may not be considered for reasons including, but not limited to, the Eligibility Requirements listed in Section 4.2 and the following:

- The Proposal is not in conformance with the RFP requirements and instructions;
- The Proposal is conditional in a manner not permitted by the RFP;
- Company is not satisfied, in its sole discretion, that the Proposer is capable of meeting its financial obligations with respect to its Proposal for reasons including, but not limited to, Proposer's inadequate credit rating or creditworthiness or Proposer's failure to supply a requested letter of credit, or other form of security acceptable to the Company; and/or
- Company is not satisfied, in its sole discretion, that the Proposer is capable of fully and timely implementing its Proposal.

### 3.8 **Power Purchase Agreement**

- 3.8.1 Power Purchase Agreement ("PPA"): Company and the successful Proposer will execute a Firm Capacity Renewable Dispatchable Generation Power Purchase Agreement, in the form attached hereto as Appendix C (Model Firm Renewable Dispatchable Generation PPA) ("Model PPA"), subject to modifications as mutually agreed by the parties in the contract negotiation process. The Project shall be situated at a Proposer-owned Site or at the Company Site. Subject to a mutually acceptable lease of the Company Site for a term coinciding with the term of the PPA. The proposed

form of lease from the Company to the successful Proposer for the Company Site is attached hereto as Appendix K. The term of the PPA shall be for a period of twenty five (25) years from the Commercial Operations Date. Proposers who select the PPA option shall own and operate the Project for the term of the PPA and shall be responsible for all costs including Project development, Site and Land Rights acquisition, permitting, financing, construction of the Facility, construction of the interconnection facility, fuel supply and operations and maintenance as further described in the Model PPA.

- 3.8.2 Proposers who elect to propose modifications the Model PPA as part of their proposals shall provide a red-line version of the Model PPA with their requested changes and revisions as a component of their Proposals. Such modifications will be evaluated as a non-price evaluation criteria as further described in Section 4.4 and Appendix L. In order to facilitate this process, the Company will make available electronic versions of the Model PPA. The Company will review and consider the requested changes and reflect the suggested changes in the overall risk assessment associated with the evaluation of each Proposal. Proposers are strongly discouraged from proposing fundamental changes to the risk allocation set forth in the Model PPA. Any terms of the Model PPA designated as non-negotiable by the PUC will not be open for negotiation and must be accepted by the selected Proposer(s) as is.
- 3.8.3 The following sections of the PPA are not negotiable and Proposers who submit proposals showing revisions to these sections are subject to disqualification: Article 1, Article 2, Article 3, Article 7, Article 8, Article 9, Article 11, Article 12.3, Article 14, Article 15, Article 16, Article 17, Article 18, Article 20, Article 21, Article 22, Article 25, Article 26, Article 27, Section 29.15, Sections 2 and 3 of Attachment B, Attachment C, Attachment H, Attachment I, Section 3 of Attachment J, Attachment M, Attachment T, and Attachment U. Changes to the above sections will be allowed to accommodate the results of the IRS and or changes in law that occur prior to the Execution Date. Although the Company is unlikely to consider substantive changes to Attachment C, the Company will receive Proposer input to this attachment.
- 3.8.4 Proposals that do not include proposed revisions to the attached Model PPA shall be deemed to have accepted the Model PPA terms. Modifications to the PPA provisions previously identified in Section 3.8.3 are not allowed and such provisions will not be subject to negotiation.
- 3.8.5 The Company shall have the right to reject any Proposal or evaluate it unfavorably based on the nature of the exceptions to the Model PPA proposed by a Proposer.
- 3.8.6 Proposals in which all of the proposed Generators are not located on the same site shall be required to execute a separate PPA for each site.

### 3.9 Pricing Formula Requirements

For Independent Power Producers, the Proposer's Response Package shall include the following pricing in 2017 dollars (Proposers should refer to Article 5 and Attachment J of the Model PPA for a definition of the terms):

- Capacity Charge Rate in \$/kW-mo
- Fixed O&M Component Rate in \$/kW-mo (including an indication of whether this component is to be escalated annually)
- Fuel Component in \$/kWh
- Per kWh Variable Component of the Variable O&M Component in \$/kWh (including an indication of whether this component is to be escalated annually)
- Per Hour Variable Component of the Variable O&M Component in \$/hr (including an indication of whether this component is to be escalated annually)
- In addition, Proposers are required to include in their Proposal, a \$/kW-month amount per \$100,000 (lower than the estimate) of actual interconnection costs. The Company will use the \$/kW-month figure along with the Proposer's interconnection cost estimate (or, in the Company's discretion, the Company's estimate) in the initial economic analysis of the Proposer's Proposal.

For Self-Build Proposals, the Proposer's Response Package shall include the following pricing information:

- Total capital generating costs
  - Cost breakout to incorporate Black-Start Capability
- Total capital interconnection costs
- Total overhead costs
- AFUDC
- Annual revenue requirements (\$)
- Annual cash flow (\$) without AFUDC

- 3.9.1 In evaluating the economics of Proposer's Projects, the Company will also include transmission system or distribution system upgrade costs, if any, beyond the Grid Connection Point that would be incurred by the Company to integrate the Proposer's Project onto the Maui Electric System.
- 3.9.2 Metering shall be provided by Company as set forth in the Model PPA.
- 3.9.3 All proposal information must be independent of changes to state or federal investment tax credit policies.



### 3.10 Sites Identified by the Company

- 3.10.1 As an alternative to a site identified by the Proposer, the Company has identified potential Sites where landowners have expressed a willingness to negotiate a lease or purchase of the land to support a renewable energy project. These Sites were identified through a Land RFI. Proposers will be responsible for working directly with the land owner and must secure site control with such land owner as set forth in Section 4.3 prior to submitting a Proposal. Additional information about the sites identified in the Land Request for Information (“RFI”) were provided to interested parties that signed Land RFI NDAs. The Land RFI information remains available to other interested parties that sign the Land RFI NDA. The Land RFI is further described in Appendix G.
- 3.10.2 Additionally, a Company-owned Site, referred to as the Waena site is being offered to Proposers for their consideration. The Company Site is currently vacant land owned by the Company. Up to 15 acres (approximate -- the final available acreage is subject to change) will be available, provided that any Proposer shall only be permitted to lease as much acreage as is necessary for its project. Additional acreage shall not be available and Proposers may only use the available land for its project and for no other uses. Only one firm Facility will be allowed at the Waena site. The current plan anticipates that the Company Site will be subdivided from the rest of the Company land and any Proposer proposing to use the Company Site shall be required to execute a lease for the Company Site coterminous with the term of the PPA. An access easement for access to the Company Site from Pulehu Road shall be provided. Proposer shall be required to pay all expenses to subdivide of the lot and ongoing prorata maintenance and other charges for such access road and any other services provided as part of the Company Site lease. Proposer shall be responsible, at its sole cost and expense, for all other site improvements, utilities, permits and other required infrastructure and regulatory requirements necessary for use of the Company Site for Proposer’s project (see Appendix K attached hereto).

### 3.11 Project Description

Proposers must agree to provide all information pertaining to the design, development and construction of the Interconnection Facilities as specified in Appendix B (Proposer’s Response Package), including, but not limited to, the following:

- Proposed Interconnection Point;
- Site plan , including any line extension;
- Single line and Three line diagrams with a wet stamp by a registered professional engineer in Hawai‘i;
- Details of major equipment, including performance specifications.

Proposers must also agree to provide open and complete access to their books and project financial information as described, including a Project financial pro forma with supporting documentation and proposed project finance structure in the form attached in Appendix B.

Proposer agrees that no material changes or additions to Facility from what is submitted with this Proposal shall be made without Proposer first having obtained prior written consent from Company.

### 3.12 Confidentiality

- 3.12.1 Each prospective Proposer must submit an executed NDA in the form attached hereto as Appendix F by the due date for Proposals specified in the RFP Schedule in Section 3.1. The form of the NDA is not negotiable. Information designated as confidential by the Company will be provided on a limited basis and only those prospective Proposers that have submitted an executed NDA will be considered.
- 3.12.2 Proposers must clearly identify all confidential information in their Proposals. However, Proposers should take care to designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The Company discourages the practice of marking each and every page of a Proposal as “Confidential.” The Company will make reasonable efforts to protect any such confidential information that is clearly marked as “Confidential.” The Company reserves the right to share any information, even if marked Confidential, to its agents or contractors for the purpose of evaluating the Proposal, as set forth in the NDA.
- 3.12.3 The Company will request that the PUC issue a Protective Order to protect confidential information provided by Proposers to the Company. A copy of the Protective Order, once issued by the PUC, will be provided to Proposers. Proposers should be aware that the Company may be required to share certain confidential information contained in Proposals with the PUC, the Division of Consumer Advocacy, State of Hawaii Department of Commerce and Consumer Affairs, and the parties to any docket instituted by the PUC, provided that recipients of confidential information have first agreed in writing to abide by the terms of the Protective Order. Notwithstanding the foregoing, no Proposer shall be provided Proposals from any other Proposer or any other information contained therein or provided by or with respect to any other Proposer, except as expressly stated herein with respect to the Self-Build Option and the Best and Final Offer.

### 3.13 Credit Requirements Under the PPA

- 3.13.1 Proposers with whom the Company concludes contract negotiations of a PPA are required to post Development Period Security and Operating Period Security as set forth in the Model PPA, attached hereto as Appendix C.
- 3.13.2 The Development Period Security and Operating Period Security identified in the Model PPA are minimum requirements. Proposers may not propose an amount lower than set forth in the Model PPA.
- 3.13.3 Proposer shall be required to provide a satisfactory irrevocable standby letter of credit in favor of the Company to secure Proposer’s payment of all Company-Owned Interconnection Facilities costs which are payable to Company as described in Attachment G of the Model PPA.

- 3.13.4 Proposer may be required to fund a monetary escrow account in lieu of the required Source Code Escrow required under Attachment B of the Model PPA.

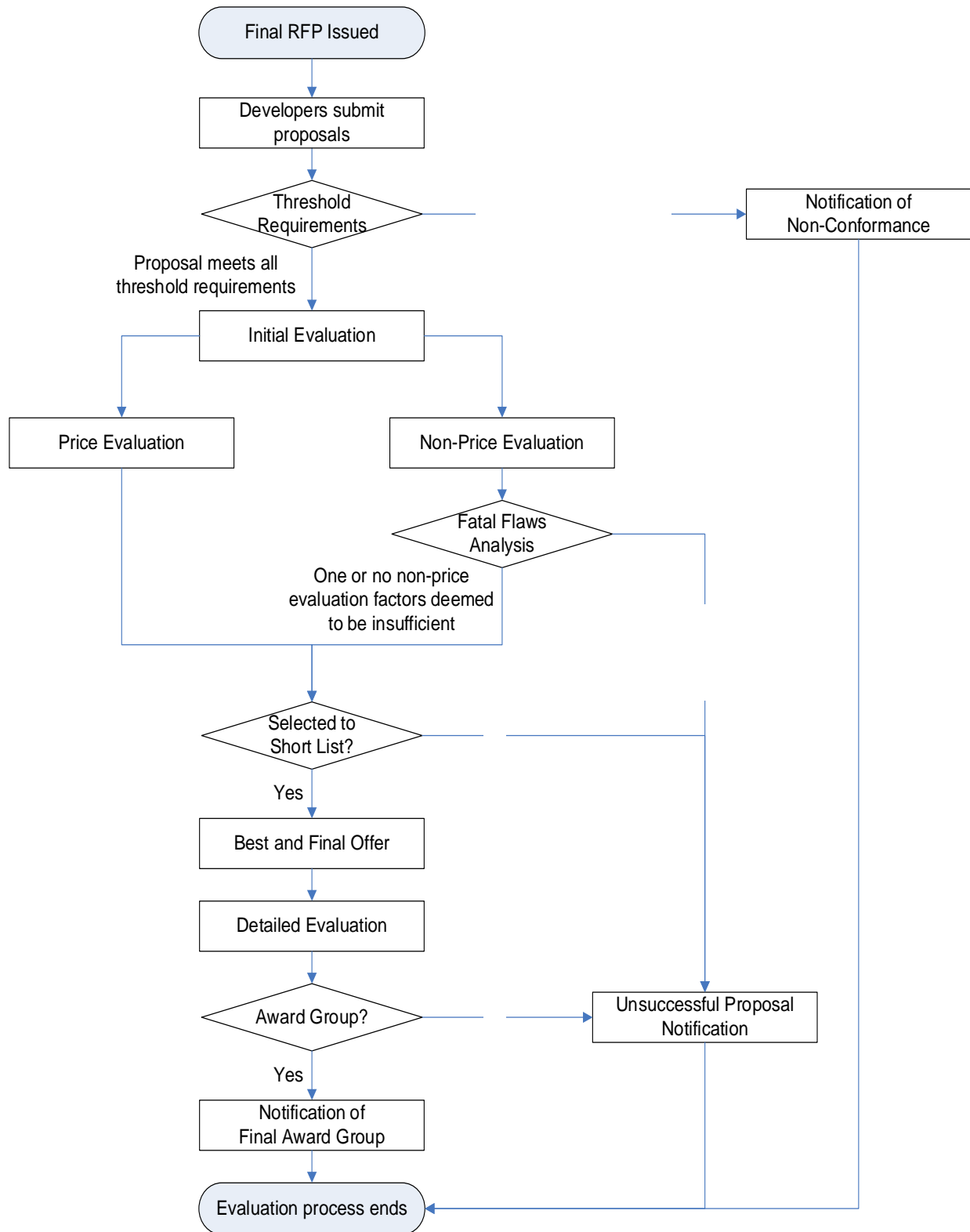
#### **Chapter 4: Evaluation Process and Evaluation Criteria**

##### **4.1 Proposal Evaluation and Selection Process**

The Company will be employing a multi-step evaluation process. Once the Proposals are received, the Proposals will be subject to a consistent and defined review, evaluation and selection process. This Chapter will provide a description of each step of the process along with the requirements of Proposers at each step. Figure 1 sets forth the flowchart for the proposal evaluation and selection process.

Upon receipt of the Proposals, the Company will ensure that the Proposals meet the Eligibility Requirements, and if so, review the Proposals to ensure that the Threshold Requirements have been met. Proposals that have successfully passed the initial eligibility and threshold criteria will then enter a two-phase process for Proposal evaluation, which encompasses the development of a Short List and then an evaluation of the selected Short List Proposals based on Best and Final Offers.

**Figure 1 – Evaluation Workflow**



## 4.2 Eligibility Requirements

4.2.1 Upon receipt of the Proposals, each Proposal will be reviewed to ensure that it meets the following Eligibility Requirements. Failure to meet any of these requirements could lead to disqualification of the Proposal from further review and evaluation.

- The Proposal must be received on time.
- The Proposal Fee must be received on time.
- The Proposal must not contain material omissions.
- The Proposal must be signed and certified by an officer or other authorized person of the Proposer.
- There must not have been, in the Company's sole determination, illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal review process.
- The Proposal must not contain misrepresentations.
- Proposers have fully executed the agreements or other documents required pursuant to this RFP.
- Proposer provides a certificate of good standing from the State of Hawai'i Department of Commerce and Consumer Affairs.
- Proposer provides Federal and State tax clearance certificates for Proposer.
- The Proposal is not contingent upon changes to existing county, state or federal laws or regulations
- Proposed Project is located on the Island of Maui.

4.2.2 Company may waive non-material deviations in a Proposal that are merely a matter of form, and not substance, and the correction of which would not be prejudicial to other Proposals.

## 4.3 Threshold Requirements

Proposals that meet all the Eligibility Requirements will then be evaluated to determine compliance with the Threshold Requirements, which have been designed to screen out proposals that are insufficiently developed, lack demonstrated technology or will impose unacceptable financial accounting consequences for the Company. Proposers should provide explanations and supporting information as to how and why it believes the Project they are proposing meets each of the Threshold Requirements. The Threshold Requirements for this RFP are the following:

- **Site Control**

The Proposal must demonstrate that the Proposer has Site Control for all real property required for the successful implementation of a specific Proposal at a site not controlled by the Company, including any Interconnection Facilities for which the Proposer is responsible. The need for a firm commitment is necessary to ensure that Proposals are indeed realistic and can be relied upon as the Company

moves through the remainder of the RFP process. To meet this Site Control requirement, Proposers must either provide:

- documentation indicating that they own the Site on which the Project will be situated;
- hold a leasehold interest in the Site for a term at least equal to the term of the PPA (taking into account the timelines set forth in this RFP from selection, negotiation and execution of a PPA, and PUC approval of a PPA); or
- have an executed option agreement to purchase the Site or to lease the Site for a term at least equal to the term of the PPA. This option agreement need not be exclusive at the time the Proposal is submitted, but may be contingent upon selection of the Proposal to the Final Award Group.

Where government or publicly-owned lands are part of the Site or are required for the successful implementation of the Proposal, Proposer must provide a credible and viable plan, including evidence of steps taken to date of Proposal, to secure all necessary Site Control for the Proposal, including securing necessary approvals, rights-of-way, access and other appurtenances necessary for the project, including but not limited to evidence of sufficient progress toward approval of the government agency or other body with authority to grant such approval (as demonstrated by records of the agency). Proposals that do not demonstrate Site Control will be rejected.

If the Threshold Requirement for Site Control is met, Site Control will be further evaluated as a part of the Non-Price evaluation. See Section 4.4 below.

Proposers electing to utilize the Company Site for its Proposal must be prepared to execute the proposed lease for the Company Site, a copy of the proposed form of which is attached hereto as Appendix K. Minimal and mutually agreeable revisions to the lease form may be agreed to by the Company in its sole discretion.

- **Performance Standards**

Proposed Facility is able to meet the Performance Standards set forth in the Model PPA. Such Performance Standards are specified in Appendices of the Model PPA and in particular Attachment B and Attachment G. To the extent that certain Performance Standards in the Model PPA are blank, such standards may be dependent on the generation resource of the selected Proposal. The Company will consider and determine the requirements of such standard in conjunction with negotiations on the final terms of the PPA and the results of the IRS.

- **Proven Technology**

The Company will only consider Proposals utilizing technologies that have been sufficiently proven in multiple commercial applications as the scale being proposed. Technologies proposed in this RFP are required to be of a “bankable” grade asset class.<sup>10</sup> Proposals should include any supporting information for the Company to assess the commercial and financial maturity of the technology being proposed.

- **Experience of the Proposer**

The Proposer, its affiliated companies, partners, and / or contractors and consultants on the Proposer’s Project team shall have experience in the development and operation of at least one (1) electricity generation project similar in size, scope, and structure to the Project being proposed by Proposer. The Company will consider a Proposer to have reasonably met this Threshold Requirement if the Proposer can provide sufficient information to demonstrate that the member of the project team whose experience is being identified to meet this threshold criterion has a firm commitment to provide services to the Proposer.

- **Generator Size**

The size of any single Generator shall not exceed 20 MW at unity power factor as measured at the Metering Point.

- **Financial Compliance**

This Project must not cause the Company to be subject to consolidation and capital lease treatment as set forth in Financial Accounting Standards Board (FASB) Accounting Standards Codification (“ASC”) Topic 810 (“Consolidation”) and 840 (“Leases”), respectively, as issued and amended from time to time by FASB. Proposers are required to state to the best of their knowledge, with supporting information to allow the Company to verify such conclusion, that the proposal will not: (1) trigger a capital lease accounting treatment under FASB ASC 840 or; (2) result in the Seller under the PPA being a Variable Interest Entity (“VIE”) that would trigger consolidation of the Sellers’ finances on to the Company’s financial statements under FASB ASC 810. The Company will perform a preliminary consolidation and capital lease assessment based on the Proposals received. If the Company believes that the Proposal may

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<sup>10</sup> An asset is considered “bankable” (i.e. financial investors view the technology risk as very low) if it has known standards, known performance expectations and appropriate warranties. Vendor capabilities (including both technology vendors and specifying vendors), pricing, and other market forces drive market uptake (i.e. “demand pull”).

be subject to such treatment, it will inform the Proposer and either may request additional information or work with the Proposer to structure its agreement to avoid the capital lease and consolidation treatment. The Company reserves the right to allow a Proposal to proceed through the evaluation process through selection of the Short List and work with the Proposer on this issue. If the Company believes, in its discretion, that the Company and the Proposer cannot resolve consolidation and capital lease issues during the RFP process, the Company reserves the right to reject the Proposal as nonconforming to the Threshold Requirements. A final consolidation and capital lease assessment will be performed prior to execution of a PPA.

- **Credit / Collateral Requirements**

Proposers shall agree to post Development Period Security, Operating Period Security and the other credit requirements as set forth in Section 3.13 (Credit Requirements Under the PPA) of this RFP.

- **Financial Viability of Proposer**

Proposers shall provide evidence that the Proposer has the financial resources and financial strength to complete and operate the project as planned. Proposers must demonstrate they have completed a sufficient degree of planning and due diligence on how the proposed Project is to be financed by submitting a financing plan, as well as describing their experience in successfully financing electrical generation projects, as described in Appendix B.

#### 4.4 **Initial Evaluation – Price and Non-Price Analysis**

Proposals that meet the Threshold Requirements will then be subject to a price and non-price analysis. The results of the price and non-price analysis will be a relative ranking and scoring of all eligible proposals. Price-related criteria will account for SIXTY PERCENT (60%) of the total score and non-price-related criteria will account for FORTY PERCENT (40%) of the total score. This 60% price-related criteria / 40% non-price criteria weighting is consistent with previous RFPs.<sup>11</sup> The criteria and methodology for applying the criteria are explained below and in Appendix L.

Appendix L (Selection Criteria) of this RFP provides the components of the price and non-price evaluation criteria that will be included in the initial evaluation, but is not necessarily an exhaustive list of all criteria that may be considered.

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<sup>11</sup> Including the evaluation weighting in Hawaiian Electric Company's Docket No. 2013-0156 Waivers from the Framework for Competitive Bidding.



The Company will employ a closed bidding process for this solicitation in accordance with Part IV.H.3 of the Framework where neither the specific weights of the non-price evaluation criteria nor the price and non-price evaluation models to be used will be provided to Proposers. However, the Company will provide the Independent Observer with all necessary information to allow the Independent Observer to understand the evaluation models and to enable the Independent Observer to observe the entire analysis in order to ensure a fair process. The evaluation models will be finalized prior to receipt of Proposals.

#### 4.4.1 Initial Evaluation of the Price Related Criteria

- 4.4.1.1 The price-related evaluation will be based on the criteria set forth in Appendix L. Preference will be given to Proposers able to provide firm renewable dispatchable generation to the Company at the lowest possible cost. Initial screening will be performed on a “busbar cost” basis (in \$/MWh) as a function of capacity factor. Busbar cost is the total all-in cost (capacity, energy, fixed O&M and variable O&M payments) divided by the amount of energy, in MWh, delivered in one hour at a given MW output. For self-build proposals, busbar costs will be determined from annual revenue requirements for capital, fuel, variable O&M and fixed O&M expenses. Clear outliers will be eliminated from further consideration.
- 4.4.1.2 Projects remaining after the initial screening step described above will be simulated in the computer program in accordance with the Proposer’s pricing formulas and any requirements and constraints specified by the Proposer (See [Section 3.9](#)). The project will be dispatched economically within the production simulation computer program. The simulation will be performed over the proposed term of the PPA (or in the case of a self-build option, over the specified service life of the asset) and will determine impacts on a system-wide basis.
- 4.4.1.3 A “Reference Plan” based on the Companies’ December 2016 PSIP Update Report will be used as a baseline for comparison. In evaluating each proposal, the Proposer’s proposed project will be added to the baseline plan to produce an “Alternate Plan.” The proposed project may defer or displace firm, dispatchable capacity that exists in the Reference Plan. Production simulations will be performed for both the Reference and Alternate Plans. Differences in revenue requirements between the two plans will be calculated. Determinations will be made as to whether the proposed project increases or decreases total resource costs. The Company will then rank Proposals from lowest price to highest impact on total resource costs and award evaluation points in accordance with the relative rankings.
- 4.4.1.4 Pursuant to the Framework, during the course of this RFP process, the Company reserves the right to reject all Proposals based on non-economic pricing. In the event that the Company selects a Proposer, the Company shall meet with any losing Proposer to provide a general assessment of the losing Proposer’s specific Proposal, if requested by the losing Proposer within seven (7) Days of such selection. [See](#) Framework, Section IV.H.4.b.

#### 4.4.2 Initial Evaluation of the Non-Price Related Criteria

- 4.4.2.1 For the non-price analysis, each Proposal will be evaluated on each of the non-price criteria set forth in Appendix L. During the non-price criteria evaluation, a fatal flaws analysis will be conducted such that any Proposal that is deemed to not meet the minimum standard level for two or more of the non-price criteria will be disqualified. The minimum standard level for each non-price criteria is defined in Appendix L. The Company will then rank Proposals using the score received and weighting assigned for each evaluation criteria and award evaluation points in accordance with the relative rankings.

#### 4.5 Selection of the Short List

- 4.5.1 Based on the initial evaluation of the price-related and the non-price-related criteria as described above, the Company will select a Short List from the Proposals submitted. While the total price and non-price rankings will serve as the basis of evaluation, the Company reserves the right to select a Short List that could include a diversity of resource characteristics, project types, and other options. The Company reserves the right to determine the number of projects selected to the Short List.
- 4.5.2 Due to the complexity of evaluating different types of resource options and the Project operational attributes expected to be required by the Company, the Company is interested in maintaining flexibility in the Short List selection process. The Company will work with the Independent Observer to ensure the use of a fair evaluation and selection process and methodology which will be established prior to receipt of Proposals. The Company reserves the right to have a reasonable degree of flexibility in implementation of the evaluation and selection process, subject to consultation with, and review by, the Independent Observer.
- 4.5.3 Proposals will be compared to each other in this phase of the evaluation based on the methodology and cost components described below. The Company will utilize a computer simulation tool to model the Proposal in order to assess the costs and benefits to the Maui Electric System. The computer simulation will revise the Company's reference resource plan, which is comprised of existing resources and anticipated additional proxy resources to maintain system reliability and operating characteristics. For each combination described above, the Company will utilize information in the Proposal to model the addition of the resource and will replace either existing generation or proxy additions to assess the difference in cost with the proposed resource as compared to the reference resource plan. The total net system cost analysis will include a calculation of the Company's fuel cost savings and any other direct savings resulting from the displacement of generation by the proposed Project.

4.5.4 The Company proposes to conduct a detailed cost analysis that incorporates all the costs attributed to each Project as contained in the Proposers' Proposal including, but not limited to:

- Capacity Charge (for PPA Proposals), Total Capital Cost (for Self-Build Option )
- Fixed O&M Charge
- Energy Charge
- Variable O&M Charge
- Transmission System Impact
- Cost associated with Imputed Debt

#### 4.6 **Best and Final Offer**

4.6.1 The Company will solicit a modified Best and Final Offer from Proposers selected to the Short List. Proposers will have the opportunity to update (downward only) the following pricing elements of their Proposal:

- Capacity Charge Rate in \$/kW-mo
- Fixed O&M Component Rate in \$/kW-mo (including an indication of whether this component is to be escalated annually)
- Fuel Component in \$/kWh
- Per kWh Variable Component of the Variable O&M Component in \$/kWh (including an indication of whether this component is to be escalated annually)
- Per Hour Variable Component of the Variable O&M Component in \$/hr (including an indication of whether this component is to be escalated annually)

4.6.2 If a Proposer does not modify its Proposal, the original Proposal will be deemed its Best and Final Offer.

4.6.3 Proposers will not be allowed to increase the pricing in their Proposals to address interconnection and/or system upgrade costs or for any other reason.

4.6.4 If selected to the Short List, the Self-Build Option will also have the same opportunity to provide a Best and Final Offer in accordance with the terms of this RFP. The Best and Final Offer for the Self-Build Option will be due prior to the Best and Final Offers for all other Proposers, as specified on Table 1.

#### 4.7 **Detailed Evaluation**

4.7.1 The Best and Final Offers of the Short Listed Proposals will be further analyzed as described in Appendix L, to determine the optimal portfolio of Proposals for the Company system's needs as identified for the island of Maui in the Company's PSIP Update: December 2016. Every Proposal on the Short List will not necessarily be included in the final optimized portfolio of proposals.

#### 4.8 **Selection of the Final Award Group**

Based on the results of the Detailed Evaluation and review with the Independent Observer, the Company will select a Final Award Group from which to begin contract negotiations. All Proposers will be notified at this stage of the evaluation process whether their Proposal is included in the Final Award Group. However, Proposal evaluation results and rankings will not be disclosed to the Proposers in the Final Award Group. Selection to the Final Award Group and/or entering into contract negotiations does not guarantee execution of any contract.

### **Chapter 5: Post Evaluation Process**

#### 5.1 **Interconnection Requirements Study**

The Company will complete Interconnection Requirements Studies (IRS) for Proposals selected to the Final Award Group to further assess the costs of system upgrades necessary to integrate the Projects into the Company System. Submission of Facility models and documentation required to perform the IRS is required at Proposal due date. Proposers must be prepared to provide any additional data necessary for the IRS within fifteen (15) days of request. Failure to provide requested material within the time specified is grounds for elimination from the Final Award Group. Proposer will pay for the IRS. The IRS will take into consideration other Proposals selected to the Final Award Group. The IRS provides information including, but not limited to, an estimated cost for required Interconnection Facilities for a particular Project. Proposer will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities. No upward adjustments to pricing will be permitted as a result of the actual final costs. However, there may be downward adjustments to the pricing as a result of a lower estimated cost for required Interconnection Facilities previously provided for a particular Project. Proposer will have the opportunity to terminate the PPA in the event that the actual final costs are higher than the estimate provided by the Company prior to Proposal submission. See Attachment G (Company-Owned Interconnection Facilities) to the Model PPA.

All Proposals selected to the Final Award Group will require a new IRS, including any Proposal at a Site where an IRS might have been previously performed in connection with other RFPs or proposed PPAs.

#### 5.2 **Contract Negotiation Process**

5.2.1 Proposers selected for the Final Award Group will be required to indicate, in writing, to the Energy Contract Manager whether they intend to proceed with their Proposals within five (5) business days of being notified by the Company of its intent to enter into contract negotiations. Proposers who elect to remain in the Final Award Group will be required to keep their Proposal valid through the award period.

5.2.2 The Company's goal is to complete contract negotiations within six (4) months of notification of intent to enter into contract negotiations. The IRS may not be completed

at such time. If this is the case, the Company intends to execute and file the PPA with the PUC for approval and later amend the PPA to include the results of the IRS.

- 5.2.3 The Company highly recommends that Proposers do not significantly modify the Model PPA and instead only request revisions to the Model PPA specifically tailored to Proposer's project.

### 5.3 **Community Outreach and Engagement**

No later than in parallel with the Contract Negotiation Process, Proposers shall at minimum conduct a public meeting in the community where the proposed project is located, provide adequate public notice of the meeting of two weeks or more, and inform the Company of the meeting. This public meeting shall include an opportunity for stakeholders and other interested parties to learn about the proposed project, engage in dialogue about concerns, mitigation measures and potential community benefits, and inform the community of the process and/or intent for input and engagements. Following the public meeting, the public will be allowed 30 days to submit comments to the Company. If a PPA is signed, the Application for Regulatory Approval of that PPA will contain an Attachment including those comments. Proposers must also comply with any other requirement set forth in the Model PPA relating to Community Outreach.

Following submission of the Application, the Company will provide another opportunity for the public to comment on the proposed Project. The Company's Statement of Position filed in the docket associated with the Project will contain an Attachment including those comments.

### 5.4 **Required PUC Approvals**

Anticipated PUC approval requirements that will govern the application for approval of any executed PPA resulting from this RFP are set forth in Section 25.12 of the Model PPA.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix A – Definitions*



**Maui  
Electric**

“AFUDC” means Allowance for Funds Used During Construction.

“Automatic Generator Control (AGC)” means a system for adjusting the power output of a Facility.

“Balance of Plant” means the remaining systems, components, and structures that comprise a complete Project that are not included in the prime systems, components, and structures.

“Base Load Unit” means a generating unit that is normally on-line twenty-four (24) hours a Day. This includes any unit that is scheduled to be on-line continuously for a given Day because a unit which is normally a base load unit is on maintenance or otherwise temporarily out of service.

“Best and Final Offer” or “BAFO” means the final offer from a Proposer, as further described in Section 4.6 and elsewhere in this RFP.

“Black-Start Capability” means the ability to self-start or remain energized without connection to the remainder of the Company System, with the ability to energize a bus, meeting the Company restoration plan needs for real and reactive power capability, frequency and voltage control for restoration of the Company System following a total outage.

“Capacity Charge” has the meaning set forth in the Model Firm Dispatchable PPA.

“Code of Conduct” means the code of conduct approved by the PUC in Docket No. 03-0372 (Decision and Order No. 23614, August 28, 2007) with respect to a Self-Build Option. An updated Code of Conduct was submitted to the PUC in Docket No. 2017-0352 on October 23, 2017.

“Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai‘i.

“Commercial Operation” has the meaning set forth in the Model PPA.

“Commercial Operations Date” means the date on which a Facility first achieves Commercial Operations.

“Company” means Maui Electric Company, Limited, a Hawai‘i corporation.

“Company Offered Sites” means potential sites identified by Company where landowners have expressed a willingness to negotiate a lease or purchase of the land to support a renewable energy project, as set forth in Section 3.10 of the RFP.

“Company-Owned Interconnection Facilities” has the meaning set forth in the Model PPA.

“Company System” – The electric system owned and operated by Company (to include any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

“Competitive Bidding Framework” or “Framework” means the Framework for Competitive Bidding contained in Decision and Order No. 23121 issued by the Public Utilities Commission on December 8, 2006, and any subsequent orders providing for modifications from those set forth in Order No. 23121 issued December 8, 2006.

“Confidentiality Agreement” means the Mutual Confidentiality and Non-Disclosure Agreement attached to this RFP as Appendix F.

“Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai‘i.

“Contingency Plan” is defined in the Framework as “an electric utility’s plan to provide either temporary or permanent generation or load reduction programs to address a near-term need for capacity as a result of an actual or expedited failure of an RFP process to produce a viable Project proposal, or of a Project selected in an RFP. The utility’s Contingency Plan may be different from the utility’s Parallel Plan and the utility’s bid. The term ‘utility’s bid,’ as used herein, refers to a utility’s proposal advanced in response to a need that is addressed by its RFP.”

“Contract Firm Capacity” has the meaning set forth in the Model PPA.

“Cost-Effective” has the meaning set forth in HRS § 269-91.

“Day” means a calendar day, unless the term “business day” is used, which means calendar day excluding weekends and federal and State of Hawai‘i holidays.

“Dispatchable” means the ability to turn on or turn off a generating resource at the request of the utility’s system operators, or the ability to increase or decrease the output of a generating resource from moment to moment in response to signals from a utility’s Automatic Generation Control System, Energy Management System or similar control system, or at the request of the utility’s system operators.

“DOE” means the U.S. Department of Energy.

“DPR” means Dispute Prevention Resolution, Inc.

“D&O” means PUC Decision & Order.

“EEPS” means Energy Efficiency Portfolio Standards, pursuant to HRS 269-96.

“Electronic Procurement Platform” means the third-party web-based sourcing platform that will be used in the intake of Proposals and associated electronic information, storage and handling of Proposer information, and communication.

“Eligibility Requirements” has the meaning set forth in Section 4.2 herein.

“Energy Payment Price” is the amount that the Company will pay the Seller for electric energy delivered to the Company in accordance with the terms and conditions of the Model PPA on a monthly basis as set forth in Attachment J (Company Payments for Energy and Dispatchability) to the Model PPA. This payment will be calculated in terms of dollars per MWh.



“Facility” shall have the meaning set forth in the Model PPA.

“FASB” means Financial Accounting Standards Board.

“FASB ASC 810” means Financial Accounting Standards Board Accounting Standards Codification 810, Consolidation.

“FASB ASC 840” means Financial Accounting Standards Board Accounting Standards Codification 840, Leases.

“Final Award Group” means the group of Proposers selected by the Company from the Short List, with which the Company will begin contract negotiations, based on the results of the Company’s detailed evaluation.

“Firm Capacity” means the amount of Demonstrated Firm Capacity which Seller declares for the Facility in accordance with Section 3 (Performance Standards), Attachment B (Facility Owned by Seller) of the Model PPA.

“Fixed O&M Charge” shall have the meaning set forth in the Model PPA.

“Framework” means the Competitive Bidding Framework.

“Generator” means an individual generating unit of renewable energy at the Facility as contemplated in this RFP.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, or any court or governmental tribunal.

“Hawaiian Electric” means Hawaiian Electric Company, Inc.

“Hawaiian Electric Companies” or “Companies” means Hawaiian Electric Company, Inc. and its subsidiaries Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited.

“HEI” means Hawaiian Electric Industries, Inc.

“HRS” means the Hawai‘i Revised Statutes as of the date of this Request for Proposals..

“Imputed Debt” means adjustments to the debt amounts reported on financial statements prepared under generally accepted accounting principles (“GAAP”). Certain obligations do not meet the GAAP criteria of “debt,” but have debt-like characteristics; therefore, credit rating agencies “impute debt and interest” in evaluating the financial ratios of a company.

“Independent Observer” has the meaning set forth in Section 1.4 (Role of the Independent Observer).

“Independent Power Producer” or “IPP” means an entity that owns or operates an electricity generating facility that is not included in the Company’s rate base.

“Interconnection Facilities” means the equipment and devices required to permit a Facility to operate in parallel with, and deliver electric energy to, the Company System (in accordance with applicable provisions of the Commission’s General Order No. 7, Company tariffs, operational practices, interconnection requirements studies, and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers. Interconnection Facilities includes Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities.

“Interconnection Requirements Study” or “IRS” means a study, performed in accordance with the terms of the IRS Letter Agreement), to assess, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Performance Standards of the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

“Interconnection Requirements Study Letter Agreement” or “IRS Letter Agreement” means the letter agreement and any written, signed amendments thereto, between Company and Proposer/Seller that describes the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

“kV” means kilovolt.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Land Rights” means all easements, rights of way, licenses, leases, surface use agreements and other interests or rights in real estate.

“Laws” mean all federal, state and local laws, rules, regulations, orders, ordinances, permit conditions and other governmental actions.

“Lump Sum Payment” has the meaning set forth in the Model PPA. Also referred to as a monthly Lump Sum Payment to reflect the portion of the payment made each month.

“Maui Electric” means Maui Electric Company, Limited.

“Maui Electric Site” means a Site owned or controlled by Maui Electric. The approximate location of the Maui Electric Site is indicated on the map attached hereto as Appendix G being a portion of the property identified as Tax Map Key (2) 3-8-003:023.

“Maui Electric System” means the electric system owned and operated by Maui Electric on the island of Maui (including any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

“Maui Electric System Operator” means the authorized representative of Maui Electric who is responsible for carrying out Maui Electric dispatch and curtailment of electric energy generation interconnected to the Maui Electric System.

“Mediation” means the confidential mediation conducted in Honolulu, Hawai‘i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (or its successor) or, in its absence, the American Arbitration Association then in effect.

“Model PPA” means the Model Power Purchase Agreement for Renewable Firm Capacity and Dispatchable Energy (“Model PPA”), attached as Appendix C to this RFP.

“MW” means megawatt.

“MWh” means megawatt hour.

“O&M” means operation and maintenance.

“Operating Period Security” has the meaning set forth in the Model PPA, Article 7.1(D) (Operating Period Security).

“Parallel Plan” is defined in the Framework as “the generating unit plan (comprised of one or multiple generation resources) that is pursued by the electric utility in parallel with a third-party Project selected in an RFP until there is reasonable assurance that the third-party Project will reach commercial operation, or until such action can no longer be justified to be reasonable. The utility’s Parallel Plan unit(s) may be different from that proposed in the utility’s bid. The term “utility’s bid,” as used herein, refers to a utility’s proposal advanced in response to a need that is addressed by its RFP.”

“Performance Standards” means the various performance standards for the operation of the Facility to Company specified in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller), as such standards may be revised from time to time pursuant to Article 24 (Process for Addressing Revisions to Performance Standards) of the Model PPA, and as described in Chapter 2 of this RFP.

“Point of Interconnection” has the meaning ascribed to it in the Model PPA.

“Power Purchase Agreement” or “PPA” means an agreement between an electric utility company and the developer of a renewable energy generation facility to sell the power generated by the facility to the electric utility company.

“PPA Rate” means the rates for the purchase of Capacity and Energy as set forth in the Model PPA.

“Procedures Manual” means the manual approved by the PUC, which was put in place to address and to safeguard against preferential treatment or preferential access to information in a Hawaiian Electric RFP process. The Procedures Manual is attached as Appendix D to this RFP.

“Project” means a Facility proposed to Maui Electric by a Proposer pursuant to this RFP.

“Proposal” means a proposal submitted to Maui Electric by a Proposer pursuant to this RFP.

“Proposal Fee” means the non-refundable fee of \$10,000 for each proposal submitted.

“Proposer” means a person or entity that submits a Proposal to Maui Electric pursuant to this RFP.

“Proposer’s Response Package” means the form in which the Proposal should be submitted, which is attached hereto as Appendix B.

“PUC” means the State of Hawai‘i Public Utilities Commission.

“Renewable Portfolio Standards” or “RPS” means the Hawaii law that mandates that the Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. The RPS requirements in Hawai‘i are currently codified as Hawai‘i Revised Statutes (HRS) 269-91 through 269-95.

“Request for Proposals” or “RFP” means a request for Proposals issued pursuant to a competitive Bidding process authorized, reviewed, and approved by the PUC.

“RFP Schedule” means the schedule set forth in Table 1 of this RFP.

“Self-Build Option” means a Proposal submitted by Maui Electric that is responsive to the resource need identified in the RFP, as required by Section VI of the Framework..

“Self-Build Team” means agents of the Company who are developing Self-Build Option proposals.

“Seller” means the entity that the Company is contracting with, as set forth in the Model PPA.

“Seller-Owned Interconnection Facilities” shall have the meaning set forth in the Model PPA.

“Short List” means the group of Proposals selected by Maui Electric as set forth in Section 4.5.

“Site” means the parcel of real property on which the Facility, or any portion thereof, will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility.

“Site Control” has the meaning set forth in Section 4.3 herein.

“Threshold Requirements” has the meaning set forth in Section 4.3 herein.

“Transmission Planning Criteria” means the Transmission Planning Criteria attached to this RFP as Appendix H.

“Variable O&M Charge” shall have the meaning set forth in the Model PPA.

Any capitalized term not defined in this RFP shall have the definition as set forth in the Model PPA.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix B – Proposer’s Response Package/ IRS  
Data Sheet*



**Maui  
Electric**

**Table of Contents**

<i>Section</i>	<i>Description</i>	<i>Page</i>
1.0	General Instructions to Proposers:.....	B-1
2.0	Commercial Information Requirements .....	B-1
2.1	Required Forms .....	B-1
2.2	Proposal Summary / Contact Information .....	B-1
2.2.1	Project Summary .....	B-1
2.2.2	Project Contact Information.....	B-1
2.2.3	Project Characteristics.....	B-2
2.3	Executive Summary of the Proposal .....	B-2
2.4	Financial/Legal .....	B-2
2.4.1	Identification of Equity Participants.....	B-2
2.4.2	Evidence that the Project will be Financed, including assumptions.....	B-3
2.4.3	Proposer's Organizational Structure .....	B-3
2.4.4	Approach and Plan for Project Financing .....	B-3
2.4.5	Project Financing Experience of the Proposer.....	B-4
2.4.6	Evidence of the Proposer's Financial Strength .....	B-4
2.4.7	Evidence that the Proposer can Provide the Required Securities.....	B-4
2.4.8	Disclosure of Litigation and Disputes .....	B-4
2.4.9	Financial Pro Forma.....	B-4
2.5	Redline Version of the Form Agreements .....	B-5
2.6	Environmental and Land Use Permits .....	B-5
2.7	Community Outreach and Community Benefits Plan .....	B-6
3.0	Technical Information Requirements .....	B-7
3.1	Project Operational Requirements – Generation .....	B-7
3.1.1	Design and Operating Information.....	B-7
3.1.2	Auxiliary Power Information.....	B-7
3.1.3	Generator Capability (Used to Identify Proposed Facility's Auxiliary Load, Normal and Emergency Capacity).....	B-8
3.1.4	Capability of Meeting Performance Standards .....	B-8
3.1.5	Coordination of Operations.....	B-8
3.2	Engineering and Technology.....	B-9
3.3	Project Management / Experience.....	B-9
3.4	Siting .....	B-10
3.5	Project Schedule and Construction Execution Plans .....	B-10
3.6	Operation and Maintenance.....	B-12
3.7	Ramp Rate .....	B-13
3.8	Cycling .....	B-13
3.9	Generator Inertia.....	B-13
4.0	Pricing Information .....	B-13

## **1.0 General Instructions to Proposers:**

Maui Electric has elected to use the services of PowerAdvocate, a third-party electronic platform as facilitator of the RFP process. All Proposals and all relevant information must be submitted via the Power Advocate platform, as is described in the Final RFP. Proposers are requested to observe response structure, file naming convention, RFP documents and submittals, as identified on the Power Advocate platform. The platform will be configured to mirror the requirements identified in Appendix B, but formatting on the platform may vary from Appendix B. If there are any discrepancies between this Appendix B and what appears on the Power Advocate platform, the Power Advocate platform will control.

Items that are not applicable to a specific Proposer or project type must be clearly marked N/A and a brief explanation must accompany each item so marked.

Proposers must clearly identify all confidential information in their Proposals, as described in more detail in Section 3.10, Confidentiality, of the RFP.

## **2.0 Commercial Information Requirements**

### **2.1 Required Forms**

Proposer must upload a copy of each of the completed forms.

- Mutual Confidentiality and Non-Disclosure Agreement (Appendix F to the RFP)

### **2.2 Proposal Summary / Contact Information**

#### *2.2.1 Project Summary*

Proposer must provide the following summary information about their Proposal.

- Project Name
- Proposed Commercial Operations Date
- Proposer Entity Name
- Project City or Town
- Proposed Point of Interconnectoin
- Proposed Grid Connection Point

#### *2.2.2 Project Contact Information*

Proposer must provide the contact information below for Proposer's primary point of contact.

- Name
- Title
- Address
- Phone Number

- Mobile Phone Number (if different)
- Email Address

### 2.2.3 *Project Characteristics*

Proposer must provide the following summary information about the characteristics of the Proposed Project.

- Gross and Net MW AC Capability of the generation facility: The net capacity (amount able to be exported to the grid) must not exceed the available capacity of the circuit to which it will interconnect. Proposers are strongly encouraged to contact the Company as described in Section 2.3.1 of this RFP to ensure the project's net capacity does not exceed the circuit's hosting capacity.
- Renewable Generation Type and overview:
  - Manufacturers and model numbers for all major equipment
  - Number of Generator(s)
  - Generating Capacity of Generator(s) (MW)
  - Annual Capacity Factor
- Estimated Life of Generator(s) and interconnection facilities

## 2.3 **Executive Summary of the Proposal**

The Proposer is required to provide an executive summary of the Proposal. The Proposer must include an approach and description of the important elements of the Proposal consistent with, and in the order of, the sections outlined in the Table of Contents included in the Proposer's Response Worksheet. Proposer must provide sufficient information to clearly demonstrate how its Proposal conforms to the eligibility and threshold requirements specified in Sections 4.2 and 4.3 of the Final RFP.

## 2.4 **Financial/Legal**

Proposers are required to provide the following information to demonstrate the financial viability of their project:

### 2.4.1 *Identification of Equity Participants*

- Who are the equity participants in the project (or the equity partners' other partners)?
- Proposer company profile information
  - DUNS Number
  - Dun & Bradstreet Rating
  - Tax ID Number
  - If applicable, in which state was the Proposer incorporated/formed?
  - If applicable, in what year was the Proposer incorporated/formed?
  - Does the Proposer have any government ownership?
  - Certificate of Good Standing from the State of Hawai'i Department of Commerce and Consumer Affairs



- Proposer's Federal and State tax clearance certificates
- If the Proposer has a parent entity, please answer the questions below about the parent entity.
  - Parent entity profile information
    - DUNS Number
    - Dun & Bradstreet Rating
    - Tax ID Number
    - If applicable, in which state was parent entity incorporated/formed?
    - If applicable, in what year was parent entity incorporated/formed?
    - Does the parent entity have any government ownership?

*2.4.2 Evidence that the Project will be Financed, including assumptions*

- How will the project be financed?
- Is there a written commitment from the equity participants? If so, please provide a copy with confidential information redacted if necessary.
- Discuss and/or provide supporting information on any project financing guarantees.
- Does the Proposer envision any conditions precedent to project financing other than execution of the Power Purchase Agreement or any other applicable project agreements and State of Hawai'i Public Utilities Commission approval of the Power Purchase Agreement and other agreements?
  - If yes, please describe such conditions precedent to project financing and Proposer's plan to address them.
- Describe the implication of the Federal Production Tax Credits or Investment Tax Credits (or similar incentives) on the viability of the project.

*2.4.3 Proposer's Organizational Structure*

- Please provide a description of the Proposer's organizational structure and associated responsibilities on the project from a financial and legal perspective, including any general and limited partners, providers of capital, and percentage interest of each party.

*2.4.4 Approach and Plan for Project Financing*

- Provide a financing plan for the project, including construction and term financing. The financing plan must address at a minimum:
  - The project's projected financial structure;
  - Expected sources of debt and equity financing;
  - Estimated development and capital costs; and,
  - Evidence the project is financeable.
- Proposer is required to state to the best of its knowledge, and provide supporting information to allow Maui Electric to verify such conclusion, that its Proposal will not (1) trigger a capital lease accounting

treatment under FASB ASC 840 or (2) result in a Developer being a Variable Interest Entity (as defined in FASB ASC 810) that would trigger consolidation of such party's finances onto Maui Electric's financial statements under FASB ASC 810.

#### 2.4.5 *Project Financing Experience of the Proposer*

- Provide documentation illustrating the experience of the Proposer in securing financing for projects of similar size and technology. For each project provide the following information:
  - Project name and location
  - Project type and size
  - Date of construction and permanent financing
  - Commercial Operations Date
  - Proposer's role(s) in financing of project.
  - Off-taker, term of interconnection agreement, financing structure, and major pricing terms.

#### 2.4.6 *Evidence of the Proposer's Financial Strength*

*Maui Electric reserves the right to request additional financial documents and bank references, as needed.*

- Provide evidence that the Proposer has the financial resources and financial strength to complete and operate the project as planned.
- Please submit Proposer's audited annual reports (from legal entity and parent company) containing the balance sheets, income statement, and statement of cash flows for the three (3) most recent fiscal years and quarterly report for the most recent quarter ended.
- Please list the current credit rating from Standard & Poor's, Moody's, and Fitch for the Proposer, affiliates, partners, and credit support provider.

#### 2.4.7 *Evidence that the Proposer can Provide the Required Securities*

- The Proposer must demonstrate its ability (and/or the ability of its credit support provider) to provide the required securities, including its plan for doing so (including type of security, sources of security and a description of its credit support provider).
- Provide a description of any current credit issues regarding the Proposer or affiliate entities raised by rating agencies, banks, or accounting firms.
- Proposers must agree to provide Development Period Security and an Operating Period Security as set forth in the Model PPA.

#### 2.4.8 *Disclosure of Litigation and Disputes*

- Proposers must disclose any litigation, disputes, and status of any lawsuits or dispute resolution related to projects owned or managed by them or any of their affiliates.

#### 2.4.9 *Financial Pro Forma*

- Provide pro forma income and cash flow statements conforming to Generally Accepted Accounting Principles for the project for the term of the proposed in the provided template.

## 2.5 Redline Version of the Form Agreements

To the extent a Proposer takes any exceptions to the form agreements applicable to its Proposal, such Proposer is required to upload redlined versions in Microsoft Word format of the applicable documents. This includes the Model Power Purchase Agreement (PPA) (Appendix C to the Final RFP) and Ground Lease (Appendix K)

In the event the Proposer does not upload redlines of the applicable form agreements, Maui Electric will assume the terms in such form agreements are agreeable to the Proposer.

## 2.6 Environmental and Land Use Permits

This section addresses environmental, social, and land use issues associated with project(s) siting and operations. The purpose of this section is to identify environmental, social, and land use planning, permitting, and approval requirements, long and short term impacts, and measures that may be required to mitigate these impacts.

- Identify and explain any State Land Use Reclassifications necessary for Proposal siting and operations, and the associated processing/approval timeframes.
  - Provide a description of the current or previous use of the site
- Identify all required discretionary and non-discretionary land use and environmental permits and approvals required for development, financing, construction and operation of the Proposal, including but not limited to zoning changes, Environmental Assessments and/or Environmental Impacts Statements.
  - Provide a listing of Federal, State, and Local agencies and authorities having jurisdiction over the issuance of such permits and approvals.
  - Provide an overall land use and environmental permits and approvals strategy and approach to obtaining successful positive results from the agencies and authorities having jurisdiction.
- Proposers must provide a preliminary environmental assessment of the site, which includes the identification and analysis of potential short and long term impacts associated with the Proposal – including direct, indirect, and cumulative impacts associated with development, construction, operation, and maintenance. If alternatives have been or will be considered, those should be discussed. The assessment shall also include Proposer’s short and long term plans to mitigate such impacts and an explanation of the mitigation strategies for, but not limited to, each of the major environmental areas as presented below:
  - Soils
  - Topography and geology
  - Solid waste
  - Hazardous waste
  - Natural habitats and ecosystems
  - Flora/Fauna/vegetation
  - Noise (during construction and operation)
  - Other natural resources
- Proposers must also provide a preliminary assessment of other potential short and long term impacts resulting from the Proposal – including direct, indirect, and cumulative impacts associated with

development, construction, operation, and maintenance. The assessment shall include an identification and analysis of impacts, including, but not limited to, the areas listed below. If alternatives have been or will be considered, those should be discussed. The assessment shall also include an explanation of mitigation strategies for identified impacts. Where further assessment, permits, and approvals are required, those should be identified, along with the agency with jurisdiction over any required permits or approvals.

- Existing and surrounding land uses
  - Area businesses and residences
  - Cultural / Historical resources<sup>1</sup>
  - Archaeological sites
  - Aesthetic/visual
- Proposers are required to provide conceptual plans for siting, studies/assessments, permits, and approvals, including a schedule which identifies the sequencing of activities and critical path.
    - A narrative explaining the basis for the assumed timeline shall also be provided. In addition, Proposers shall also describe situations where a planning, permit, or approval process for one aspect of the total project may influence the timing for other aspects of the project (*e.g.*, a case where one permit is contingent upon completion of another permit or license).
  - Proposer should describe its decommissioning plan, including programs for recycling of installed infrastructure, if any, and how Site restoration to its original ecological condition will be guaranteed in the event of default by the Proposer in the applicable Site Control documentation.

## 2.7 **Community Outreach and Community Benefits Plan**

- Identify a detailed plan for community outreach and communications to gain support for or acceptance of the proposed project, which must include the Proposer's plan for working with the community during project development and construction to provide project information and address local or community issues. The plan should address, but not be limited to, the following items:
  - Identify communities and other stakeholders that may be affected by the proposed project. How will they be affected? What mitigation strategies will the Proposer implement?
  - How will affected communities and the general public be informed about the proposed project? Describe, at a minimum, the frequency of communication, source of information, and outlets utilized.
  - Will the affected communities and the general public be given an opportunity to provide the developer with feedback and comments on the proposed project? What will the developer do with the feedback and comments received?

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<sup>1</sup> Detail the potential impacts of the Proposal on cultural resources in the short and long term and the Proposer's plan to mitigate such impacts. In seeking certain state land use approvals, Hawai'i law (HRS § 343) requires parties to identify (1) valued cultural, historical, or natural resources in the area in question, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (2) the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Proposers must provide as much information as possible to allow Maui Electric to understand the considerations.

- Description of community outreach efforts already taken or currently underway.
- Provide any documentation of local community support or opposition including any letters from local organizations, newspaper articles, or communications from local officials.
- Identify any anticipated or negotiated investment in the community and other community benefits that Proposer proposes to provide in connection with the project, along with an estimated value of the community benefits in dollars (including the cost to Proposers providing the benefits and details to support how those costs were developed).

### **3.0 Technical Information Requirements**

#### **3.1 Project Operational Requirements – Generation**

Proposers must provide the following information regarding the project operational parameters for proposed firm capacity renewable dispatchable generation. If not applicable to the specific technology, the Proposer must respond with an N/A.

##### *3.1.1 Design and Operating Information*

- Provide a project design description, including configurations and maps
- Identify the Contract Firm Capacity (as defined in Model PPA), as well as the annual energy production capability of the project. Provide an hourly production profile for a typical year of mature operations, including the associated assumptions and sources of the profile.

##### *3.1.2 Auxiliary Power Information*

- Proposer must list the maximum auxiliary power requirements for:
  - Start-up
  - Normal Operations (from generator)
  - Normal Operating Shutdown
  - Forced Emergency Shutdown
  - Maintenance Outage

3.1.3 *Generator Capability (Used to Identify Proposed Facility’s Auxiliary Load, Normal and Emergency Capacity)*

	Net (MW) (to utility system)	Corresponding Gross (MW)
Minimum (normal operations)	_____	_____
Minimum + [25% x (Normal Top Load - Minimum)] (normal operations)	_____	_____
Minimum + [50% x (Normal Top Load - Minimum)] (normal operations)	_____	_____
Minimum + [75% x (Normal Top Load - Minimum)] (normal operations)	_____	_____
Normal Top Load (normal operations)	_____	_____
Emergency	_____	_____

- Duration of Emergency Capability (e.g., 10% above Normal Top Load capability for 2 hours only in a 24-hour period)
- Describe any operating or dispatch constraint and the source of the constraint (e.g. equipment limitations, environmental permits, fuel resource availability, or other sources)
- Specify the Generator cold start-up time from minimum load to full load
- Specify the Generator hot start-up time from minimum load to full load
- Specify the shut-down time from full load to 0 MW output
- Specify the forecasted EAF and EFOR as defined in the Model PPA

3.1.4 *Capability of Meeting Performance Standards*

The Proposer shall confirm that the proposed generation facility can comply with the Performance Standards contained in Section 3 of Appendix B to the Model PPA (Appendix C to the Final RFP). To the extent the Performance Standards cannot be achieved, the Proposer must specify and provide an explanation of why they cannot be met. Alternately, provide the Proposer’s ability to exceed the Performance Standards and explain with detail and basis.

Certain Performance Standards in the Model PPA are blank, such standards may be dependent on the generation resource of the selected Proposal. The Company will consider and determine the requirements of such standard in conjunction with negotiations on the final terms of the PPA and the results of the IRS.

3.1.5 *Coordination of Operations*

- Provide a description of the control facilities required to coordinate generator operation with and between the Maui Electric System Operator and the Maui Electric System.

- Provide a description of the equipment and technology used to facilitate dispatch by Maui Electric and communicate with Maui Electric.
- Include a description of the control and protection requirements of the Generator and the Maui Electric System.

### 3.2 **Engineering and Technology**

Proposals must utilize technologies that have been sufficiently proven in multiple commercial applications at the scale being proposed. To this end, proposals must demonstrate that this requirement is met by providing examples of the technology and equipment being proposed having been used in other commercial applications at the scale being proposed.

### 3.3 **Project Management / Experience**

Proposers are required to demonstrate project experience and management capability to successfully develop and operate the project proposed. Maui Electric is interested in a project team that has demonstrated success in projects of similar type, size, and technology and can demonstrate an ability to effectively work together to bring the project to commercial operation in a timely fashion.

- Provide an organizational chart for the project that lists the project participants and identifies the management structure and responsibilities. For each of the project participants (including the Proposer, partners, and proposed contractors), provide statements that list the specific experience of the firm in: developing, financing, designing, constructing, owning, operating, and maintaining renewable energy generating facilities, or other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects.
- Identify those member(s) of the team the Proposer is submitting to meet the experience Threshold Requirements and demonstrate the member(s) firm commitment to provide services to the Proposer.
- Identify those members of the team with experience and qualifications including affiliates, and their principal personnel who will be involved in the project contracting to sell and deliver energy. If the Proposer consists of multiple parties, such as joint ventures or partnerships, provide this information for each party, clearly indicating the proposed role of each party, including an ownership chart indicating direct and indirect ownership, and percentage interests in the partnership or joint venture
- Provide a management chart which lists the key personnel dedicated to this project and provide biographies / resumes of the key personnel, including position, years of relevant experience, and similar project experience. Provide specifics as they relate to financing of renewable energy projects. Identify architects and engineers or provision to provide same that are licensed to practice in the State of Hawai'i.
- Provide a listing of all firm capacity renewable dispatchable generation projects the Proposer has successfully developed or that are currently under construction. Describe the Proposer's role and responsibilities associated with these projects (lead developer, owner, investor, etc.). Provide the following information as part of the response:
  - Name of the project
  - Location of the project

- Project type, size and technology
- Commercial operation date
- Offtaker (if applicable)
- Current ownership
- References with contact information(name, address, phone number, and relationship with the Proposer and with the related project

### 3.4 **Siting**

Proposer's are required to address the following with respect to siting and right-of-way issues.

- Demonstrate how the Proposer has met the Threshold Site Control, identified in RFP Section 4.3 Threshold Requirements.
- Provide a Tax Map Key (“TMK”) map of the Facility site that clearly identifies the location of the site, the total acreage, the Point of Interconnection, and the relationship of the site to other local infrastructure. In addition to providing the required map, provide a site layout plan which illustrates the proposed location of all equipment and facilities on the site.
- Provide a detailed description including site sketches of how the Generator will be interconnected to the Maui Electric System (above-ground or underground) and a description of the rationale for the interconnection route.
- Identify whether the site and interconnection route are near cultural resources and implications for project completion and mitigation strategies.
- Provide evidence that the site and interconnection route are properly zoned. If they are not currently zoned properly, identify present and required zoning and/or land use designations and provide a permitting plan and timeline to secure the necessary approvals.
- Identify any rights-of-way or easements that are required for access to the site or for interconnection route. Describe the status of rights-of-way and easement acquisition, and describe the plan for securing the necessary rights-of-way, including the proposed timeline.
- Should the Proposer elect to site the project on Company-Owned Site (Waena Site), Proposer shall confirm the conditions stated in Section 3.10.2 of the RFP and the Land Lease agreement (Appendix K) are acceptable to Proposer. Proposer will still be responsible for all permits required to install new generation at Waena.

### 3.5 **Project Schedule and Construction Execution Plans**

- Proposers are required to provide a project schedule in MS Project GANTT chart format with complete critical path activities identified for the Proposal from the Notice of Selection of the Proposal for contract negotiation to the Commercial Operations Date. The schedule must include permitting, interconnection, and all other important elements outside of the direct construction of the project. For each project element, list the start and end date. Proposers must also list and describe critical path activities and milestone events, particularly as they relate to the integration and coordination of the project components and Maui Electric System.
  - Proposers must ensure that the schedule provided in this section is consistent with the milestone events contained in the PPA and/or other agreements.



- Identify the elements on the critical path. The schedule must include, at a minimum, facility contracts, construction, siting, environmental permitting (anticipated submittal and approval), cultural resource implications and mitigation plans, community outreach plan, energy resource assessment, financing, engineering, procurement, local permits and any other requirements that could influence the project schedule, and the Commercial Operations Date. The project schedule must include dates for submittal of engineering and design for review and approval, all construction management events and construction and applicable reporting milestone events specified in the Model PPA and/or other agreements.
- Proposer must provide the construction execution strategy. This must include identification of contracting/subcontracting plans, modular construction, safety plans<sup>2</sup>, quality management plan, labor availability, likely manufacturing sites and procurement plans, and similar projects where these construction methods have been used by the Proposer.
- Proposers should provide a description of any project activities that have been performed to date.

### ***Generator Proposal***

- Provide a scope of work of all required interconnection facilities, consistent with the provisions included in Attachment B and Attachment G to the Model PPA (Appendix C to the RFP)
- Single-Line Diagram – The Proposer shall provide preliminary single-line diagram(s) for the generation and interconnection facilities as described below.
  - a. The single-line diagram(s) should include:
    - i. Transformers - for main and generator step up transformer(s), show:
      - 1. Transformer voltage and MVA ratings.
      - 2. Transformer impedance(s).
        - a. Transformer winding connections and grounding. If neutrals are grounded through impedance, show the impedance value.
    - ii. Breakers:
      - 1. Proposed technology.
      - 2. Voltage, continuous current and interrupting capability ratings.
      - 3. The trip speed (time to open).
    - iii. The protective relaying and metering for the generators, buses, and all other main substation equipment.
    - iv. For the potential transformers, indicate the type, quantity, ratio, and accuracy rating.
    - v. For the current transformers, indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.

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<sup>2</sup> A document that describes the various safety procedures and practices that will be implemented on the project and how applicable safety regulations, standards, and work practices will be enforced on the project.

- vi. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.
  - vii. The generator(s) voltage, impedances, and MVA ratings.
  - viii. The generator grounding method. If the generator is not solidly grounded, provide the grounding method details and equipment ratings.
- b. Energy Management System, SCADA,(monitoring equipment) and communication interface
- i. Site map.
  - ii. Power schematic diagram(s).
  - iii. Communication interface block diagram, including primary and backup communication.
- Proposer shall provide a plan map of the facilities with location identified by the Maui Tax Map Key map, preliminary footprint dimensions and layout, renewable generator interconnection, as well as the Maui Electric substation proposed for interconnection to the Maui Electric System.
  - Provide a description of the Proposer’s interconnection plan including routing and a description of overhead (above-ground) and/or underground facilities, including elevations/depth, style of tower or description of buried cable construction, materials and protection,.
  - Provide a list of the major materials for the proposed interconnection plan, including:
    - For new lines – poles, conductors, cables, cable splices, and cable terminators;
    - For new switching station(s) - circuit breakers, bus conductors, and protective relays; and,
    - For communication facilities - fiber optic cables and microwave equipment.
  - Proposers must identify the time requirements estimated to interconnect the project to the Maui Electric System.

### 3.6 **Operation and Maintenance**

Operations and maintenance is as an important element of successful project operations. Maui Electric is interested in projects that can demonstrate that the maintenance plan will ensure reliable operations during the term of the contract.

- Provide an operation and maintenance plan for the project that demonstrates the long term operational viability of the proposed project. The plan must include a discussion of the staffing levels proposed for the project and location of such staff, the expected role of the Proposer (Owner) or outside contractor, scheduling of major maintenance activity, maintenance funding levels, and the plan for testing equipment. Also state whether the Proposer would consider 24-hour staffing, explain how this would be done, and identify any cost impacts that are not included in the Proposal.
- Describe the Proposer’s contingency plan, including the Proposer’s mitigation plans to address failures. Such information should be described in the proposal to demonstrate the project’s reliability with regard to potential operational issues.
- Indicate whether or not the project sponsor is willing to coordinate the maintenance schedule for the project with the annual maintenance schedule of Maui Electric.

- Describe the status of the Proposer in securing any operation and maintenance agreements or contracts. Include a discussion of the Proposer's plan for securing a long-term operation and maintenance contract.
- Provide examples of the Proposer's experience with operation and maintenance services for other similar projects.

### 3.7 **Ramp Rate**

Proposers shall provide the Ramp Rate Net and Gross (MW/minute)

### 3.8 **Cycling**

- Ability to cycle on and off daily (to 0 MW net output).
- If yes, number of times the Generator can cycle to net 0 output per day.
- If the Generator cannot cycle to net 0 MW, specify the Generator minimum load in MW.
- Cycling constraints (e.g. equipment limitations, environmental permits, or other sources).
- Source constraints.

### 3.9 **Generator Inertia**

Proposers shall provide the Generator Inertia (MJ/MVA).

## 4.0 **Pricing Information**

For Independent Power Producers:

- Capacity Charge Rate in \$/kW-mo
- Fixed O&M Component Rate in \$/kW-mo (including an indication of whether this component is to be escalated annually)
- Fuel Component in \$/kWh
- Per kWh Variable Component of the Variable O&M Component in \$/kWh (including an indication of whether this component is to be escalated annually)
- Per Hour Variable Component of the Variable O&M Component in \$/hr (including an indication of whether this component is to be escalation annually)
- Capacity Charge Rate sensitivity, a \$/kW-mo amount per \$100,000 reduction in actual interconnection costs

For Self-Build Proposals:

- Total capital generating costs
  - A cost breakout to incorporate Black-Start Capability
- Total capital interconnection costs

- Total overhead costs
- AFUDC
- Annual revenue requirements
- Annual cash flow without AFUDC

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

	Response
1)	<p><b>Please provide Single-Line Diagram(s), Three-Line Diagram(s), and Protective Relay List &amp; Trip Schedule for the generation and interconnection facilities:</b></p> <p><b>General SLD Comments and Questions</b></p> <p>a. The Single-line diagram(s) and Three-line diagram (s) should include:</p> <p>i. For main and generator step up transformer(s), please show:</p> <ul style="list-style-type: none"> <li>• Transformer voltage and MVA ratings.</li> <li>• Transformer impedance(s).</li> <li>• Transformer winding connections and grounding. If neutrals are grounded through impedance, please show the impedance value.</li> </ul> <p>ii. The protective relaying and metering for the generators, transformers, buses, and all other main substation equipment.</p> <p>iii. For the potential transformers, please indicate the type, quantity, ratio, and accuracy rating.</p> <p>iv. For the current transformers, please indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.</p> <p>v. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.</p> <p>vi. For the interconnection / tie lines (overhead or underground) and the plant's generation system, please provide the following, as applicable:</p> <ul style="list-style-type: none"> <li>• Installation details such as cross-section(s), plan and profiles, etc.</li> <li>• Conductor data such as size, insulation, etc.</li> <li>• Continuous and emergency current ratings.</li> <li>• Voltage rating (nominal and maximum KV).</li> <li>• BIL rating.</li> <li>• Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance)</li> <li>• Capacitance or charging current.</li> <li>• Short-circuit current capability.</li> </ul> <p>vii. Include station power for facility and all applicable details.</p> <p>viii. All applicable notes pertaining to the design and operation of the facility.</p> <p>b. The Protective relay list &amp; trip schedule should list the protected equipment; the relay description, type, style number, quantity, ANSI Device No., and range; and the breaker(s)/switching device(s) tripped, for both the generator protection and the interconnection facilities protection.</p>

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

	Response
c. Please provide both a paper and an electronic version (e.g. dgn, dxf, or pdf) of the single-line diagram(s) and the protective relay list & trip schedule.	
d. Single-line diagrams should be provided for both the generation plant and the interconnection substation.	
2) <b>Please provide a plan map of the Non Utility Generation (NUG) facilities; please indicate the interconnection point to the HECO system.</b>	
3) <b>For the power transformers including the generator step-up transformers, please provide:</b>	
a. Transformer voltage and MVA ratings, and available taps. Attach copy of transformer test report or data sheet	
b. The tap settings used.	
c. The LTC Control Scheme.	
d. Transformer winding connections and grounding used. If the transformer is not solidly grounded, provide the impedance value for the grounding method.	
e. Positive, negative, and zero sequence impedance values.	
4) <b>For the circuit breakers and fault-clearing switching devices, including the generator breakers, please provide:</b>	
a. The voltage, continuous current and interrupting capability ratings.	
b. The trip speed (time to open).	

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

		Response
5)	<b>For the power fuses, please provide:</b>	
	a. The manufacturer, type, size, and interrupting capability.	
	b. The minimum melt and total clearing curves.	
6)	<b>For the protective relaying, please provide:</b>	
	a. Data for the CTs used with the relaying including the manufacturer, type of CT, accuracy class, and thermal rating factor.	
	b. Data for the PTs used with the relaying including the manufacturer, type of PT, voltage ratings, and quantity.	
7)	<b>Please provide protective relay settings for existing and proposed generators, including but not limited to, reverse power, negative sequence, over and underfrequency, over and under voltage, volts per hertz, etc.</b>	
8)	<b>For the new generator(s), please provide:</b>	
	a. Manufacturer and model of the generator.	
	b. Generator type (e.g. synchronous, induction, etc.). If synchronous, indicate round rotor or salient pole.	
	c. Generator voltage, MVA, and power-factor ratings.	
	d. Validated PSSE and Synergi load flow and dynamic model. Documentation on the models should also be provided.	
	e. Please provide the following: <ul style="list-style-type: none"> <li>i. The time constants T'do, T'qo, T"do, T"qo.</li> </ul>	

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

	Response
ii. The reactance values for the $X_d$ , $X_q$ , $X_2$ , $X_0$ , $X'_d$ , $X'_q$ , $X''_d$ , $X''_q$ , and $X_L$ . Please provide both saturated (for short-circuit calculations) and unsaturated (for dynamics modeling) values where appropriate.	
iii. The inertia, $H$ , for the generator/turbine/exciter combination.	
iv. The generator saturation characteristics.	
v. Starting power factor	
vi. Starting current	
vii. Starting torque	
viii. Full load speed/slip	
ix. Full load speed/slip	
x. Full load efficiency	
xi. Pull out torque	
f. Generator V/Hz curve.	
g. Negative Sequence Current Limit curve ( $I_2^{2t}$ ).	
h. Generator auxiliary load curve.	
i. Generator (MW/MVAR) capability curve(s).	
j. The type of grounding used with the generator. If the generator is not solidly grounded, provide the grounding method details and equipment ratings.	
k. Validated Aspen Oneliner short circuit model that accurately represents the facility, and is valid for all faults conditions anywhere on the Utility system.	

9) <b>For the generators' excitation system, please provide:</b>	
a. For synchronous generators, please provide the following.	
i. Exciter type, manufacturer, model, and voltage/current ratings.	
ii. Excitation system response ratio and ceiling factor.	
iii. Validated PSSE excitation system model with parameter values representative of the excitation system. Documentation of the model should also be provided.	
iv. Please indicate whether the excitation system has a maximum excitation (OEL) limiter, a minimum excitation (UEL) limiter, and/or a power system stabilizer (PSS); please provide the device settings if device(s) present.	
v. Description of the control mode of the excitation system, e.g. on voltage regulation, power factor regulation, etc.	
b. For asynchronous generators, please describe the method of excitation and its control. Note additional inquiries may be made to obtain technical data for such method.	

10) <b>For generator's prime mover, please provide:</b>	
a. Validated PSSE and Synergi governor system model with parameter values representative of the prime mover system. Documentation of the model should	
b. Description of the control mode of the prime mover, e.g. on droop control, load control, etc.	



**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

		Response
11)	<p><b>Please provide the following generation and load information for the NUG facilities:</b></p> <p>a. Expected KW and KVAR loads including, but not limited to, generators' auxiliary load curve, process load(s) profile(s), etc.</p> <p>b. Expected minimum and maximum MW and MVAR "import from" AND "export to" HECO.</p> <p>c. Gross and net output of the facility</p>	
12)	<p><b>In addition to the items mentioned above, please provide the following for PSS/E models:</b></p> <p>a. Object files and IPLANS for user written models, and applicable library files. The uncompiled source code for object files shall be provided to ensure compatability with future versions of PSS/E. In lieu of the uncompiled object file source code, compiled object file updates compatible with future PSS/E versions shall be provided as requested for the life of the project.</p>	
13)	<p><b>In addition to PSS/E, other power system analysis tools are required to study events that cannot accurately be modeled in PSS/E due to limitations of the program (e.g. sub-cycle behavior). Data compatible with the following tools shall be provided:</b></p> <p>a. Time domain tools - PSCAD® or electro-magnetic transient program (EMTP). Documentation on the model shall also be provided.</p> <p>b. ASPEN One-Liner (VALIDATED MODEL TO BE PROVIDED)</p>	

NOTE: \*\*Equivalent models other than PSSE may be required if the PSSE model cannot be converted properly.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix D – CODE OF CONDUCT  
PROCEDURES MANUAL*



**Maui  
Electric**

**DRAFT**

**HAWAIIAN ELECTRIC COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED  
HAWAII ELECTRIC LIGHT COMPANY, INC.**

**Code of Conduct Procedures Manual  
for the  
Competitive Bidding  
Program**

## INTRODUCTION

The Framework for Competitive Bidding (“Framework”) adopted on December 8, 2006, by the Public Utilities Commission of the State of Hawaii (the “Commission”) pursuant to Decision and Order No. 23121 (Docket No. 03-0372, Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawaii) requires that the utility develop and follow a Code of Conduct whenever a utility or its affiliate seeks to advance an energy generation resource proposal in response to a request for proposals (RFP) issued by the Company. Section III.A.4 of the Framework required the utility to submit to the Commission for review and approval (subject to modification if necessary) a Code of Conduct prior to the commencement of any competitive bid process under the Framework. On June 7, 2007, by letter to the Commission, the Company submitted its form of Code of Conduct for Commission review and approval. By Decision and Order No. 23614 (Docket No. 03-0372), issued August 28, 2007, the Commission approved the Code of Conduct.

This Code of Conduct Procedures Manual has been developed to outline the procedures to be followed and the policies that have been developed surrounding the implementation of Hawaiian Electric Company’s competitive bidding process for new generating capacity. This Code of Conduct Procedures Manual has been developed in accordance with the requirements of Section IV.H.9.a(iii) of the Framework and outlines requirements (1), (3) and (4) of such section, namely: (1) the protocols for communicating with proposers, the self-build team, and others; (3) the documentation forms, including logs for any communications with proposers; and (4) other information consistent with the requirements of the solicitation process. Requirement (2) of the section, the evaluation process in detail and the methodologies for undertaking the evaluation process for the RFP are described in detail in Chapter 4 (Evaluation Process and Evaluation Criteria) of the RFP. The bid evaluation process and methodology will consider both price/system impacts and non-price criteria in accordance with Section IV.E of the Framework and Tariff Rule 19 (See Appendix J (Tariff Rule 19) of the RFP).

The procedures and policies set forth herein have been designed to ensure that the procurement process is undertaken in a fair and equitable manner and that each Proposer is afforded an equal opportunity to participate and compete within the RFP framework.

This Code of Conduct Procedures Manual is intended as a guideline for implementing the Companies' solicitation process and to manage communications between Company personnel and consultants participating in the RFP process. Necessary additions, deletions, and/or changes depending on the circumstances surrounding the RFP and directions from the IO may be required.

## **DEFINITIONS**

- **Affiliate-** An "affiliated interest" of the Company as defined in HRS Section 269-19.5(a), specifically: (1) any person/entity holding 10% or more of the shares of the Company, (2) any person/entity holding 10% or more of the ownership interests of an entity holding 10% or more of the shares of the Company; (3) any corporation, 10% of which is owned by a person/entity holding 10% or more the shares of the Company; (4) any person who is an officer or director of the Company; (5) any corporation operating the Company, or providing engineering, accounting, legal, or similar service to the Company, which has 3 or more officers or 3 or more directors in common with the Company; and (6) any corporation which has directors in common with the Company where the number of common directors is more than one-third of the total number of the Company's directors. For the purposes of any RFP where an Affiliate of the Company is presenting a proposal in response to the RFP, such Affiliate and its proposal will be considered and evaluated in the same manner as any other independent Proposer.
- **Affiliate Team –** Affiliate personnel and outside consultants for the Affiliate responsible for the development of the Affiliate's response to the RFP.

- Code of Conduct - A written code developed by Hawaiian Electric Company, Inc., Maui Electric Company, Limited and Hawaii Electric Light Company, Inc. (each, a “Company” and collectively, the “Companies”) to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its affiliate seeks to advance its own resource proposal in response to an RFP. The Code of Conduct follows the requirements described in Section IV.H.9.c of the Framework and was approved by the Commission in Decision & Order No. 23614.
- Company Executive in Charge – A Company’s executive responsible for ensuring compliance with this Code of Conduct and serving as the point of contact for the Independent Observer for reporting any violations by the Company of the Code of Conduct. For any RFP of the Companies, the Company Executive in Charge shall be the Senior Vice President of Business Development & Strategic Planning. The Company’s Corporate Compliance Officer shall remain responsible for the Companies’ independent code of conduct and may support compliance matters and questions arising with employees, agents and other representatives of the Company, e.g., conflicts of interest, with respect to this Code of Conduct.
- Company RFP Team – The Company personnel and outside consultants responsible for the development of the Company’s RFP and the evaluation of bids submitted in response to the RFP. Within the Company RFP Team, there may be designated certain “core” team members who will be permanent team members of any Company RFP Team. Such “core” members will not have any involvement with the Company Self-Build Team for the subject RFP.
- Company Self-Build Team - The Company personnel and outside consultants responsible for the development of the Company’s self-build response to the RFP. Within the Company Self-Build Team, there shall be designated certain “core” team members who will be permanent team members of any Company Self-Build Team. Such “core” team members will not have any involvement with the Company RFP Team for the subject RFP.
- Confidential Information – Any non-public information developed and provided by the Company (i.e. proprietary system information, etc.) or Proposers during the RFP process (such non-public information may include, for example, the

identity of competing Proposers, and their technical, trade or financial information). This term includes any material non-public information regarding the RFP process developed for and used during the competitive bidding solicitation process, such as the evaluation process or criteria. Confidential Information does not include public information, such as information on resources in the Company's Power Supply Improvement Plan (PSIP) included in its filings with the Commission.

- Director of Energy Procurement - The director of the Division within the Renewable Acquisition Department responsible for directing the resources responsible for the implementation of the competitive bidding process pursuant to the Framework. The Director of Energy Procurement will report to the Manager of Renewable Acquisition on the status of the competitive bidding process.
- Eligible Proposer – A Proposer who has met the minimum requirements and threshold requirements in the RFP necessary to remain eligible to compete in the process.
- Energy Contract Manager – The staff position(s) within the Company's Renewable Acquisition Department responsible for managing the RFP.
- Framework – The Framework for Competitive Bidding contained in Decision & Order No. 23121 issued by Commission on December 8, 2006, to establish rules for competitive bidding in response to a request for proposals when a utility seeks to acquire new generation resources.
- Independent Observer (IO) – The neutral person or entity retained by the electric utility to monitor the utility's competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.
- Manager of Renewable Acquisition – The manager of the Department that will oversee the Company's competitive bidding process.
- Proposer – Entity who submits or plans to submit a proposal in response to a Company-issued RFP. An Affiliate of the Company participating in the RFP and submitting a proposal shall be considered a Proposer.

- RFP – A written request for proposals issued by one of the Companies to publicly solicit bids to supply future generating capacity to the Company pursuant to the competitive bidding process established in the Framework.
- Shared Resource – An employee of a Company or consultant to a Company who is authorized to provide information or input to both the Company RFP Team and the Company Self-Build Team and is not a resource dedicated to either team.
- Unassigned Company Resource -- Company employees unassigned to an essential team that may be called upon by the Company RFP Team and/or the Company Self Build Team to assist in meeting unforeseen tasks for the RFP or the Self-Build proposal. For example, the RFP team may be unable to evaluate an unforeseen technical specialty included in a bid. In that event, the RFP team would need to request assistance from an employee in the company or a consultant that isn't already assigned to an essential team and possesses the specific expertise. Such personnel are intended to assist the requesting team only in an ad hoc manner, limited in scope and purpose to the particular task required.

## **STATEMENT OF OBJECTIVES**

From time to time, each of the Companies will be proposing to seek power supply proposals for electric generation resources that best meet the needs of the respective Company's system. The timing for issuance of RFPs for each of the systems will be dependent upon the Commission's approval of the associated PSIP and the necessary competitive bidding procedures identified in the Framework and upon the timing of the need for capacity for each island. Each of the Companies will undertake a detailed multi-stage review and evaluation process whereby eligible proposals will be selected based upon their ability to most cost-effectively and reliably satisfy the requesting Company's resource requirements. While cost minimization is a major criterion, the Companies will select those resources which, in its opinion, represent the best value to the Companies and its customers regarding economic and technical attributes, limited risk and flexibility for meeting its projected requirements. Consistent with this objective is the Companies' goal of ensuring the competitive benefits of the procurement process while continuing to provide equitable and fair consideration for all proposals. The



Companies also intend that the evaluation process will be well-documented so that the results of the evaluation can be fully reviewed by an IO to confirm that all proposals were treated in a fair and consistent manner.

The Code of Conduct and this Manual addresses (1) communication requirements and procedures associated with the relationship between utility employees (Company RFP Team, Company Self-Build Team, Shared Resources and Unassigned Company Resources); (2) communication requirements and procedures associated with the relationship between the Company RFP Team, the Company Self-Build Team and Proposers; and (3) communication requirements associated with the relationship between Company management and the Company RFP Team.

The Code of Conduct and this Manual also includes procedures for the sharing of resources, where appropriate, by the Company RFP Team and the Company Self-Build Team for the purposes of completing their efforts to effectively evaluate the RFP or to submit a bid in response to the RFP. The small size of the Companies and limitation of resources will require specialized services, information exchange and sharing of resources in certain limited circumstances. Company personnel and consultants identified as "Shared Resources" shall be designated by the Companies for this specific purpose.

## **ORGANIZATION AND COMMUNICATION RESPONSIBILITIES**

This section outlines the RFP organizational structure for the development of the RFP and the Company self-build option and the organization's responsibilities to ensure that communications between Company personnel and consultants working on their respective RFP or self-build projects are conducted in a fair, consistent, and equitable basis so that the Company Self-Build Team does not enjoy any unfair advantage over other Proposers responding to the RFP.

**A. Organization**

The Company shall identify two separate teams to facilitate the independence and objectivity of the Company resources working on the RFP and ensure an arms-length relationship with the resources working on the Company's self-build project to avoid any real or perceived inequity in the RFP process. The two essential teams shall be the "Company RFP Team" and the "Company Self-Build Team."

Other limited Company resources, such as select staff from various functional areas of the Company that are in short supply and thus cannot be dedicated solely to either team, may be designated as "Shared Resources" to perform services for the Company RFP Team and Self-Build Team. Shared Resource employees are allowed to carry on with both their RFP (for either the RFP Team and/or the Self-Build Team) and regular functions throughout the resource planning process (including the development of any Company parallel or contingency plan as defined in the Framework), which may require communications with or services performed for the Self-Build Team. Shared Resource employees, however, will not participate in the evaluation and selection process of proposals submitted in response to the RFP. Rules for communications between Shared Resources and the essential teams shall be outlined below.

Company employees unassigned to the RFP may be called upon by the RFP Team, Self-Build Team, or both for help to meet unforeseen tasks. After completing the Code of Conduct training, these "Unassigned Company Resources" are eligible to assist on an ad hoc basis with the requirement that all communications as an Unassigned Company Resource must be memorialized logged in the same manner as communications with Shared Resources. If an Unassigned Company Resource is called upon repeatedly and asked for a substantial amount of assistance by a particular team, the employee should be assigned to such team or evaluated for designation as a shared resource.

### **Essential Teams**

Company RFP Team. The Company RFP Team, tasked with preparing the RFP and evaluating the responses and bids in response to the RFP, will consist primarily of Director/Manager-level and other experienced employees together with possible outside consultants, with backgrounds in a number of disciplines necessary to conduct a thorough evaluation of each proposal. The members of the team will be prepared to evaluate proposals on the basis of their price and non-price aspects pertaining to their level of expertise. Members of the Company RFP Team will include professionals with experience in the following areas of expertise: engineering, siting/land use, environmental, transmission planning, fuel procurement, legal, financial planning, system operations, integrated resource planning, generation planning, production cost analysis, and others as needed.

Price and non-price sub-teams will conduct their sections of the bid evaluation process separately and will not share the results of their evaluation with members of the other sub-team. Each team will submit their evaluation results to an oversight team, which will be responsible for compiling the results of the evaluations and selecting the short-list.

The Energy Contract Manager will be responsible for directing the efforts of the Company RFP Team and for distributing the appropriate sections of the proposal to the appropriate Company RFP Team members when the proposals are received. The Energy Contract Manager will be responsible for maintaining the documentation underlying the evaluation of each proposal as well as all communications with proposers.

The Self-Build Team. The Self-Build Team, tasked with preparing any Company proposal to be submitted by the Company in response to a Company RFP, will consist primarily of Company employees, along with possible outside consultants

with backgrounds in a number of disciplines necessary to complete a competitive proposal in response to the Company RFP. The members of the team will include professionals with experience in the following areas of expertise: engineering, siting/land use, environmental, transmission planning, fuel procurement, legal, financial planning, system operations, integrated resource planning, generation planning, production cost analysis, and others as needed.

Affiliate Team. Any Affiliate Team will be comprised solely of employees and consultants of the Affiliate and no Company employee or consultant shall serve as a member of an Affiliate Team, provided, however, that a consultant may perform services for an Affiliate and the Company so long as appropriate “walls” are established satisfactory to the Company, that ensures that employees of the consultant working for the Affiliate Team do not also perform work for the Company nor communicate with employees of the consultant performing work for the Company, and vice versa.

### **Communications Protocols**

Hawaiian Electric has developed policies and procedures governing communication between the Company RFP Team, the Company Self-Build Team, Shared Resources, the Proposers the IO, and with the Commission regarding RFP design and bid evaluation. Bid information and evaluation data and information shall not be communicated between members of the Company RFP Team, outside parties and other employees within the Companies except to those with a business need to know.

To ensure that the competitive bidding process is fair and unbiased, that all Proposers have access to the same information so that no Proposer has an unfair advantage, and that any Company self-build and/or Affiliate proposals do not have any unfair competitive advantage over third-party bids, the Companies shall follow the Code of Conduct whenever the utility or its Affiliate is seeking to advance a resource proposal as provided in Section IV.H.9.b of the Framework.

Each employee or consultant on the Company RFP Team, Company Self-Build Team and Shared Resources shall read, acknowledge and sign a Competitive Bidding Code of Conduct Acknowledgement of Receipt. Unassigned Company Resources who may be called upon by the Company RFP Team or Self-Build Team for help to meet unforeseen tasks shall also read, acknowledge and sign a Competitive Bidding Code of Conduct Acknowledgement of Receipt if called upon. Finally, each employee or consultant of an Affiliate intending to submit a proposal in response to a Company-issued RFP shall read, acknowledge and sign a Competitive Bidding Code of Conduct Acknowledgement of Receipt.

The Company issuing the RFP will establish a shared drive on its corporate computer network designed to maintain the bid evaluation documentation and other information associated with the bidding process. Only Company RFP Team members will have access to all the files on the shared drive.

In cases where staffing and resources are limited or constrained, Hawaiian Electric may identify Shared Resources or those employees eligible to provide information or serve as a resource to both the Company RFP Team and the Company Self-Build Team. Specific rules to log communications with the Company RFP Team or the Company Self-Build Team are described below.

Shared Resources will not have access to the Company's shared drive established for the RFP process which will include the documentation of the bid evaluation results.

**A. Communications Between the Company RFP Team and Proposers, including the Company Self-Build Team.**

During the RFP process, the Energy Contract Manager shall serve as the primary contact person for all RFP communications with Proposers. This is important from the standpoint of maintaining consistency and confidentiality of information between Proposers and the Company. For documentation and oversight purposes, all communications from

Proposers must be submitted to an established website link provided by the Company (the "Company RFP website"). The IO will monitor all communications through the Company RFP website. To ensure fair and equal access to information, any Company Self-Build Team and/or Affiliate Team shall be considered a Proposer for communication purposes and any request for information from the Company Self-Build Team or Affiliate Team to the Company RFP Team shall be through the Company RFP website.

A single exception to the communication process outlined above shall be instituted for the purpose of facilitating the preliminary exchange of confidential interconnection requirements for any Proposer's bid. For this limited scope, the Director of Interconnection Services will serve as the primary contact person for all such interconnection communications with a Proposer, provided that all necessary confidentiality and non-disclosure agreements are in place. Interconnection communications will be limited to a Proposer's bid and no more information other than as necessary to facilitate such communications will be permitted. Locations of projects shall be limited to that necessary only to determine the interconnection requirements of such project. The IO shall have the right to monitor all such communications in his/her discretion. Company, with input from the IO, reserves the right to share any information that may be generally applicable to all Proposers via the Company RFP website.

Subject to confidentiality obligations, it is the objective of the Code of Conduct that all Proposers, including the Company Self-Build Team, receive access to information released by the Company RFP Team, whether in response to a question from a Proposer or not, at the same time.

The communications process for addressing questions and requests for information from Proposers, and for the Company RFP Team to provide information to Proposers, is provided below:

1. Other than during Company sponsored conferences, Proposers must submit all questions to the Company RFP website or the designated RFP email address (if the Company RFP website has not been opened yet for the RFP).
2. Questions will be reviewed and responses will be coordinated with the appropriate functional area within the Company for a response. Every reasonable effort will be made to provide responses in a timely manner.
3. All responses, including the classification of such response, i.e., whether non-confidential or confidential as described below, will be made available to the IO for monitoring purposes. The IO may choose to comment on any response at its discretion.
4. Depending on the questions received, responses may involve Confidential Information of the Company and/or Proposers. Release of any Company Confidential Information must be approved in advance by the Company Executive authorized to release the Confidential Information. Any release of Company Confidential Information shall be accompanied by appropriate confidentiality and non-disclosure agreements, protective orders or other means required to maintain the confidentiality of the Company Confidential Information while still permitting its disclosure under circumstances deemed appropriate by the responsible Company Executive. Other non-Company Confidential Information will not be shared without the prior written consent of the owner of such Confidential Information and the execution of

appropriate confidentiality and non-disclosure agreements by all recipients of such Confidential Information. Responses will be categorized as follows:

Non-Confidential Responses: Questions and responses will either be posted directly on the Company RFP website (process-related questions or simple non-substantive information) or a description of the information that can be made available will be posted and Proposers will be instructed to submit a request to the Company via the Company RFP website to receive a copy.

Confidential Responses: Questions and a description or notice of a Confidential Information response will be posted on the Company RFP website and Proposers will be instructed to submit a request to the Company via the Company RFP website to receive instructions on how to access the Confidential Information. The Confidential Information will only be provided to the requestor after receipt of an executed Confidentiality and Non-Disclosure Agreement. Only those who have qualified to submit a bid (i.e. Eligible Proposers) and have executed a Confidentiality and Non-Disclosure Agreement will be considered for receipt of Confidential Information.

#### Process for Distribution of Confidential Information

Confidential Information provided in response to questions from proposers may be made available only to parties as indicated above via the following:

Confidential Information that is approved for exchanging on a secured access site: (1) Confidential Information may be made available on a secured website with an individual password provided to each approved Proposer. (2) Confidential Information



in documents may be transmitted to approved recipients through the Company's secure email system.

Confidential Information that can be made available for inspection only, but cannot be copied: There may be some types of Confidential Information that the Company may consider making available for inspection only with no copies allowed. This type of Confidential Information will be made available on Company premises for inspection only. Proposers will be advised via the Company RFP website to make arrangements with Company staff to view the Confidential Information.

Confidential Information that may not be released. In the event that Proposers submit questions that require responses that the Company feels are not appropriate to provide for reasons which may include, but not be limited to, safety, security, protection of trade secrets or intellectual property rights, Proposers will be advised as such via the Company RFP website.

6. Prior to and during the RFP, and outside of the Company RFP website protocol, developers may inquire with the Company Interconnection Services Department directly as to the interconnection viability of a proposed project. Contact information will be as follows:

Hawaiian Electric Company, Inc.  
Interconnection Services Department  
Attention: Director  
Email: [interconnection.services@hawaiianelectric.com](mailto:interconnection.services@hawaiianelectric.com)  
Telephone: \_\_\_\_\_

If determined necessary, face-to-face meetings may be scheduled.

7. Once bids are received, the Company may submit information requests to Proposers to clarify their proposals or request additional information. All contacts with Proposers will be through the Company RFP website. If determined necessary, face-to-face meetings may be scheduled. All contacts and information exchanged will be under the oversight of the IO.

**B. Communications Between the Companies and the Commission.**

The Company's Regulatory Affairs staff will be responsible for initiating communication with the Commission regarding the RFP or the Companies' evaluation process. Regular updates may be provided to the Commission regarding the RFP process if requested.

**C. Communications between the Company RFP Team and the IO**

Communications between the RFP Team and the IO will be required for many aspects of the evaluation process. The IO is also required to maintain confidentiality of any Company or Proposer Confidential Information. The IO will coordinate all activities through the Energy Contract Manager. The IO will be invited to participate in any meetings or discussions between the RFP Team and the Proposers and other communications as noted above. Sufficient notice will be provided whenever possible and teleconference and/or web conference alternatives may be utilized.

**D. Communications between the Company RFP Team and the Company Self-Build Team**

Any communication between the Company RFP Team and the Company Self-Build Team with respect to the RFP shall be handled no differently than with Proposers and other outside parties. Accordingly, the Self-Build Team will be required to submit any questions or information requests to the Company RFP Team via the Company RFP website and all responses will be provided in the same manner as to other Proposers. Members of

the Company RFP Team are prohibited from providing any input into the development of the self-build resource option by the Company or an affiliate. Company RFP Team members are prohibited from sharing any Confidential Information (i.e. detailed evaluation criteria, other proposals, etc.) with any Self-Build or Affiliate Teams except in accordance with the procedures in the Code of Conduct, this Manual or the RFP.

Company RFP Team members and Company Self-Build Team members may continue to work with each other on projects not related to the RFP. Further, members of each respective team do not have to be physically separated from each other but members of each team must make reasonable efforts to keep all Confidential Information (including electronic data) secure and inaccessible to the other team.

**E. Communications among the Company RFP Team, the Company Self-Build Team and Shared Resources**

Shared Resources may provide services to the Company RFP Team and the Company Self-Build Team. Shared Resources shall be limited as much as possible to instances where Company resources cannot provide a dedicated member to the Company RFP Team and the Company Self-Build Team at the same time and still provide the necessary functions of its area to the Company as a whole. Shared Resources are expressly prohibited from providing any information developed on behalf of the Company RFP Team to the Company Self-Build Team or any information developed on behalf of the Company Self-Build Team with the Company RFP Team, except through the formal communication process outlined above, i.e., through the Company RFP website.

Additionally, Shared Resources are required to maintain a written record of the time, date and substance of all conversations, data and written material directly or indirectly exchanged with the Company RFP Team, the Company Self-Build Team and any affiliates that pertain to the RFP.

A SharePoint-based interface will be set up and managed by the Energy Contract Manager to provide an easy to use and understand mechanism to log and memorialize these conversations.

Shared Resources will not have direct access to the Company's shared drive developed for the RFP process which will include documentation of the bid evaluation results.

**F. Communications between the Company RFP Team, the Company Self-Build Team and any Unassigned Company Resource or consultant that is not a Shared Resource.**

There may be times, in which a Company RFP or Self-Build team member may need ancillary or other ministerial or administrative assistance that requires communication and/or assistance from Company personnel who are not on any team nor considered a Shared Resource. In such events, such personnel may assist the requesting team member on an ad hoc basis upon the following conditions:

1. The essential team member making the request must inform the Company personnel that sharing of the requested information or assistance with the other team, be it the Company RFP or Company Self-Build Team, is expressly prohibited under the Code of Conduct.
2. The assisting Company personnel shall complete the Code of Conduct training and sign the Code of Conduct Acknowledgement form.
3. The assisting Company personnel shall be directed to the Company RFP and Company Self-Build Team rosters provided by such requesting team member to determine and/or confirm the restrictions on communication with the other team members. The essential team member making the request will ensure the roster of Unassigned

Company Resources is updated by the Energy Contract Manager to include the assisting Company personnel.

4. Unassigned Company Resources will be required to maintain a written record of the time, date and substance of all conversations, data and written material directly or indirectly exchanged with the Company RFP Team, the Company Self-Build Team and any affiliates that pertain to the RFP. A SharePoint-based interface will be set up and managed by the Energy Contract Manager to provide an easy to use and understand mechanism to log and memorialize these conversations.

5. If assistance from Unassigned Company Resource becomes more than occasional or more substantive than ancillary, ministerial or administrative services, the Unassigned Company Resource should be considered for inclusion on the team that he/she has been assisting on such basis. Additionally, the Unassigned Company Resource may also be considered for inclusion as a Shared Resource. Members of the Company RFP Team and/or Company Self-Build Team shall consult with the Company Executive for resolution.

**G. Communications between Company RFP Team, Company Self-Build Team and Company Management.**

The Company RFP Team and the Company Self-Build Team will necessarily require management approval of the RFP and the Self-Build Proposal. Because of the size of the Company, it may be possible that a single employee (at whatever level) (the "Approver") may have approval responsibility for matters affecting the RFP and the Self-Build proposal. Approvers in this situation must use their best judgment in making decisions reviewing and approving matters for the respective teams. The Code of Conduct must be adhered to in these situations and the Approver must not communicate matters learned from the Company RFP Team with the Company Self-Build Team.

If an Approver feels that he/she cannot manage this potential conflict, the Approver is recommended to consult with his/her immediate supervisor to determine whether such higher authority could be appointed with the task of reviewing and approving matters for a designated team, either the Company RFP Team or the Company Self-Build Team. In matters where a team of employees (including one or more Approvers) is responsible for reviewing and approving matters for the respective teams, approving employees (from whatever level, including executives) with information from reporting personnel beneath them from both the Company RFP Team and the Company Self-Build Team may consider recusing himself/herself from the decision making if such employee cannot objectively make a decision on the matter.

Finally, an Approver may be a member of either the Company RFP Team and have a subordinate reporting to him/her that is a member of the Company Self-Build Team (and vice versa). In such situations, because the Code of Conduct prohibits communication between the teams, the manager must recuse himself/herself from the decision making and request his/her manager to review and approve the matter in his/her place.

In all instances, it is possible that any particular situation above may be addressed and/or resolved by the terms and conditions of the Company's internal code of conduct implemented for all employees and consultants of the Company. As appropriate, an Approver or any other team member, Energy Contract Manager or Executive in Charge may involve the Company's Corporate Compliance Officer for input and possible resolution under the Company's internal code of conduct.

## WHEN THE CODE OF CONDUCT BECOMES EFFECTIVE

1. No later than 30 days after the Commission opens the docket to issue an RFP the Code of Conduct for that RFP will be activated. However, if the Company Self-Build Team determines at any time that it will not pursue a Self-Build Option for a particular RFP, the Code of Conduct may be de-activated.
2. Upon the signal to activate Step 1 above, the Code of Conduct shall be activated and members of the Company RFP Team and the Company Self-Build Team must then conduct activities on the RFP or self-build process in compliance with the Code of Conduct. Once identified and having commenced work, no information may be shared outside the respective team members with respect to the RFP or the Self-Build Option except through the formal communication processes outlined above.
3. Immediately upon assignment to a Company team (RFP or Self-Build), designated as a Shared Resource, or requested to assist as an Unassigned Company Resource, each such employee or consultant must review this Manual, and sign the Code of Conduct acknowledgement form.
4. Within the RFP process, after a member has been assigned to a particular team, he or she will not be able to transfer to a different team at a later date for any reason. It is the responsibility of each team to fill vacant team positions with employees that have not been previously assigned as a team member for a team.
5. Each employee and consultant working on the RFP shall review the Code of Conduct and sign an acknowledgement attesting to his/her compliance with the Code of Conduct for each subsequent year until the Code of Conduct is terminated.

6. The Energy Contract Manager will be responsible for maintaining the Code of Conduct organizational chart and the signed "Acknowledgement of Code of Conduct" letters. The Company Executive in Charge shall be responsible for ensuring compliance with the Code of Conduct and shall have the written authority and obligation to enforce the Code of Conduct.

#### **IMMEDIATE ACTIONS UPON ACTIVATION OF THE CODE OF CONDUCT**

The following items are required to be completed as soon as possible after activation of the Code of Conduct but no later than the designated events specified for each item below.

1. No later than 30 days after the opening of the docket commencing an RFP, an organizational chart listing employee (with their title) and consultants in their designated role; Company RFP Team, Company Self-Build Team, Affiliate Team, Shared Resource or Unassigned Company Resource. When the IO is appointed, this organizational chart shall be provided to him/her. The organizational chart shall be placed in an accessible database (such as the Company's SharePoint database) so that any Company personnel can access the database to determine the identity of the respective teams and Shared Resources.

2. Upon the finalization of the organizational chart for the RFP and upon each addition to any team, the Energy Contract Manager shall obtain signed copies of the "Acknowledgement of Code of Conduct" by Affiliate Team members, and all employees (whether full-time, part-time, temporary, or contract) and consultants involved in the competitive bidding process, such as members of the Company RFP Team, the Company Self-Build Team, Shared Resources or Unassigned Company Resources.

3. No later than 30 days after the opening of the docket commencing an RFP, establishment of the Company email address to accept requests for



information from Proposers, including the Company Self-Build Team or any Affiliate Team.

4. No later than 30 days after the opening of the docket commencing an RFP, establishment of the Company secured site that houses the accessible database (such as SharePoint).

#### **WHEN THE CODE OF CONDUCT TERMINATES**

The Code of Conduct for a specific RFP will terminate after the following two conditions are met:

1. When the final contract(s) with the successful proposer(s) is executed or when written notice of the RFP's termination is provided by the Director of Energy Procurement or his/her designee to the IO and the Commission.
2. A certification of Code of Conduct compliance by all employees participating in the specific RFP process is submitted by affidavit by the Company Executive in Charge.

#### **DOCUMENTATION FORMS**

The following documentation forms may be utilized by those Company personnel involved in the RFP. These forms may be amended from time to time as necessary. Additional forms may also be developed as determined necessary.

- Code of Conduct Acknowledgement Form
- Code of Conduct Attestation Form (annual/final)
- Communications Log for Shared Resources
- Organizational Chart for essential teams and Shared Resources

**DRAFT REQUEST FOR PROPOSALS**

**FOR**

**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix E – PowerAdvocate User Information*



**Maui  
Electric**

### **Electronic Procurement Platform**

1. “Sourcing Intelligence,” developed by PowerAdvocate is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP. Proposers who do not already have an existing account with PowerAdvocate , and intend to submit a Proposal for this RFP, will need to register as a “Supplier” with PowerAdvocate.
2. There are no license fees / costs or usage fees to Proposers for an account or to use of the PowerAdvocate Platform.
3. Proposers may register for an account by clicking on the “Registration” button on the PowerAdvocate website at the following address:

[www.poweradvocate.com](http://www.poweradvocate.com)

4. In order to complete the registration, the Proposer will need to review and accept PowerAdvocate’s Terms of Use. The Terms of Use are available online and a copy is also attached for convenience in Appendix E.
5. Once a Proposer has successfully registered as a Supplier with PowerAdvocate, the Proposer shall request access to the subject RFX<sup>1</sup> event from the Energy Contract Manager via email through the RFP Email Address. The email request must list the Supplier name under which the Proposer has registered with PowerAdvocate.

Once the RFX event is opened, Proposers will have online access to general notices, RFP-related documents, and other communications via theSourcing Intelligence, and may begin to submit their Proposal.

6. Proposals shall be accepted only through the PowerAdvocate Platform.

### **Instructions to Proposers – Electronic Procurement Platform**

7. Prior to the opening of the RFX event in Sourcing Intelligence, Proposers are encouraged to familiarize themselves with Sourcing Intelligence.
8. Proposers should note that they will not be able to access any Bid documents until the event officially opens in Sourcing Intelligence.
9. An e-mail notification will be sent to all prospective Proposers via the Sourcing Intelligence when the event has been opened to receive Proposals.
10. Proposals must be submitted through Sourcing Intelligence before 2:00 p.m. HST on the date shown in the RFP Schedule. Sourcing Intelligence will not accept the submittal of late information for this RFX event. It is the Proposer’s sole responsibility to ensure that its complete information has been submitted on time. Any proposal information that is merely SAVED, but not SUBMITTED will not be considered.

<sup>1</sup> RFX event is the terminology used in Sourcing Intelligence to describe the RFP event.

11. All Bids must be prepared in accordance with the procedures and format specified in the RFP and the RFx event. Proposers are also required to respond to all questions and provide all information requested in the RFP and the RFx event, as applicable. This process is intended to provide an orderly, consistent and fair evaluation of the Proposals.
12. Items in the RFx event that are not applicable to a specific Proposer or contract type must be clearly marked as “N/A” (Not Applicable) and provide a brief explanation for each item as marked.
13. It is the Proposer’s sole responsibility to advise the Energy Contract Manager of conflicting requirements, ambiguities, omission of information, or the need for clarification prior to submitting a Proposal and before the due date for submission of Proposals.
14. It is the Proposer’s sole responsibility to ensure the timely submission of the completed Proposal. The Company will not be responsible for technical problems that interfere with the upload or download of Proposal information. PowerAdvocate provides live customer support Monday through Friday, from 8 AM to 8 PM, Eastern Standard Time (EST) and is closed on all Federal Holidays.
15. Proposers are encouraged to start early, SAVE data frequently and avoid waiting until the last minute to SUBMIT the required information. Proposers are allowed to revise information that has been previously submitted, as well as add, modify and/or delete documents anytime before the event closes. There is no limit to the size of a file that can be uploaded, but larger files will take longer. Multiple files can also be compressed into a .zip archive for upload.
16. Proposers may form a team to establish additional authorized persons who will have access to their team’s proposal. Proposers wishing to form a team, must declare a Team Name, and designate a Supplier to be the main contact. The main contact shall send an email to the Energy Contract Manager containing the team member’s/s’ name, email address and relationship, to request the addition of team member/s. All team members must have registered on PowerAdvocate and meet the requirements stated above to be granted access to the subject RFx event before they can be added to the team.
17. Be advised that multiple users from the same company or team cannot simultaneously fill out a datasheet. When one user saves, others’ work will be lost.
18. Proposals that are not included on the Short List will be released when the Short List is established. All other Proposals must remain valid through the selection of the Final Award Group, through the signing of the PPA and approval by the PUC..
19. All contract negotiations and contract award will be handled by the Company.

### **PowerAdvocate Platform Submittal Procedures**

20. After logging onto the PowerAdvocate Platform, the RFP will be visible on your dashboard with several Tabulations (Tabs) each used for the following:
21. Within the RFX event, Suppliers will have access to several tabs, including Download Documents, Upload Documents, Commercial Data, Technical Data, Pricing Data, and Messaging.
  - “Download Documents”: Documents stored under this tab are provided for the Suppliers use and information. All documents can be downloaded and/or printed, as required. If available, the Company’s responses to Proposer questions will be posted in this tab.
  - “Upload Documents”: In addition to specific data that is requested through the datasheets stored under the Commercial, Technical and Pricing Data Tabs, files such as (spreadsheets, pdfs, word documents, signature statements, etc) may be requested. Such files being submitted by the Supplier may be uploaded here.
  - “Commercial Data”: Proposers are required to fill in the Commercial datasheets.
  - “Technical Data”: Proposers are required to fill in the Technical datasheets.
  - “Pricing Data”: Proposers are required to fill in the Pricing datasheets.
22. All responses to this RFP shall be submitted in the English language.
23. All questions or concerns regarding the RFP shall be submitted to the Energy Contract Manger via the PowerAdvocate Messaging tab.
24. Questions regarding the PowerAdvocate platform ONLY should be directed to:
25. PowerAdvocate Support

E-mail: [support@poweradvocate.com](mailto:support@poweradvocate.com)

Tel: +001.857.453.5800

Note that any questions regarding the RFP submitted to PowerAdvocate will not be answered. PowerAdvocate may, but shall not be obligated to, forward any such questions to the Company and any Proposer submitting such questions to PowerAdvocate does so at its own risk.



## PowerAdvocate Terms of Use (Version: January 1, 2010)

READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SITE. BY USING OR ACCESSING THE SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, ACCEPT, AND AGREE TO BE BOUND BY THESE TERMS OF USE.

### 1. Background

Your use of [www.poweradvocate.com](http://www.poweradvocate.com) (the Site) is governed by these PowerAdvocate Terms of Use (Terms of Use or Agreement). The password protected areas of the Site allows individuals or entities with registered Users (as defined below) to access and use the PowerAdvocate Energy Intelligence Platform. Your use of the Energy Intelligence Platform (or any of the individual products that comprise the Energy Intelligence Platform – Spend Intelligence, Cost Intelligence, Market Intelligence and Sourcing Intelligence as of the date hereof) is governed by these Terms of Use and by any license, subscription or other applicable written contract entered into by you or by the Participating Company (as defined below) or which you are a User. A Participating Company is an individual or a legal entity that as Users that have registered to participate on the Energy Intelligence Platform. The employees or authorized agents of a Participating Company are referred to as Users. A Participating Company submitting information on, or bids or other offers to sell, goods or services (including any entity acting as a representative or an agent or another) on Sourcing Intelligence is referred to as a Supplier Company. A Participating Company posting a request on the Sourcing Intelligence, or otherwise requesting or collecting information on, or receiving bids or offers or the purchase of, goods or services from Supplier Companies is referred to as a Buyer Company. Except as expressly stated otherwise, all terms apply equally to Supplier Companies and to Buyer Companies.

### 2. Registration

Each User must register on the Site before Users are authorized to participate on the Energy Intelligence Platform.

### 3. User Names and Passwords

Each User will be issued a unique user name and password upon registration. Each Participating Company agrees to take all reasonable precautions to maintain as confidential the user names and passwords of its Users. Each Participating Company agrees not to provide access to the Energy Intelligence Platform to any persons other than authorized Users through use of their user names or passwords and to notify PowerAdvocate upon becoming aware of any loss or theft of a user name or password or an unauthorized use of the Energy Intelligence Platform or a user name or password. A Participating Company will be responsible for all use of its user names and passwords by any person or entity. At its sole discretion and at any time, PowerAdvocate may disable one or more user names or passwords or otherwise deny a User access to the Energy Intelligence Platform.

### 4. PowerAdvocate's Role

PowerAdvocate may be involved on the Site in many ways, including by assisting a Buyer Company with the preparation and posting of a request or proposals on Sourcing Intelligence, by promoting Supplier Company participation, and by facilitating Participating Company use of the Energy Intelligence Platform through helpdesk services. PowerAdvocate will not take title to, or otherwise have any liability for, any products or services sold or offered or sale on the Site, and each Participating Company hereby releases PowerAdvocate from any such liability. PowerAdvocate is not responsible for any material posted on the Site by a Participating Company. PowerAdvocate has no obligation to monitor the content on the Site. PowerAdvocate has the right, but not the obligation, to remove any material posted on the Site, including any material that is alleged to violate an intellectual property right (whether or not the allegation proves accurate) or that may violate these Terms of Use or applicable laws.

#### Participating Company's Role

Each Participating Company is responsible for all activities carried out on the Energy Intelligence Platform by its Users, and ensuring that each of its Users abides by the Terms of Use, as they are amended from

time to time and appear on the Site. All Users must be employees or authorized agents of a Participating Company and authorized by that Participating Company to conduct business on the Energy Intelligence Platform. A Participating Company shall inform PowerAdvocate immediately of any change in a User's status that affects that User's right to use the Energy Intelligence Platform. Should a Participating Company fail to do so, that Participating Company will continue to be responsible for all the User's activities on the Energy Intelligence Platform. The applicable Buyer Companies and Supplier Companies are responsible for determining the final terms and conditions between them with respect to a purchase and sale of goods or services arising out of their use of Sourcing Intelligence, including pricing, warranties, logistics, transportation, and inspection as required. If a Buyer Company elects to purchase any goods or services, that Buyer Company and the successful Supplier Company(s) will enter into any contracts they deem necessary and PowerAdvocate will not be a party thereto. You and each Participating Company warrant and covenant that its Contact Information (as defined in paragraph 9), its posting of any materials on the Site, and its other uses of and activities on the Site do not and shall not: (a) infringe any third party's copyright, patent, trademark, trade secret or other intellectual property rights, or other proprietary rights or rights of publicity or privacy; (b) violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, unfair competition, deceptive trade practices, and false advertising); or (c) constitute activities that are scandalous, deceptive, inaccurate, misleading, defamatory, libelous, obscene, harassing or threatening. You and each Participating Company will comply with all applicable laws, statutes, ordinances and regulations regarding its use of the Site, and regarding its ordering of, bidding on or purchase of goods and services, and its posting and retrieval of information, on or through the Site. Access to the Site by means of screen scrapers, web crawlers or similar methods is prohibited. Any Supplier Company acting as a representative or agent for another Supplier Company (e.g., a manufacturer's representative) acknowledges and agrees that these Terms of Use are intended to bind itself and the Supplier Company that it represents. Each Participating Company represents and warrants that it has all necessary right, title and interest to enter into this Agreement and to perform its obligations under this Agreement and, in the case of a Supplier Company acting as a representative for another Supplier Company, that it has the power to bind that other Supplier Company to these Terms of Use.

**6. Third Party Links**

The Site may contain links to third-party web sites not under the control or operation of PowerAdvocate. PowerAdvocate does not endorse these third-party web sites, and is not responsible for the contents of any linked site or any link contained in a linked site. You may provide a hypertext link to the Site on another web site, so long as such link is done in good taste and does not create the false appearance that PowerAdvocate is associated with or sponsoring the linking web site. The use of techniques to frame the Site within a third-party web site is not permitted under this Agreement. PowerAdvocate reserves the right to revoke its consent to any link at any time in PowerAdvocate's sole discretion.

**7. Warranties and Limitations of Liability**

THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. POWERADVOCATE AND ITS AFFILIATES, AGENTS, EMPLOYEES, CONTRACTORS, AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, RELIABILITY, OR AVAILABILITY OF THE SITE OR ANY INFORMATION, SOFTWARE, OR SERVICES OBTAINED THROUGH THE SITE, INCLUDING ANY INFORMATION, SOFTWARE, OR SERVICES OBTAINED THROUGH THE SITE. POWERADVOCATE AND ITS AFFILIATES, AGENTS, EMPLOYEES, CONTRACTORS, AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, ARISING FROM THE USE OF THE SITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. POWERADVOCATE AND ITS AFFILIATES, AGENTS, EMPLOYEES, CONTRACTORS, AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, ARISING FROM THE USE OF THE SITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. POWERADVOCATE AND ITS AFFILIATES, AGENTS, EMPLOYEES, CONTRACTORS, AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, ARISING FROM THE USE OF THE SITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

DAMAGES (INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, REVENUES OR DATA), ARISING OUT OF OR IN CONNECTION WITH THE SITE, USAGE OF THE SITE, OR THOSE RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED THROUGH, OR TRANSACTIONS ENTERED INTO AS A RESULT OF USING THE SITE. THE LIMITATIONS OF LIABILITY PROVIDED IN THESE TERMS OF USE INURE TO THE BENEFIT OF POWERADVOCATE, AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS. IN THE EVENT THAT A PARTICIPATING COMPANY HAS A DISPUTE WITH ANOTHER PARTICIPATING COMPANY, BOTH SUCH PARTICIPATING COMPANIES HEREBY RELEASE POWERADVOCATE, AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS, FROM ALL CLAIMS, LOSSES, LIABILITIES, DEMANDS, AND DAMAGES OF EVERY KIND AND NATURE (DIRECT, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHERWISE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTE.

## 8. Confidential Information

PowerAdvocate recognizes the importance of protecting confidential and proprietary information collected or posted on the Energy Intelligence Platform and of not disclosing such information to unauthorized third parties. As such, PowerAdvocate enters into confidentiality agreements with PowerAdvocate customers that contain PowerAdvocate's sole obligations concerning the treatment of confidential or proprietary information collected or posted by that customer on the Site.

## 9. Intellectual Property

"PowerAdvocate" (alone and together with the three rings) is a registered trademark of Power Advocate, Inc. In addition, "Energy Intelligence Platform," "Spend Intelligence", "Cost Intelligence", "Market Intelligence", and "Sourcing Intelligence" are trademarks or service marks of Power Advocate, Inc. Unless otherwise noted on the Site, all other trademarks, service marks, and logos used in this Site are the trademarks, service marks or logos of their respective owners. All ownership rights -- including all right, title, and interest in all patents, cop rights, trademarks, trade secrets and other intellectual property rights -- in the Site, including any software associated with the operation or functioning of the Site, are and will remain in PowerAdvocate or its licensors. You and each Participating Company will not undertake to copy, trademark or patent the Site, or any portion thereof. You and each Participating Company acknowledge that all or portions of the Site (including the software and methodologies associated with the operation or functioning of the Energy Intelligence Platform) may be copyrighted, trademarked or patented by PowerAdvocate or another party. You and each Participating Company acknowledge that no such act will cause or be construed as causing any portion of the Energy Intelligence Platform to be in the public domain. You and each Participating Company will not, and will not attempt to, modify, reverse engineer, disassemble or decompile the Site, or permit or cause any third party to do so on our behalf. Any changes, advice, modifications or evaluations of or concerning the Site generated or proposed by any party will be the exclusive property of PowerAdvocate and will not give any one other than PowerAdvocate any right, title or interest in or to the Site. All ideas, concepts, know-how or techniques relating to the use, operation or functioning of the Site will be the exclusive property of PowerAdvocate or PowerAdvocate's licensors. You and each Participating Company are granted only a limited, revocable, non-transferable license to print and download portions of any materials created by PowerAdvocate ("PowerAdvocate Materials") and posted on the Site solely for internal, non-commercial use, provided that any copyright notice and any other notices that appear on any such copies are maintained and unmodified. Any other use, copying, redistribution, publication, or retransmission of any portion of any PowerAdvocate Materials on the Site is strictly prohibited without the express written permission of PowerAdvocate. All PowerAdvocate Materials on the Site are, and shall continue to be, owned by PowerAdvocate. Each Participating Company shall also maintain any copyright notice and any other notices that appear on any materials created by any third party and posted on the Site. PowerAdvocate retains all rights to any data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices ("Technical Elements") owned or developed by PowerAdvocate prior to, or independent of, the provision of the Site (and any modifications or enhancements to PowerAdvocate's Technical Elements developed in the course of providing the Site) (collectively, "PowerAdvocate Technical Elements") and PowerAdvocate retains exclusive ownership rights to all PowerAdvocate Technical Elements. PowerAdvocate retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of providing the Site, and, subject to the confidentiality obligations in the separate contracts referenced in Section 8, you and each Participating Company hereby grant to PowerAdvocate a perpetual, worldwide, paid-up license to use, copy, modify and or sublicense, in the course of



PowerAdvocate's business, any Technical Elements acquired or developed as a result of providing the Site.

## 0 Contact Information

"Contact Information" shall mean any and all contact information (name, address, phone numbers, email address) that you provide to PowerAdvocate during registration for the Energy Intelligence Platform or during any other use of the Site. During registration, you shall provide -- and Participating Company shall ensure that its Users provide -- true, accurate, current and complete Contact Information. During registration or any other use of the Site that collects Contact Information, you will ensure that all Contact Information is office or home office contact information and is not private home contact information. PowerAdvocate uses the Contact Information in furtherance of, and consistent with, the Site and otherwise in its normal course of business. By providing your Contact Information, you provide your consent to PowerAdvocate's contacting you by email or telephone in its normal course of business, including to determine your interest in any PowerAdvocate offerings.

## Governing Law and Jurisdiction

This Agreement shall be deemed to have been made and performed entirely in the Commonwealth of Massachusetts, and shall be governed by and construed pursuant to the laws of the Commonwealth of Massachusetts without regard to its provisions regarding the conflicts of laws. You and each Participating Company and PowerAdvocate hereby agree the state and federal courts of Massachusetts shall be the exclusive forum and venue to resolve disputes involving PowerAdvocate and arising out of or relating to these Terms of Use or any use of the Site. By using the Site and thereby agreeing to these Terms of Use, you and each Participating Company consent to personal jurisdiction and venue in the state and federal courts in Massachusetts with respect to all such disputes.

## Amendment

PowerAdvocate may modify this Agreement from time to time by posting the modified Agreement on the Site. Any use of the Site after the posting of the modified Agreement constitutes that user's and that Participating Company's agreement to be bound by such modified version of this Agreement. PowerAdvocate reserves the right to change the Site at its discretion at any time. PowerAdvocate may add or remove features, services or otherwise modify the Site, all without any liability whatsoever.

## 3 Order of Precedence

THESE TERMS OF USE SHALL OVERTAKE OR OVERRIDE ANY OTHER CONTRACTS OR AGREEMENTS THAT YOU OR A PARTICIPATING COMPANY MAY HAVE WITH POWERADVOCATE OR WITH ANY OTHER PARTICIPATING COMPANY. In the event of any conflicting terms under a written contract signed by you or a Participating Company with PowerAdvocate and these Terms of Use, the terms of the written contract will prevail over the conflicting terms in these Terms of Use.

## Miscellaneous

Any notice, report, approval, or consent required or permitted under this Agreement shall be in writing and in the English language. Notices to PowerAdvocate may be sent to Power Advocate, Inc., 179 Lincoln Street, Boston, MA 02111, Facsimile: 857-453-5656, Attention: Daniel P. Sullivan. No failure or delay in exercising any right under this Agreement will operate as a waiver thereof, nor will any partial exercise of any right or power under this Agreement preclude further exercise. If any provision of this Agreement is unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. For all purposes under this Agreement, each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract with third-parties. No agency, partnership, joint venture, employee-employer, or franchisor-franchisee relationship is intended nor created by this Agreement.



## Sourcing Intelligence® Quick Start for Suppliers

PowerAdvocate Sourcing Intelligence enables suppliers to access buyer documents and submit documents over a web-based sourcing platform.

### Logging In

1. Launch a web browser and go to [www.poweradvocate.com](http://www.poweradvocate.com).
2. Click the orange **Login** button.
3. Enter your account **User Name** and **Password** (both are case-sensitive) and click **Login**.
4. Click the **Events** tab if it is not already displayed.

### Dashboard

Your Dashboard lists the events you have been invited to. A line divides currently accessible events from others.

Click to view Supplier Intelligence Dashboard

Click to view Contract Intelligence Dashboard

Buyer filter

Navigation bar

Event / Buyer	Msg	Open	Close	Download Documents	Upload Documents	Commercial	Technical	Pricing
190-cbl-1: 190 First St. Cable/Wiring Electric Power Utility		05/16/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	3	4	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	3	4	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/29/10 4:00 PM EST	1	2	3	4	5

Open & Pending Pre-Bid events

Pending (no Pre-bid) and Closed events

Buying entity

Click to view the event's Status tab

Number of unread/total messages

Click to view the event's Messaging tab

Click numbers to view event tabs

Datashet available

No datashet available

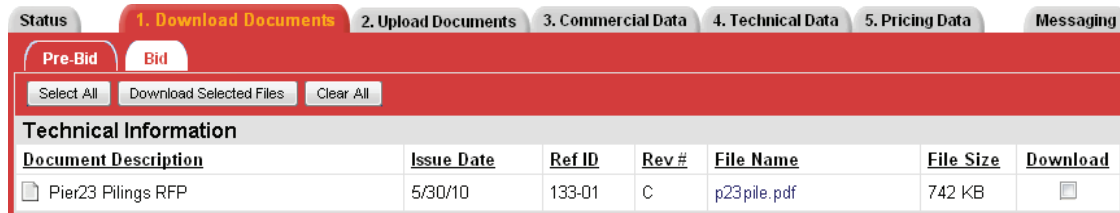
- Click an event name to view its Status tab, which displays a summary of your activity and key event dates. To view specific details of an event, click the buttons **1 2 3 4 5** to view the corresponding tab.
- To return to the Dashboard, click **Dashboard** in the navigation bar at the top of the window.
- An event will not appear on your Dashboard until the Bid Event Coordinator has added you as a participant.

In addition to the Events tab, you may also see:

- An **Opportunities** tab, if a buyer opens an event to all PowerAdvocate suppliers; you can review a high-level event description, and may request full access to the event.
- A **Portals** tab, if a buyer subscribes to PowerAdvocate Supplier Intelligence
- A **Contracts** tab, if a buyer subscribes to PowerAdvocate Contract Intelligence.

## Downloading Bid Packages

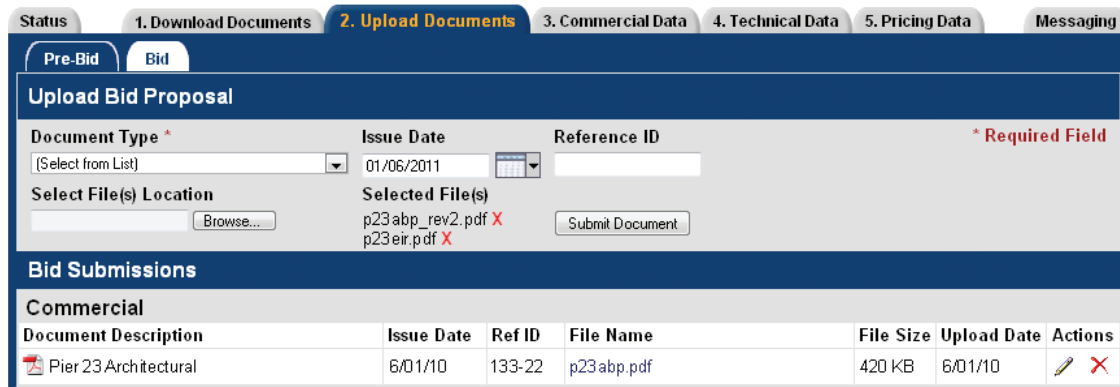
All of the buyer's bid package documents, including specifications and engineering drawings, are centrally stored on the PowerAdvocate platform. To view bid documents, click **1** on your Dashboard or on the **1. Download Documents** tab from within the event.



- You can access the **Bid** sub-tab after the bid opens. You can access Buyer documents before the event from a **Pre-Bid** sub-tab if the buyer requires a Pre-Bid submittal; the buyer must approve your submittal before you can access the **Bid** sub-tab. Likewise, you will see a **Post Bid** sub-tab if the buyer invites you to participate in post-bid negotiations.
- To view or download a document, click the file name; you may be prompted to open or save the file.
- To download multiple documents:
  1. Select the checkbox in the **Download** column for each document you wish to download, or click **Select All**.
  2. Click **Download Selected Files**.
  3. Click **Start** to download a .zip file containing the selected documents.

## Uploading Documents

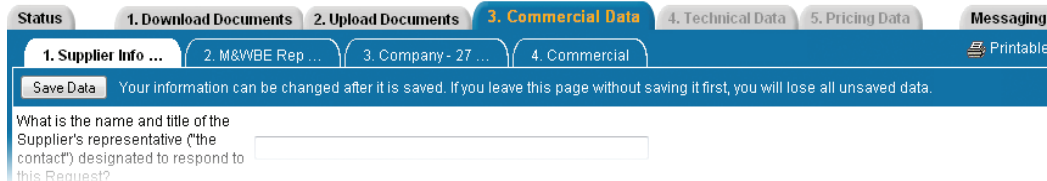
To upload your documents, click **2** on your Dashboard, or on the **2. Upload Documents** tab from within the event.



- As with the **1. Download Documents** tab, you may be able to access and upload documents to **Pre-Bid**, **Bid**, and **Post Bid** sub-tabs as appropriate.
- To upload a document:
  1. Specify a **Document Type**, and edit the Issue Date and Reference ID if necessary.
  2. Click **Browse**, navigate to and select the document, and then click **Open**; multiple files can also be compressed into one .zip file for upload.
  3. Click **Submit Document**.
- Late documents are accepted at the Buyer's option, but are flagged in red text.

## Completing Datasheets

To view the event datasheets, click **3** **4** **5** on your Dashboard or on the **3. Commercial**, **4. Technical**, or **5. Pricing** tabs from within the event. Buttons/tabs are grayed out (e.g., **3**) if the buyer did not create a particular type of datasheet.



- Complete the datasheets over the course of the Bid Open period; datasheets may have multiple sub-tabs.
- Click **Save Data** often to avoid data loss. Once the bid closes, saved data is automatically submitted to the buyer.
- Once the bid closes, you are normally unable to modify datasheets. However, at the buyer's option, you may upload additional documents on the **2. Upload Documents** tab (which are flagged as being late).
- To view a printer-friendly version of a datasheet, click **Printable**.

## Communicating with the Bid Event Coordinator

Buyer companies use one of two communication options in Sourcing Intelligence: Email or PowerAdvocate Messaging.

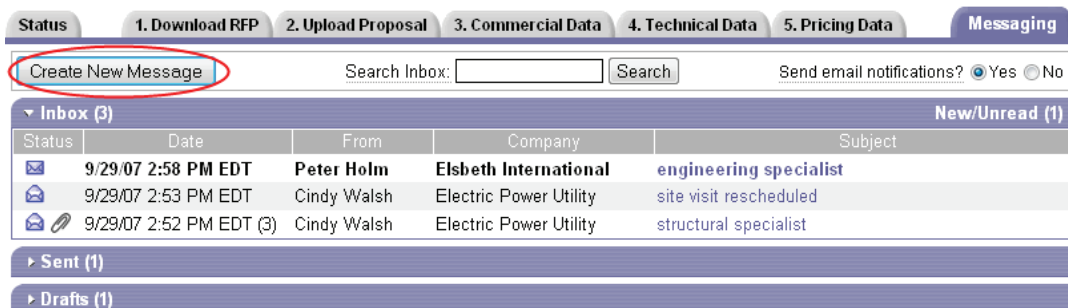
### Email

Click the icon next to the Buyer Contact's name to contact them through your default email application (e.g., Outlook).



### PowerAdvocate Messaging

To send a message to the Bid Event Coordinator (BEC), go to the **Messaging** tab and click **Create New Message**. To read or reply to a message from the BEC, click the message subject.



- You can send messages to the BEC and Buyer team; replies are sent your Supplier team and the Buyer team.
- BECs can message the Buyer team and all Supplier teams at once; Supplier teams can respond but not see other Supplier teams' responses.
- Supplier teams cannot message each other, or see other Supplier teams' correspondence with the Buyer team.
- You can receive external email notification of new PowerAdvocate messages.

## Getting More Information

- Click **Help** on the navigation bar to display the online help.



Dashboard Profile Company **Help** Logout

- Supplier documentation can be downloaded from the online help system.
- Call PowerAdvocate support at 857-453-5800 ( on-Fri, 8 a.m. to 8 p.m. Eastern Time) or email [support@poweradvocate.com](mailto:support@poweradvocate.com).

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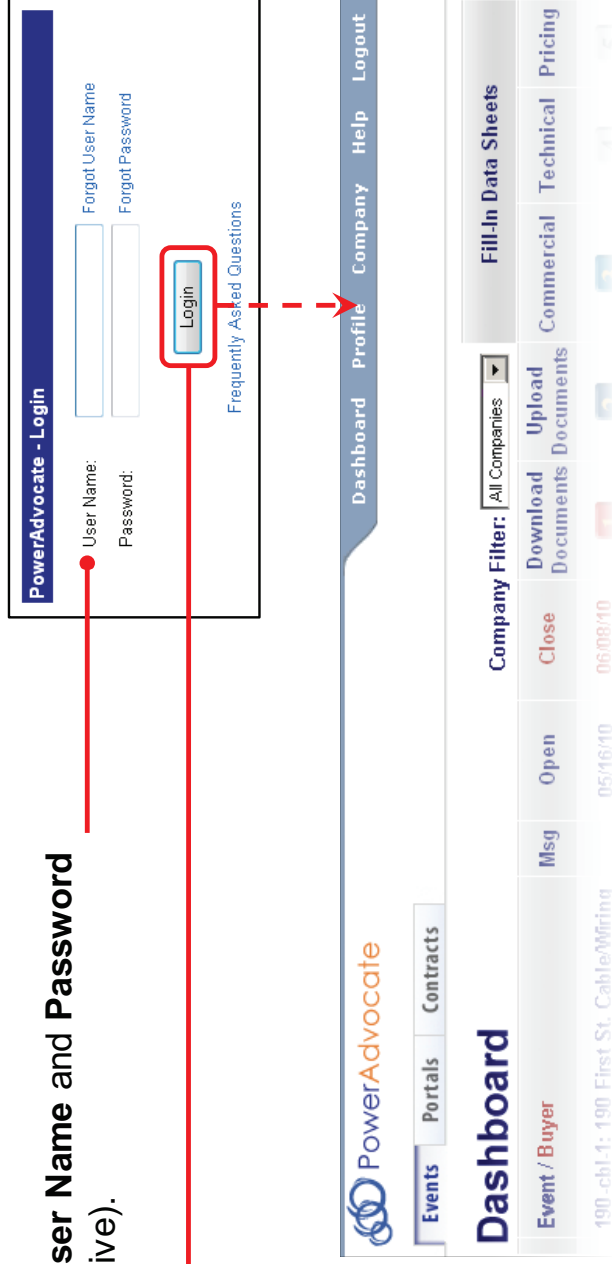
# PowerAdvocate Sourcing Intelligence®



Suppliers' Frequently Asked Questions  
May 2016

## How do I log in to Sourcing Intelligence?

1. Launch a web browser and go to [www.poweradvocate.com](http://www.poweradvocate.com), and then click the orange **Login** button.
2. Enter your account **User Name** and **Password** (both are case-sensitive).
3. Click **Login**.

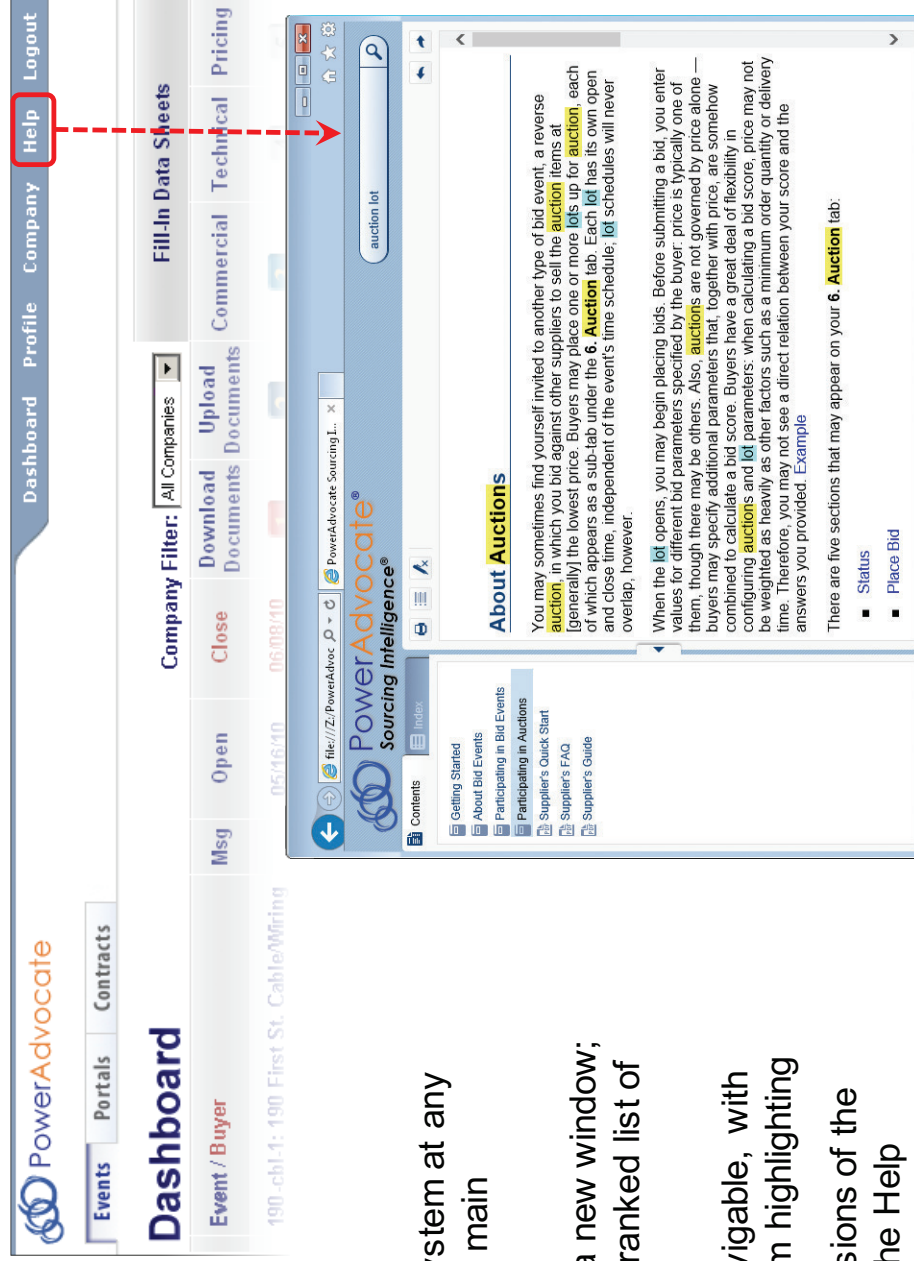


### Tips

- Participating in a Reverse Auction requires logging into PowerAdvocate using IE9 or higher.
- If you received an email from a Bid Event Coordinator inviting you to register, follow the instructions in the email to complete the registration process.
- **Portals** and **Contracts** tabs may appear if buyers also subscribe to Supplier Intelligence or Contract Intelligence, respectively. An **Opportunities** tab may also appear, which is described on page 5.

## How do I get more information if I need it?

You can contact PowerAdvocate Support at [support@poweradvocate.com](mailto:support@poweradvocate.com) or by calling **857-453-5800**, Monday through Friday (excluding U.S. Federal Holidays) from 8:00 AM to 8:00 PM Eastern Time



The screenshot displays the PowerAdvocate Sourcing Intelligence Dashboard. The top navigation bar includes 'Events', 'Portals', 'Contracts', and 'Dashboard'. The 'Dashboard' section is active, showing 'Event / Buyer' and '190-cbl-1-190 First St. Cable Wiring'. A 'Company Filter' dropdown is set to 'All Companies'. The main content area is divided into sections for 'Download Documents', 'Upload Documents', 'Fill-In Data Sheets', 'Commercial', 'Technical', and 'Pricing'. A red dashed box highlights the 'Help' button in the top right corner, with a red arrow pointing to a browser window. The browser window shows the 'About Auctions' page, which contains detailed information about the auction process, including instructions on how to place a bid and how to participate in an auction. The page also includes a 'Contents' sidebar with links to 'Getting Started', 'About Bid Events', 'Participating in Bid Events', 'Participating in Auctions', 'Supplier's Quick Start', 'Supplier's FAQ', and 'Supplier's Guide'.

### Online Help

- You can access the Help System at any time by clicking **Help** on the main navigation bar
- The Help System opens in a new window; use full-text search to get a ranked list of relevant help topics
- The Help System is fully navigable, with features such as search term highlighting
- You can download PDF versions of the documentation from within the Help System



# What information is displayed on my Dashboard?

Your Dashboard displays all bid events to which you have been invited.

Dashboard		Company Filter: All Companies		Fill-In Data Sheets		
Event / Buyer	Msg	Open	Close	Download Documents	Upload Documents	Pricing
190-cbl-1: 190 First St. Cable/Wiring Electric Power Utility		05/16/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/29/10 4:00 PM EST	1	2	5

Open and Pending Pre-Bid events

Pending (not Pre-Bid) and Closed events

Buying entity

Event name/number

The numbers on the Dashboard represent a general workflow, though you can work in any order:

- 1 Download the bid package.
- 2 Upload bid documents, proposals, etc.
- 3 4 5 Fill in online datasheets if present.

Number of unread/total messages; click to access the **Messaging** tab.

## Tips

- If an event is missing a type of datasheet, that number & its corresponding tab are grayed out (e.g., 3).
- Events with links in the **Msg** column use PowerAdvocate Messaging; others use standard email.
- Supplier contacts are invited individually by the buyer

## How do I find other supplier opportunities?

Buyer companies have the option to make their bid events visible to all PowerAdvocate-registered suppliers.

When these opportunities exist, your **Opportunities** tab displays some high-level event information for you to evaluate.

Events		Opportunities				
<b>Opportunities Dashboard</b>						
Event Title	Company	Products / Services	Open Date	Close Date	Accessible	
Actuators	Acme Electric	Controls	08/18/2015 8:00 AM EDT	08/31/2015 4:30 PM EDT		
Next-Gen Boiler Upgrade	Universal Energy	Boiler Components	08/15/2015 8:00 AM EST	12/31/2015 4:00 PM EST		
<b>Description:</b> Looking for a cutting-edge implementation for a green building in the planning stages.						
Project Simulator	Solar Arrays LLC	Construction Services	08/01/2015 8:00 AM EDT	09/07/2015 4:00 PM EDT	Pending	
Site 101 Rough-out	Sheridan Builders	Piping	07/01/2015 9:00 AM EDT	12/31/2015 6:00 PM EST		

To request access to a posted event:

1. Click .
 

A pop-up appears asking you to verify your qualifications. You may also enter Optional Comments to the buyer, if you have something to add.
2. Click **Submit Request**.
 

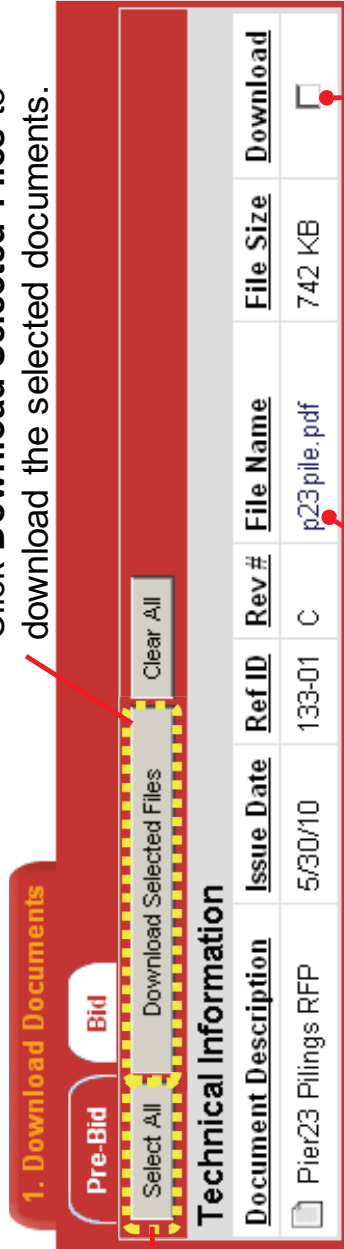
The Accessible column will display Pending until the buyer approves your request. Once approved, the event will appear on your Events tab. If the buyer does not approve your request, the event will be removed from your Opportunities tab.

## How do I access the buyer's bid package?

Once a buyer invites you to participate in a bid event, that event appears on your Dashboard. You can begin downloading the buyer's bid documents after the event opens. From the Dashboard, click **1** to access the **1. Download Documents > Bid** tab, where you can download the buyer's entire bid package, download selected documents, or view individual documents online.

If the buyer invites you to Pre-Bid, you can access documents from the **1. Download Documents > Pre-Bid** tab before the event opens; the buyer must approve your Pre-Bid submittal before you can access the **Bid** sub-tab. Likewise, a **1. Download Documents > Post Bid** sub-tab indicates an invitation to post-bid negotiations.

Click **Download Selected Files** to download the selected documents.



The screenshot shows a web interface with a red header bar. On the left, there are two tabs: 'Pre-Bid' and 'Bid'. The 'Bid' tab is active. Below the tabs, there are two buttons: 'Select All' and 'Download Selected Files'. A red dashed box highlights the 'Download Selected Files' button. To the right of these buttons is a 'Clear All' button. Below this is a section titled 'Technical Information' containing a table with the following data:

Document Description	Issue Date	Ref ID	Rev #	File Name	File Size	Download
Pier23 Piling RFP	5/30/10	133-01	C	p23.pile.pdf	742 KB	<input type="checkbox"/>

Click **Select All** to select all files in the bid package.

Click a document **File Name** to open and view it online

If there are multiple documents, you can selectively download them

### Tip

➤ Selected documents are saved in a .zip file named **BidPackage-nnnn-n.zip** (nnnn-n is a unique ID).

## How do I submit documents to the buyer?

1. Go to the **2. Upload Documents** tab and select the appropriate sub-tab.

2. Select a **Document Type** and enter a brief **Document Description**.

3. Click **Browse**, navigate to your document, and click **Open**.

4. Click **Submit Document**.

**2. Upload Documents**

**Upload Bid Proposal**

Document Type \* [Select from List] Issue Date 01/06/2011 Reference ID \* Required Field

Select File(s) Location [Browse...] Selected File(s) p23\_abp\_rev2.pdf X p23\_eir.pdf X [Submit Document]

**Bid Submissions**

Document Description	Issue Date	Ref ID	File Name	File Size	Upload Date	Actions
Pier 23 Architectural	6/01/10	133-22	p23_abp.pdf	420 KB	6/01/10	X

### Tips

- **Issue Date** and **Reference ID** are optional, though they are helpful for tracking documents.
- You can add, modify (✎), or delete (X) documents at any time before the event closes.
- There is no limit on the number or size of documents that you can upload; multiple files can also be compressed into a .zip archive for upload.
- Late documents, if the buyer opts to accept them, are flagged in red text.

## How do datasheets work?

In addition to your proposal, buyers often request that you complete datasheets as part of your bid package. Datasheets are online forms that allow buyers to collect specific data to tabulate and compare across suppliers.

1. Click one of the datasheet tabs.



2. Fill out the required information in the online form.

3. Click **Save Data**.

### Tips

- Multiple users from the same company cannot simultaneously fill out a datasheet — when one user saves, others' work will be lost.
- Be sure to click **Save Data** before navigating elsewhere, or data may be lost. Save your work often.
- There is no **Submit** button. Data is automatically submitted when the bid closes.
- The buyer may block access to datasheets once the bid closes.

## How do I communicate with the buyer? (1 of 2)

The buyer uses one of the following messaging options in Sourcing Intelligence:

- **Standard email** – Click an  icon to create a message to the buyer contact in your default email application.



**17579 : Widgets and Gizmos**  
Open: 08/19/09 08:00:00 AM EDT Close: 09/15/09 04:00:00 PM EDT  
Buyer Contact: Cathy Walsh 

**Electric Power Utility**  
Time Remaining: 21 days 2 hours 56 mins 5 secs

Status: 1. Download Documents 2. Upload Documents 3. Commercial Data 4. Technical Data 5. Pricing Data

1. Supplier Info ... 2. M&WBE Rep ... 3. Company - 27 ... 4. Commercial

Save Data Your information can be changed after it is saved. If you leave this page without saving it first, you will lose all unsaved data. 

- **PowerAdvocate Messaging** – See the following slide.

# How do I communicate with the buyer? (2 of 2)

## To create a message in PA Messaging:

1. Click the event's Messaging tab or the link in the Msg column on your Dashboard.
2. Click **Create New Message**.

The screenshot shows the PA Messaging interface. At the top, there are navigation tabs: Status, 1. Download RFP, 2. Upload Proposal, 3. Commercial Data, 4. Technical Data, 5. Pricing Data, and Messaging. A red circle highlights the 'Create New Message' link in the 'Status' tab. Below the tabs is a search bar for the 'Inbox (3)'. The inbox list contains three messages:

Status	Date	From	Company	Subject
	9/29/07 2:58 PM EDT	Peter Holm	Eisbeth International	engineering specialist
	9/29/07 2:53 PM EDT	Cindy Walsh	Electric Power Utility	site visit rescheduled
	9/29/07 2:52 PM EDT (3)	Cindy Walsh	Electric Power Utility	structural specialist

A red dashed arrow points from the 'Create New Message' link to the 'Create Message' dialog box. The dialog box contains the following information:

**Create Message**

To: Cindy Walsh, Electric Power Utility (Bid Event Coordinator)  
 Cc: Electric Power Utility Buyer Team Members, Eisbeth International Bid Team Members  
 From: Eisbeth Plenoit, Eisbeth International  
 Date: 10/20/07 2:13 PM EDT  
 Subject: site visit rescheduled

Message: [Could we reschedule the Substation #63 visit to 3:30pm?]

Note: Maximum message length is 3000 characters.  
 Attachments: Add Attachment

Buttons: Send, Save Draft, Close

Below the dialog box, the 'View Message' window is shown for the selected message:

**View Message**

Subject: site visit rescheduled

From: Cindy Walsh, Electric Power Utility  
 To: Eisbeth International Bid Team  
 Cc: Electric Power Utility Buyer Team  
 Date: 10/30/07 9:46 AM EDT  
 Subject: site visit rescheduled

Message: Are there any questions we need to address at the site visit? -- Cindy

Attachments: site prep questions

Buttons: Reply, Close

## To view a message:

- Click the message subject or status icon ( / )

## Tips

- New messages are sent to the Bid Event Coordinator and copied to the Buyer and Supplier Teams.
- Messages/file attachments are embedded within an event, and cannot be viewed outside of that event.
- Messages are sent to entire teams; one-to-one messaging is not allowed.
- You can choose to receive [external] email notifications of new event-related messages.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix F – Mutual Confidentiality and  
Non-Disclosure Agreement*



**Maui  
Electric**



**APPENDIX F**  
**MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**  
Independent Power Producers – (“IPPs”)

This Mutual Confidentiality and Non-Disclosure Agreement (this “Agreement”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) between [INSERT NAME OF IPP], a [State of incorporation/organization] [type of entity] (“IPP”) and [SELECT ONE OR ALL: Hawaiian Electric Company, Inc./Maui Electric Company, Limited/Hawai‘i Electric Light Company, Inc.] (the “Company”) [Note – if selecting all companies, change the defined term (the “Company”) to (the “Companies”) and replace all references in this document to the “Company” to the “Companies”], a Hawai‘i corporation (“Company”). In consideration of the mutual promises contained in this Agreement, including the provision of Confidential Information (as defined below) by either party to the other hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Background

The Company has or intends to issue a Request for Proposals (“RFP”) for renewable energy generation. The IPP has or intends to propose a nominal [ ] MW, [TYPE OF PLANT] plant located at [LOCATION] on the island of [NAME OF ISLAND], State of Hawai‘i (“Proposal”).

In connection with the IPP’s Project, the Company may conduct an interconnection requirements study (“IRS”) to establish the requirements for interconnection of the IPP’s proposed renewable energy generation facility to the Company’s electric grid. The RFP process may also result in the award of a potential power purchase agreement, the terms of which must be negotiated and agreed upon by the parties (“PPA Negotiations”). For purposes of this Agreement the term “Project” refers to the RFP, Proposal and potential IRS and PPA Negotiations.

In order to evaluate the Project, either party may from time to time provide to the other party certain Confidential Information, as defined herein. The parties are willing to provide such Confidential Information to each other upon the terms and conditions of this Agreement.

2. Confidential Information

Except as set forth in Section 3 below, “Confidential Information” means all non-public, confidential or proprietary information disclosed by either party (the “Provider”) to the other party (a “Recipient”) its affiliates and its and their directors, officers, employees, agents, advisors, consultants (including, without limitation, financial advisors, counsel and accountants) and controlling entities or individuals (collectively, “Representatives”) whether disclosed orally or disclosed or accessed in written, electronic or other form of media, and whether or not marked or otherwise identified as “confidential,” including, without limitation:

(a) all information concerning the Provider and its affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, designs, processes, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, business, marketing, development, sales and other commercial information and strategies;

(b) information concerning the Company's generation, transmission, and distribution systems (e.g., engineering and operating characteristics of the Company's transmission lines and substations) ("Critical Infrastructure Confidential Information");

(c) the Provider's unpatented inventions (whether or not they are patentable), ideas, methods and discoveries, techniques, formulations, development plans, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(d) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(e) any third-party confidential information included with, or incorporated in, any information provided by the Provider to the Recipient or its Representatives; and

(f) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials ("Notes") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

### 3. Exclusions from Confidential Information

Except as required by applicable federal, state, or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives; provided, however, that Confidential Information shall not be disqualified as Confidential Information (i) merely because it is embraced by more general or generic information which is in the public domain or available from a third party, or (ii) if it can only be reconstructed from information taken from multiple sources, none of which individually shows the whole combination (with matching degrees of specificity);

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a contractual or other obligation to the Provider;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Provider pursuant to this Agreement;

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider's Confidential Information; or

(e) was or is learned or established entirely from public sources, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider's Confidential Information.

The parties acknowledge and understand that the confidentiality obligations of this Agreement apply only to the Confidential Information shared in connection with the Project. The parties may share other information with each other under other agreements, provisions or understandings which are not related to the Project. Such information sharing shall be subject to the provisions of the agreements and confidentiality provisions associated thereto and this Agreement shall not be construed to infringe upon or apply to such agreements or provisions.

#### 4. Non-Disclosure of Confidential Information

Unless otherwise agreed to in writing by the Provider, the Recipient agrees as follows:

(a) except as required by law, not to disclose or reveal any Confidential Information to any person or entity other than its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know the Confidential Information for the purpose of evaluating the Project.

(b) not to use Confidential Information for any purpose other than in connection with its evaluation of the Project or the consummation of the Project.

(c) except as required by law, not to disclose to any person or entity (other than those of its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know for the purpose of evaluating the Project) any information about the Project, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Proprietary Information has been made available to the Recipient or its Representatives.

(d) to use diligent efforts to safeguard and protect the confidentiality of the Confidential Information, including, at minimum, implementing the same commercial measures that the Recipient uses to protect its own confidential information. Before disclosing the Confidential Information to any Representative, the Recipient will inform such Representative of the confidential nature of such information, their duty to treat the Confidential Information in accordance with this Agreement and shall ensure that such Representative is legally bound by the terms and conditions of this Agreement or subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement.

(e) Any provision herein to the contrary notwithstanding, the Company may disclose Confidential Information to the State of Hawai'i Public Utilities Commission ("Commission") and/or the State of Hawai'i Division of Consumer Advocacy (including their respective staffs) provided that such disclosure is made under a protective order entered in the docket or proceeding with respect to which the disclosure will be made or any general protective order entered by the Commission.

5. Required Disclosure and Notice

If the parties or any of their Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, court order, or similar process) to disclose any of the Confidential Information, the compelled party shall undertake reasonable efforts to provide the other party with notice within three (3) business days of such requirement or advice prior to disclosure so that the other party may (a) seek a protective order or other appropriate remedy, (b) consult with the other party with respect to the compelled party taking steps to resist or narrow the scope of such requirement or advice, and/or (c) waive compliance, in whole or in part, with the terms of this Agreement. If such protective order or other remedy is not obtained, or the other party waives compliance with the provisions hereof, the compelled party agrees to furnish only that portion of the Confidential Information which it is legally required to so furnish and, at the request of the other party, to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, it being understood that such reasonable efforts shall be at the cost and expense of the party whose Confidential Information has been sought. In any event, neither the IPP nor any of its Representatives will oppose action by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

6. Return or Destruction of Confidential Information

At any time during or after the term of this Agreement, at the Provider's written request, and in any event, upon the termination of the Agreement, the Recipient shall certify within ten (10) business days that it has destroyed all Confidential Information by using industry standard data elimination methods used to prevent unauthorized disclosure of information, and for

Personally Identifiable Information (defined as personally identifiable information of individuals, and any information that may be used to track, locate or identify such individuals (or which is otherwise protected by privacy laws), including any automatically generated information (such as IP addresses and other customer identifiers) that identifies or is unique or traceable to a particular individual or computer or other electronic device capable of accessing the internet, including without limitation, name, address, telephone number, social security number, credit card account numbers, email addresses, user identification numbers or names and passwords, which is disclosed to the Recipient or its subcontractors in connection with this Agreement by the Provider, which products and services are used or intended to be used for personal, family or household purposes), such methods shall be consistent with Hawaii Revised Statute 487-R; provided, however, that with respect to Confidential information in tangible form, the Recipient may return such Confidential Information to the Provider within ten (10) business days in lieu of destruction. The Recipient's sole obligation with respect to the disposition of any Notes shall be to redact or otherwise expunge all such Confidential Information from such Notes and certify to the Provider that it has so redacted or expunged the Confidential Information. Notwithstanding the foregoing, with respect to any Confidential Information stored in Recipient's disaster recovery backups or other electronic archives, Recipient is not required to destroy such Confidential Information if it would impose a material cost or burden; provided, however, such Confidential Information shall be destroyed when such archives are destroyed in accordance with Recipients records retention policies.

7. Authority

Each party represents and warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement, understands it and agrees to be bound by it.

8. No Representations or Warranties

Neither the Provider nor any of its Representatives make any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information disclosed to the Recipient hereunder, and the Recipient agrees that it is not entitled to rely on the accuracy or completeness of any Confidential Information. Neither the Provider nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or arising from the use of any Confidential Information or for any errors therein or omissions therefrom. Notwithstanding the foregoing, the Recipient shall be entitled to rely solely on such representations and warranties regarding Confidential Information as may be made to it in any final agreement relating to the Project, subject to the terms and conditions of such agreement.

9. No Other Obligations

Neither this Agreement nor the disclosure of the Confidential Information shall result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise, to purchase any products or services from the other, or to require either party to disclose any further information to the other. Nothing in this

Agreement shall be deemed to constitute either party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties. Either party may offer products or services which are competitive with products or services now offered or which may be offered by the other. Subject to the express terms and conditions of this Agreement, neither this Agreement nor discussions and/or communications between the parties will impair the right of either party to develop, make, use, procure, and/or market any products or services, alone or with others, now or in the future, including those which may be competitive with those offered by the other. Whether or not the Project is consummated, neither party shall issue a press release or release any information to the general public concerning such transaction or the absence thereof without the express prior written consent of the other, and the parties agree that neither party will use the other's name whether by including reference to the other in any press release, list of customers advertising that its services are used by Company or otherwise, without written authorization by the respective party's authorized representative.

10. Property Rights in Confidential Information

All Confidential Information shall remain the sole and exclusive property of the Provider and nothing in this Agreement, or any course of conduct between the parties shall be deemed to grant to the Recipient any license or rights in or to the Confidential Information of the Provider, or any part thereof. Unless otherwise expressly agreed in a separate license agreement, the disclosure of Confidential Information to the Recipient will not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Confidential Information or to any patents or patent applications of the Provider.

11. Publicly Traded Company

The IPP acknowledges that the Company's holding company is a publicly traded company, and that Confidential Information of the Company may constitute material, non-public information with respect to the Company. The IPP understands, and will advise its Representatives to whom Confidential Information of the Company is disclosed, of the restrictions imposed by the United States securities laws on (a) the purchase or sale of securities by any person in possession of material, non-public information with respect to such securities, and (b) the communication of material, non-public information with respect to securities to a person who may purchase or sell such securities in reliance upon such information.

12. Remedies

(a) Each party acknowledges and agrees that any breach or threatened breach of this Agreement may give rise to an irreparable injury to the Provider or its Representatives, for which compensation in damages is likely to be an inadequate remedy. Accordingly, in the event of any breach or threatened breach of this Agreement by the Recipient or its Representatives, the Provider shall be entitled to seek equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

(b) In the event that the Recipient learns of dissemination, disclosure, or use of the Confidential Information which is not permitted by this Agreement, the Recipient shall notify the

Provider immediately in writing and shall use reasonable efforts to assist the Provider in minimizing damages from such disclosure. Such remedy shall be in addition to and not in lieu of any other rights or remedies available to the Provider at law or in equity.

13. Cumulative Remedies

No rights or remedy herein conferred upon or reserved to either party hereunder is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

14. Notice

(a) By delivering written notice, either party may notify the other that it no longer wishes to receive or provide Confidential Information. Any further information received or provided by the party who received such notice following receipt of such notice, shall not be subject to the protection of this Agreement.

(b) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail Addresses set forth below (or to such other addresses and E-mail addresses as a party may designate by notice to the other party):

**(1) Company:**

By Mail:

[Choose: Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc., Maui Electric Company, Limited]  
P.O. Box 2750  
Honolulu, Hawaii 96840  
Attn: [TITLE, DEPARTMENT]

Delivered By Hand or Overnight Delivery:

[Choose: Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc., Maui Electric Company, Limited]  
[STREET ADDRESS]  
[City, State, Zip Code]  
Attn: [TITLE, DEPARTMENT]

By E-mail:

[Choose: Hawaiian Electric Company, Inc., Hawai'i Electric  
Light Company, Inc., Maui Electric Company, Limited]

Attn: [TITLE, DEPARTMENT]

Email: \_\_\_\_\_

With a copy to:

By Mail:

[Choose: Hawaiian Electric Company, Inc., Hawai'i Electric  
Light Company, Inc., Maui Electric Company, Limited]

Legal Department

P.O. Box 2750

Honolulu, Hawaii 96840

Delivered By Hand or Overnight Delivery:

[Choose: Hawaiian Electric Company, Inc., Hawai'i Electric  
Light Company, Inc., Maui Electric Company, Limited]

American Savings Bank Tower

1001 Bishop Street, Suite 1100

Honolulu, Hawaii 96813

Attn: Legal Department

By E-mail:

[Choose: Hawaiian Electric Company, Inc., Hawai'i Electric  
Light Company, Inc., Maui Electric Company, Limited]

Legal Department

Email: [legalnotices@hawaiianelectric.com](mailto:legalnotices@hawaiianelectric.com)

(2) [Purchaser][Vendor][Supplier]

By Mail:

[INSERT ADDRESS/CONTACT]



Delivered By Hand or Overnight Delivery:

[INSERT ADDRESS/CONTACT]

By E-mail:

[INSERT ADDRESS/CONTACT]

With a copy to:

By Mail:

[INSERT ADDRESS/CONTACT]

Delivered By Hand or Overnight Delivery:

[INSERT ADDRESS/CONTACT]

By E-mail:

[\[INSERT ADDRESS/CONTACT\]](#)

15. No Waiver

Except as otherwise provided in this Agreement, no delay or forbearance of a party in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.

16. Governing Law

This Agreement is made under, governed by, construed and enforced in accordance with, the laws of the state of Hawaii. Any action brought with respect to the matters contained in this Agreement shall be brought in the federal or state courts located in the State of Hawaii. Each party agrees and irrevocably consents to the exercise of personal jurisdiction over each of the parties by such courts and waives any right to plead, claim or allege that the State of Hawaii is an inconvenient forum or improper venue. Notwithstanding the foregoing, Company, at its option, may elect to submit any such dispute to binding arbitration pursuant to the commercial arbitration rules of Dispute Prevention & Resolution, Inc. or the American Arbitration Association then in effect in which case the parties agree that any alternative dispute resolution shall take place in the State of Hawaii.

17. Attorneys' Fees and Costs

If there is a dispute between the parties and either party institutes a lawsuit, arbitration, mediation or other proceeding to enforce, declare, or interpret the terms of this Agreement, then the prevailing party in such proceeding shall be awarded its reasonable attorneys' fees and costs.

18. Assignment Prohibited

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns. Neither party shall have the right to assign any of its rights, duties or obligations under this Agreement, by operation or law or otherwise, without the prior written consent of the other party. Any purported assignment in violation of this section shall be null and void.

19. No Third Party Beneficiaries

Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties and their successors and permitted assigns.

20. Entire Agreement

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior and contemporaneous agreements, understandings or undertakings, oral or written with respect to the subject matter. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via by the Party against whom waiver is asserted.

21. Term and Survival

This Agreement shall remain in full force and effect for a period of two (2) years from the Effective Date. All confidentiality obligations within this agreement shall survive following expiration or termination of this Agreement.

22. Severability

If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both parties notwithstanding any such aforesaid invalidity or unenforceability.

23. Negotiated Terms

The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement.

24. Counterparts and Electronic Signatures

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that this Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by E-mail or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative, all as of the Effective Date.

[Select: HAWAIIAN ELECTRIC COMPANY, INC. or HAWAI'I ELECTRIC LIGHT COMPANY, INC. or MAUI ELECTRIC COMPANY, LIMITED]

(“Company”)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

[Insert Name of IPP]

\_\_\_\_\_  
(“IPP”)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix G – Description of Available Sites*



**Maui  
Electric**

**MAUI ELECTRIC  
FIRM RENEWABLE DISPATCHABLE GENERATION RFP  
DESCRIPTION OF AVAILABLE SITES**

**Company Owned Site**

A Company-owned Site, referred to as the Waena site is being offered to Proposers for their consideration. The Waena site consists of 65.7 acres located along Pulehu and Waiko roads in central Maui (TMK 3-8-03:23 and 3-8-03:24). See Exhibits A & B. The site is zoned Heavy Industrial.

The Company Site is currently vacant land owned by the Company. Up to 15 acres has been allocated for the firm dispatchable Facility and the location at Waeana is shown in Exhibit C. Proposer shall only be permitted to lease as much acreage as is necessary for its project. Additional acreage shall not be available and Proposers may only use the available land for its project and for no other uses. The current plan anticipates that the Company Site will be subdivided and any Proposer proposing to use a subdivided lot shall be required to execute a ground lease for the site coterminous with the term of the PPA. An access easement for access to the subdivided lot from Pulehu Road shall be provided. Proposer shall be required to pay for all expenses to subdivide the lot and ongoing prorata maintenance and other charges for such access road and any other services provided as part of the ground lease. Proposer shall be responsible, at its sole cost and expense, for all other site improvements, utilities, permits and other required infrastructure and regulatory requirements necessary for use of the site for Proposer's project (see Appendix K).

**Land Request for Information**

On December 12, 2016, the Hawaiian Electric Companies issued a Land Request for Information ("Land RFI") seeking information on available land for potentially siting future utility scale renewable energy projects on the islands of O'ahu, Maui, Moloka'i, Lana'i, and Hawai'i. Information from responding landowners is available upon request by following the instructions at <http://mauielectric.com/landrfi>

This information is being provided for proposers' consideration only. Project proposals submitted in response to this RFP are not required to be sited at a location identified through the Land RFI. Maui Electric also makes no representations as to the suitability of the listed sites for renewable energy production with regard to resource quality, interconnection constraints, zoning and permitting issues, community support, or other issues. Proposers should perform their own evaluation of these factors in determining whether a site is suitable for renewable energy project development. After further evaluation, proposers that are interested in any of the identified Land RFI parcels are invited to engage in further discussions directly with landowners to negotiate any required rights to use the property.

Additionally, the following links to a few publicly available resources relating to renewable energy project siting and development from the Hawaii State Energy Office are being provided for use at proposers' sole discretion:

### **Project Permitting Assistance and Resources**

<http://energy.hawaii.gov/developer-investor/project-permitting-assistance-and-resources>

Provides numerous resources to support more informed and appropriate project siting and permitting, including the Permit Guide, Renewable Energy Permitting Consultants, DOH, ePermitting Portal, Renewable EnerGIS, Permitting Wizard, and the Renewable Energy Projects Directory.

### **Hawaii Clean Energy Programmatic Environmental Impact Statement**

<http://energy.hawaii.gov/testbeds-initiatives/hawaii-clean-energy-peis/peis-overview>

The Hawaii Clean Energy Programmatic Environmental Impact Statement (PEIS) analyzes, at a programmatic level, the potential environmental impacts of clean energy activities and technologies in the following clean energy categories: (1) Energy Efficiency, (2) Distributed Renewables, (3) Utility-Scale Renewables, (4) Alternative Transportation Fuels and Modes, and (5) Electrical Transmission and Distribution

### **Hawaii Statewide GIS Program**

<http://planning.hawaii.gov/gis/>

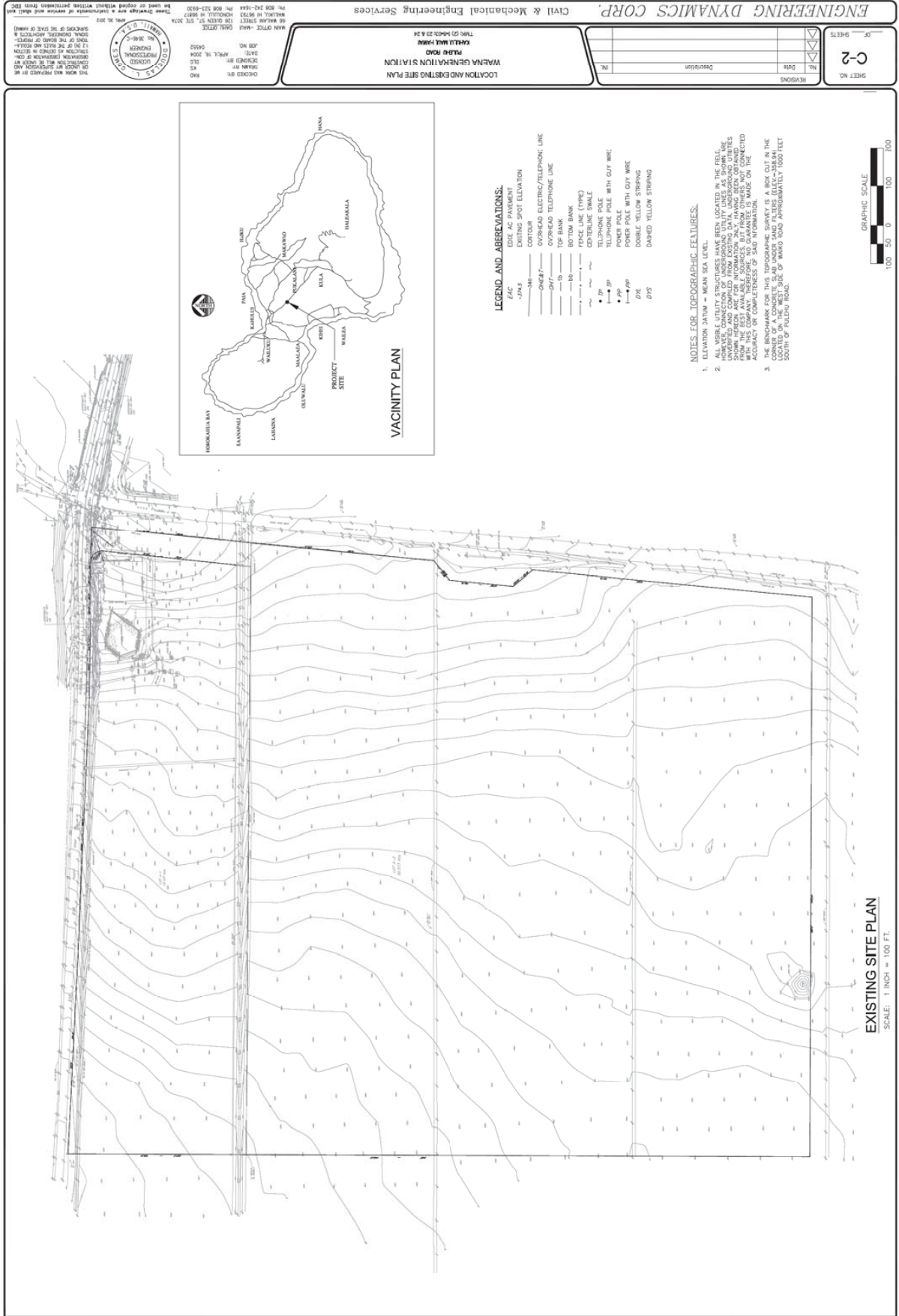
Provides Hawaii GIS data and other resources to support site identification and analysis

### **Aloha Aina: A Framework for Biocultural Resource Management in Hawai'i's Anthropogenic Ecosystems**

[https://nmshawaiihumpbackwhale.blob.core.windows.net/hawaiihumpbackwhale-prod/media/archive/council/pdfs/aloha\\_aina.pdf](https://nmshawaiihumpbackwhale.blob.core.windows.net/hawaiihumpbackwhale-prod/media/archive/council/pdfs/aloha_aina.pdf)

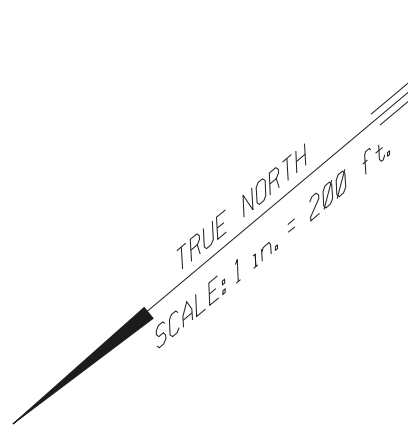
A framework developed by the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council to integrate Native Hawaiian and Western scientific management approaches toward ecosystem management. While intended for the Sanctuary, this document provides useful insight into successful collaboration in Hawaii.

EXHIBIT A

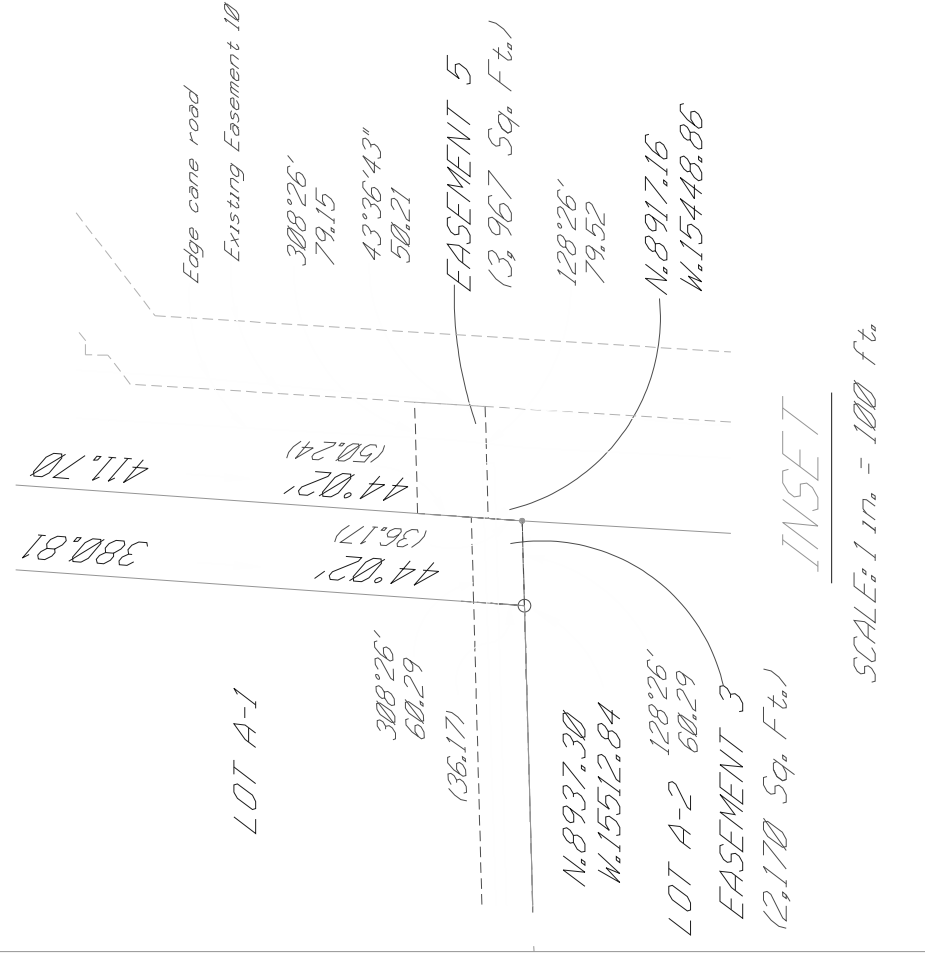




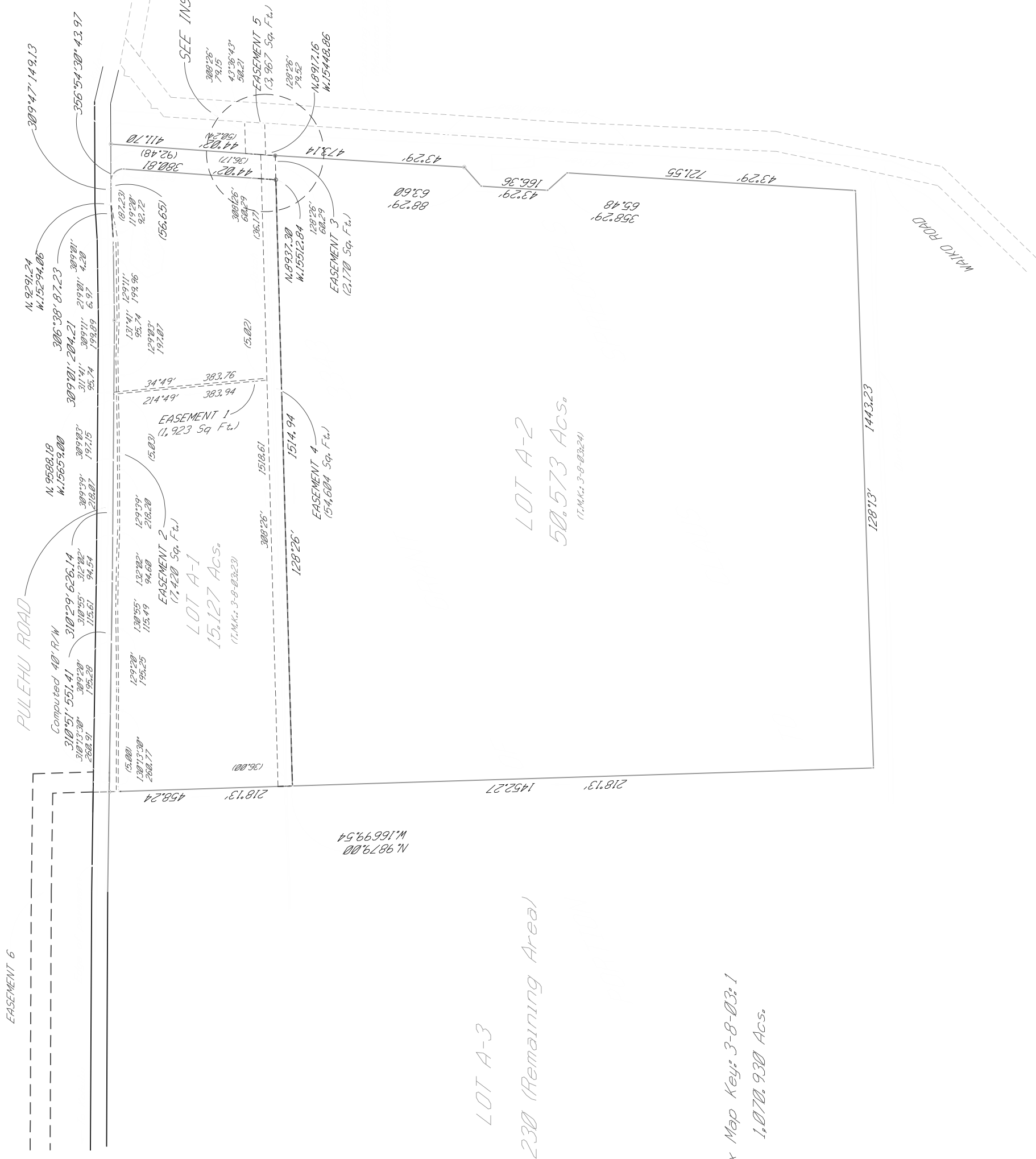
# EXHIBIT B



Tax Map Key: 3-8-03-4  
A & B-Hawaii, Inc. - Owner



INSET  
SCALE: 1 in. = 100 ft.



LOT A-3

1,005.230 (Remaining Area)

Tax Map Key: 3-8-03-1  
1,070,930 Ac.

Tax Map Key: 3-8-03-2  
A & B-Hawaii, Inc. - Owner

LOCATION MAP  
Scale: 1 in. = 2000 ft.

## NEW CENTRAL MAUI GENERATION SITE SUBDIVISION

SUBDIVISION OF PARCEL 1 OF TAX MAP KEY: (2) 3-8-03 INTO LOTS A-1, A-2, AND A-3 AND DESIGNATION OF EASEMENTS 1 TO 5, INCLUSIVE

Being a portion of Grant 3343 to Claus Spreckels

WAILUKU, MAUI, HAWAII  
OWNER: A & B-Hawaii, Inc.

SCALE: 1 in. = 200 ft.

Prepared for: Maui Electric Company, Limited

Prepared by: A & B Properties, Inc.  
Honolulu, Hawaii

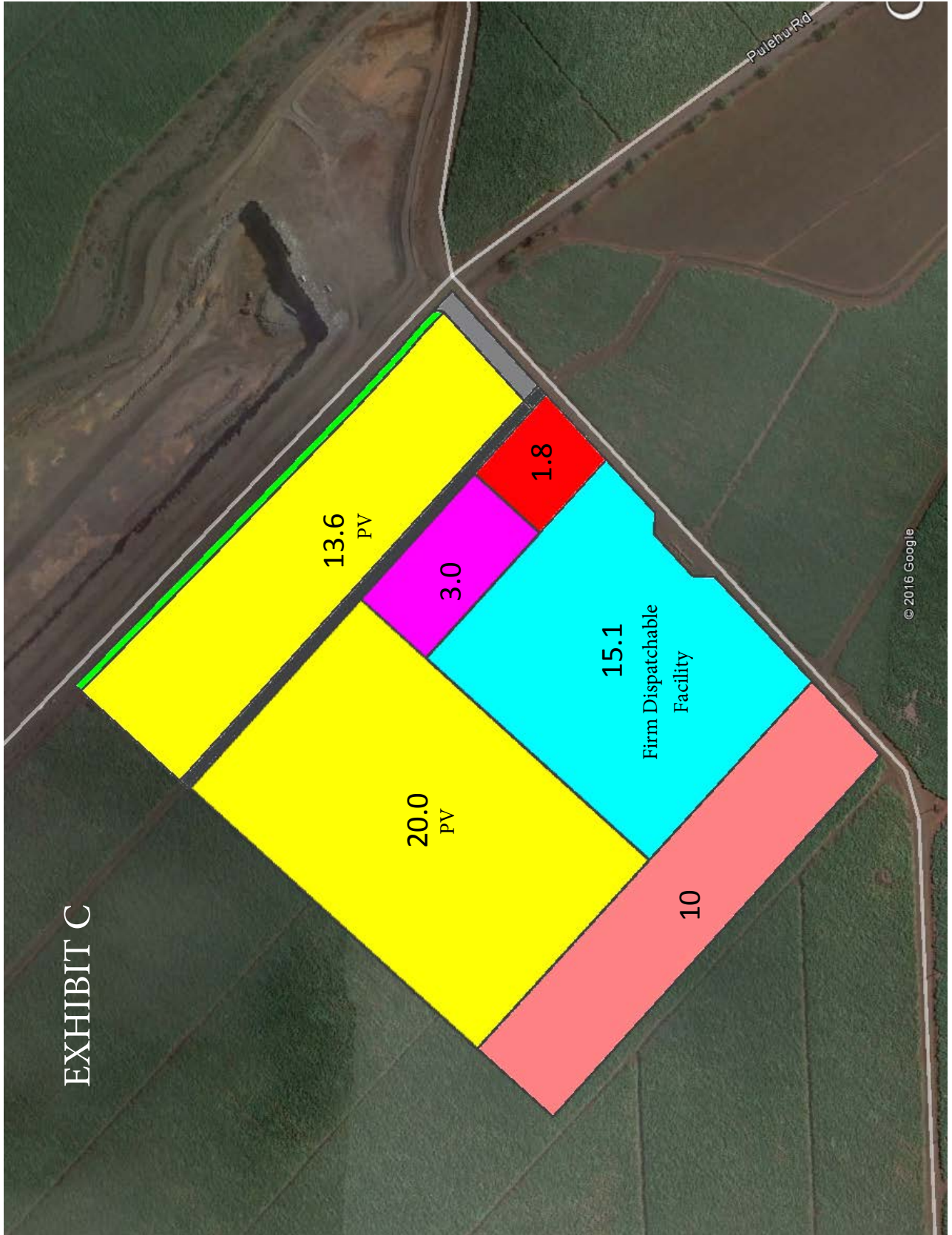
This work was prepared by me or under my supervision.

Tax Map Key: (2) 3-8-03-1, 23 & 24

Registered Professional Land Surveyor No. LS-7633

- NOTES:
1. Azimuths and coordinates referred to Government Survey Triangulation Station "PUU O KOHA";
  2. Origin of actual field survey from Government Survey Triangulation Station "PIL TRATION";
  3. Owners of adjoining parcels taken from Tax Map Records;
  4. Boundary corners marked with 1/2 inch pipe unless noted otherwise;
  5. Easements 1 and 2 are for water-line purposes in favor of Hawaiian Commercial and Sugar Company;
  6. Easements 3 and 4 are for access and water-line purposes in favor of Hawaiian Commercial and Sugar Company;
  7. Right-of-Way for Pulehu Road based on field location of existing center-line pavement and to be used only for this survey;
  8. Easement 5 is for electrical transmission line purposes in favor of Maui Electric Company, Limited.

DATE: March 26, 1996  
REVISED: August 6, 1996  
REVISED: September 11, 1996



**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix H – (Reserved)*



**Maui  
Electric**

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix I – Interconnection Facilities and  
Cost Information*



**Maui  
Electric**

APPENDIX I

INTERCONNECTION FACILITIES AND COST INFORMATION

Tariff Rule No. 19, approved by the PUC, establishes provisions for Interconnection and Transmission Upgrades (see Appendix K). The tariff provisions are intended to simplify the rules regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. Tariff Rule No. 19 will be utilized as the basis for addressing interconnection and transmission upgrades for any projects developed through this RFP. Bidders will comply with the terms and conditions as specified therein.

To assist Bidders in assessing the impacts of location on potential projects, the per unit cost figures provided in the tables below are to be used to provide an approximate estimated cost for interconnecting, including substation, communications, and transmission or distribution line cost to the existing Maui Electric System. The per unit cost figures below should not be used to create a detailed project estimate. A detailed project estimate typically requires a certain level of engineering to assess project site conditions and to factor in other parameters specific to the project.

The Bidder should identify the components assumed for their project and the quantity assumed for each. Each table below provides notes on the assumptions for each of the unit cost estimates. If a Bidder's project requirements are different than what is assumed in the notes, the Bidder should identify each difference and provide an estimated additional cost or savings resulting from those different requirements.

**2.1 Transmission & Distribution Line Interconnection Costs**

<b>Component</b>	<b>Description</b>	<b>Cost per Mile</b>
1	New 69kV Overhead line (accessible 500' spans)	\$1,700,000
2	New 23kV Overhead line (accessible 250' spans)	\$1,100,000
3	69kV overbuild on existing 23kV line (accessible 500' spans)	\$2,100,000
4	23kV overbuild on existing 12kV line (accessible 250' spans)	\$1,100,000
5	New 69kV Underground line Dielectric Cable	\$16,300,000

**Notes:**

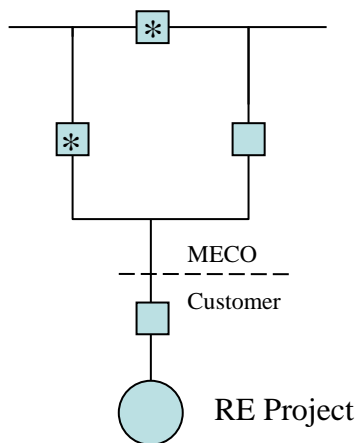
1. New 69kV Overhead line (accessible) consists of 75' height concrete embedded steel poles (66' above / 9' below grade).
2. New 23kV Overhead line (accessible) consists of 55' height wood poles.
3. 69kV Overbuilt line (accessible) consists of 75' height steel poles steel poles on concrete pier foundations and assumes the removal of the existing 23kV poles.
4. 23kV Overbuilt line (accessible) consists of 65' height wood poles with 12kV distribution and HTCOM facilities attached. Intermediate poles and joint pole credits included in the cost.
5. Component 5 - based on 1500 KCM AL 69kV (800A) cable includes duct bank and MH installation.
6. Note: Exclusions to these rough costs are as follows but not limited to:
  - a. Development of the PUC application/proceedings timeline
  - b. State or County right-of-way permitting and SMA
  - c. Environmental studies cost
  - d. Survey proposed line extension route
  - e. Easement/Land Issues if discovered in the course of final design
  - f. Archaeological survey and monitoring cost/duration (if needed)
  - g. Clearing/grading along power line corridor and access road
  - h. Final design adjustments required to negotiate terrain, physical landmarks, existing utilities and access
  - i. Construction of permanent roadways/truck access
  - j. Helicopter services
  - k. Traffic Control
  - l. Removals (MECO & HTCOM as applicable)
  - m. Salvage and depreciation credits
  - n. Street lights
  - o. Delays due to weather and material acquisitions
7. All estimates are provided in 2017 dollars.

**2.2 Substation Interconnection Costs** (Please Note: Requirements for Variable and Firm projects may differ)

**2.2.1 Substation Interconnection Costs VARIABLE Projects**

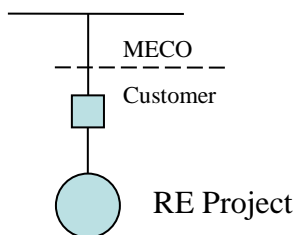
**2.2.1.1 Substation (69kV) Interconnection Costs VARIABLE Projects**

**2.2.1.1.1 69kV On a Network Circuit**



Component	Description	Cost
1	*3 – 69kV circuit breaker ring bus (MECO)	\$6,100,000

**2.2.1.1.2 69kV On a Radial Circuit (TO BE EVALUATED ON A CASE BY CASE BASIS)**



Component	Description	Cost
N/A	MECO 69kV circuit breaker not required	N/A

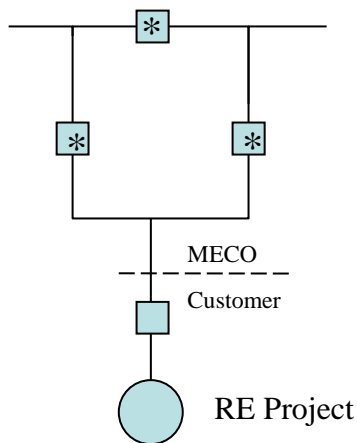
**Notes:**

1. Substation land that is received has been graded per Maui Electric’s civil and structural requirements. No costs for excavation and fill are included in the estimates.

2. Permits are not included in indicated costs.
3. Costs are in 2017 dollars.
4. Estimate does not contain any of the following costs:
  - a. Telecommunication infrastructure
  - b. Relay Coordination Study
  - c. Land Cost
  - d. Environmental Assessment/Environmental Impact Statement
  - e. Project Management
  - f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical line protection relaying requirements.
6. Control house and local SCADA equipment are included in cost estimates.
7. The estimate is for a switching station, which does not contain any transformers.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 30MW due to system reliability requirements. This may include limiting the project size on radial circuits or splitting the project capacity and installing additional breaker(s) in the ring bus on network circuits.

**2.2.1.2 Substation (23kV) Interconnection Costs VARIABLE Projects**

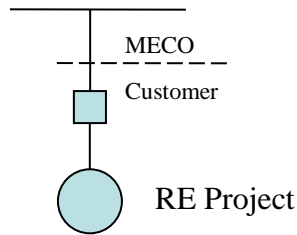
**2.2.1.2.1 23kV On a Network Circuit**



<b>Component</b>	<b>Description</b>	<b>Cost</b>
1	* 3 – 23kV circuit breaker ring bus (MECO)	\$4,600,000



**2.2.1.2.1 23kV On a Radial Circuit**



<b>Component</b>	<b>Description</b>	<b>Cost</b>
N/A	MECO 23kV circuit breaker not required	N/A

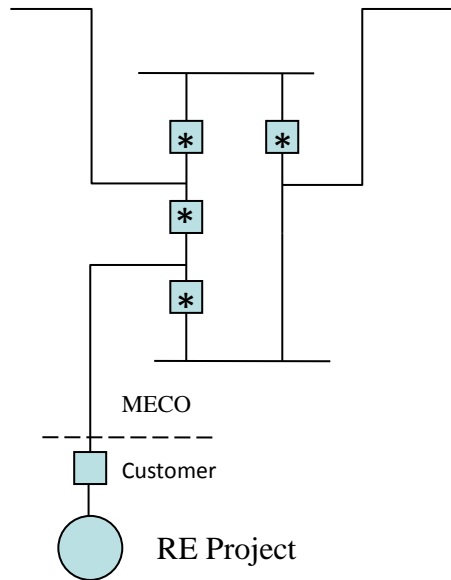
**Notes:**

1. Substation land that is received has been graded per Maui Electric’s civil and structural requirements. No costs for excavation and fill are included in the estimates.
2. Permits are not included in indicated costs.
3. Costs are in 2017 dollars.
4. Estimate does not contain any of the following costs:
  - a. Telecommunication infrastructure
  - b. Relay Coordination Study
  - c. Land Cost
  - d. Environmental Assessment/Environmental Impact Statement
  - e. Project Management
  - f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical 23kV circuit breaker relaying requirements.
6. Control house and local SCADA equipment are included in cost estimates.
7. The estimate is for a switching station, which does not contain any transformers.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 30MW due to system reliability requirements. This may include limiting the project size on radial circuits or splitting the project capacity and installing additional breaker(s) in the ring bus on network circuits.

## 2.2.2 Substation Interconnection Costs FIRM Projects

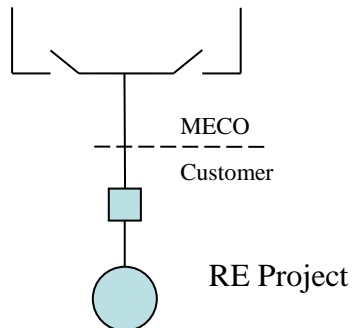
### 2.2.2.1 Substation (69kV) Interconnection Costs FIRM Projects

#### 2.2.2.1.1 69kV On a Network Circuit



Component	Description	Cost
1	*4 – 69kV circuit breakers in breaker-and-half configuration (MECO)	\$7,100,000

#### 2.2.2.1.2 69kV On a Radial Circuit (TO BE EVALUATED ON A CASE BY CASE BASIS)



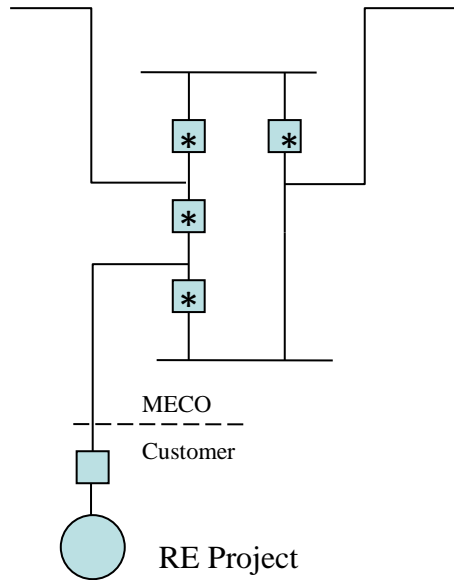
Component	Description	Cost
1	MECO 69kV redundant circuit required	\$300,000

**Notes:**

1. Substation land that is received has been graded per Maui Electric's civil and structural requirements. No costs for excavation and fill are included in the estimates.
2. Permits are not included in indicated costs.
3. Costs are in 2017 dollars.
4. Estimate does not contain any of the following costs:
  - a. Telecommunication infrastructure
  - b. Relay Coordination Study
  - c. Land Cost
  - d. Environmental Assessment/Environmental Impact Statement
  - e. Project Management
  - f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical line protection relaying requirements.
6. Control house and local SCADA equipment are included in cost estimates.
7. The estimate is for a switching station, which does not contain any transformers.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 30MW due to system reliability requirements. This may include limiting the project size on radial circuits or splitting the project capacity and installing additional breaker(s) in the ring bus on network circuits.

**2.2.2.2 Substation (23kV) Interconnection Costs FIRM Projects**

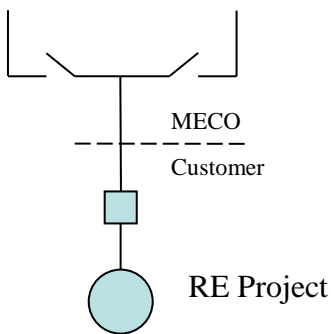
**2.2.2.2.1 23kV On a Network Circuit**



Component	Description	Cost
1	*4 – 23kV circuit breakers in breaker-and-half configuration (MECO)	\$5,500,000

**2.2.2.2.2 23kV On a Radial Circuit**

*23kV Substation (on a radial circuit)*



Component	Description	Cost
1	MECO 23kV redundant circuit required	\$290,000

**Notes:**

1. Substation land that is received has been graded per Maui Electric's civil and structural requirements. No costs for excavation and fill are included in the estimates.
2. Permits are not included in indicated costs.
3. Costs are in 2017 dollars.
4. Estimate does not contain any of the following costs:
  - a. Telecommunication infrastructure
  - b. Relay Coordination Study
  - c. Land Cost
  - d. Environmental Assessment/Environmental Impact Statement
  - e. Project Management
  - f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical 23kV circuit breaker relaying requirements.
6. Control house and local SCADA equipment are included in cost estimates.
7. The estimate is for a switching station, which does not contain any transformers.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 30MW due to system reliability requirements. This may include limiting the project size on radial circuits or splitting the project capacity and installing additional breaker(s) in the ring bus on network circuits.

**2.3 Telecommunications**

1. Point-to-point microwave: \$1,095,000 with the following assumptions:
  - a. There is line-of-sight between the communications endpoints.
  - b. FCC licensed Microwave Frequencies are available.
  - c. There are existing structures/buildings and available space on either end to house the radio equipment.
  - d. Telecommunications grounding standards are up-to-date at both sites.
  - e. -48V DC power with 12 hour battery backup is available.
  - f. This estimate does not include any special site-specific permit/approval that may be required.
  - g. Space is available to locate antenna towers/structures at both ends. Meets category 5 hurricane wind loading.
  - h. Interconnection to Maui Electric's existing communications is not included.

2. Fiber with overbuild and new construction: \$254,000 per mile with the following assumptions:
  - a. The poles are in good condition and do not need replacing.
  - b. The poles are not overloaded.
  - c. The poles and the attachments are in accordance with NESC 2002 and no work is required to upgrade the poles to current standards.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix J – Rule 19 Tariff*



**Maui  
Electric**

RULE NO. 19

Interconnection and Transmission Upgrades

A. GENERAL

1. Definitions

- a. "Betterment" means and includes any upgrading to a facility made solely for the benefit of and at the election of the Company, not attributable to the interconnection requirements. The Betterment includes any provisions for future expansion which cannot be charged to replacement. It also includes any related system work beyond that required for interconnection. If an existing facility is replaced with one of greater functional capacity or capability, the difference between the upgraded facility and a replacement facility of equivalent functional capacity is considered Betterment. It does not mean the substitution of a replacement facility for an existing facility, that is, an underground facility for an overhead facility, unless otherwise provided for in the RFP.

Example 1: A substation with a three breaker scheme is required to connect the Generating Facility to the grid. If the Company installs a substation with a six breaker ring bus scheme, the difference between installing a substation with a three breaker scheme and one with a six breaker scheme would be the Betterment.

Example 2: A transmission line needs to be upgraded to accommodate a new Generating Facility. The existing line is designed to withstand a 56 mph wind speed. The project includes upgrading the facilities to withstand a 100 mph wind speed. The increase in the design to the 100 mph wind speed criteria would be the Betterment.

Example 3: A transmission line needs to be upgraded to accommodate a new Generating Facility. In response to the Company's application to upgrade the line, the Commission orders that the line be placed underground. The cost difference between the overhead upgrade and the installation of the underground facilities would not be considered Betterment.

- b. "Company's Dispatch" means the Company's sole and absolute right to control, from moment to moment, through Supervisory Control, or otherwise, and in accordance with good engineering and operating practices in the electric utility industry, the rate of delivery of energy offered by the bidder to the Company.
- c. "Company's System" means the electric system owned and operated by the Company (to include any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

MAUI ELECTRIC COMPANY, LIMITED



RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- d. "Distribution System" means all electrical wires, equipment, and other facilities at the distribution voltage levels (such as 25kV, 12kV, or 4kV) owned or provided by the Company, through which the Company provides electrical service to its customers.
- e. "Framework" means the Framework for Competitive Bidding dated December 8, 2006, adopted by the Commission in Docket No. 03-0372, Decision and Order No. 23121, which provides the mechanism for acquiring a future energy generation resource or a block of generation resources by the Company.
- f. "Generating Facility" means a bidder or utility-owned electrical energy generation resource that is interconnected to the Company electrical grid.
- g. "Grid Connection Point" means the point at which Interconnection Facilities connect to the Company's System, normally the Company's transmission grid. Facilities from the Generating Facility to the Grid Connection Point shall be considered Interconnection Facilities (see examples given in Attachment A). The Grid Connection Point will be identified in the IRS.
- h. "Interconnection Agreement" means a contract with the bidder that specifies the terms and conditions under which Interconnection Facilities (and, in some cases, certain System Upgrades) will be designed, installed, paid for, owned, operated and/or maintained. In some instances, such terms and conditions may be included in the PPA with a bidder, instead of in a separate Interconnection Agreement.
- i. "Interconnection Facilities" means the equipment and devices required to permit a Generating Facility to operate in parallel with and deliver electric energy to Company's System and provide reliable and safe operation of, and power quality on, the Company's System (in accordance with applicable provisions of the Commission's General Order No. 7, Company tariffs, operational practices and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

Example 1: A wind farm facility constructed on a neighbor island (e.g. Molokai) that exports to the Company the energy it produces would be required to install undersea transmission lines to interconnect the Generating Facility to the Company's System. The undersea transmission lines and related facilities would be considered Interconnection Facilities.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

Example 2: A proposed Generating Facility is remotely located in a region of the island where there are no existing Transmission System facilities. In this case, if the size of the Generating Facility requires that it be tied to the existing Transmission System, the new Transmission System facilities (i.e. all electrical wires, equipment, and other facilities at the transmission voltage level) constructed from the Generating Facility to the Company's existing Transmission System facilities would be considered Interconnection Facilities.

- j. "Interconnection Requirements Study (IRS)" means a study, performed in accordance with the terms of the IRS Letter Agreement and with the applicable terms of the RFP and any resulting PPA, to identify the Interconnection Facilities, System Upgrades and other system requirements and all associated costs to integrate the proposed Generating Facility with the Company's System, and includes a detailed steady-state and a dynamic analysis. The IRS is conducted by the Company or its consultant and the bidder is responsible for the cost of conducting the IRS.
- k. "Interconnection Requirements Study Letter Agreement (IRS Letter Agreement)" means the letter agreement and any written, signed amendments thereto, between the Company and the bidder that describes the scope, schedule, and payment arrangements for the IRS.
- l. "IRP" means an electric utility's Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility's IRP proceeding, in accordance with the Commission's IRP Framework.
- m. "IRP Framework" means the Commission's Framework for Integrated Resource Planning, dated May 22, 1992, as amended by In re Public Util. Comm'n, Docket No. 05-0075, Decision and Order No. 22490, filed on May 26, 2006.
- n. "Point of Interconnection" means the point of delivery of Energy and/or Capacity supplied by the bidder to the Company, where the facilities owned by the bidder interconnect with the facilities owned or to be owned by the Company. The bidder shall own and maintain the facilities from the Generating Facility to the Point of Interconnection. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's System (see examples given in Attachment A). The Point of Interconnection will be identified in the IRS.
- o. "PPA" means a power purchase agreement or contract by the Company to purchase firm capacity, energy, or both.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- p. "Renewable Energy Facility" means a Generating Facility that generates electricity using renewable energy as the source.
- q. "RFP" means a written request for proposal issued by the Company to solicit bids from interested third-parties, and where applicable from the Company or its affiliate, to supply a future generation resource or a block of generation resources to the Company pursuant to a competitive bidding process.
- r. "Subtransmission System" means all electrical wires, equipment, and other facilities at the subtransmission voltage levels (such as 46kV, 35kV, or 23kV) owned or provided by the Company, through which the utility provides electrical service to its customers.
- s. "Supervisory Control" means remote monitoring and/or control of a Generating Facility's power output and interrupting device status by means of a communication channel that is acceptable to the Company. For Generating Facilities intending to export power with an aggregate export capacity greater than 250kW, computerized supervisory control may be required to ensure the safety of working personnel and prompt response to system abnormalities in case of islanding of the Generating Facility. The Company shall determine the need for supervisory control based upon the results of the initial technical screening and/or IRS. Supervisory control shall include at a minimum monitoring of: (a) gross generation by the Generating Facility; (b) feedback of Watts, Vars, WattHours, current and voltage; (c) Vars furnished by the utility; and (d) status of the interrupting device. In addition, the supervisory control will allow the Company to trip the interrupting device during emergency conditions. Monitoring will be performed by system dispatchers or operators at the Company's control center.
- t. "System Benefit" means a material increase in power flow capability or in the reliability of the Company's electrical system from a system-wide perspective.
- u. "System Upgrades" means improvements made to the Company's System, other than the Interconnection Facilities, required to provide reliable and safe operation of, and power quality on, the Company's System (in accordance with applicable provisions of the Commission's General Order No. 7, Company tariffs, operational practices and planning criteria) when the Generation Facility is interconnected with the Company's System (see Attachment A). Such improvements may include, but are not limited to, new transmission or distribution lines, reconstruction or reconductoring of existing lines, circuit breakers, switches, transformers, buses, protective devices, communications, and substation equipment and facilities.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

v. "Transmission System" means all electrical wires, equipment, and other facilities at the transmission voltage levels (such as 138kV or 69kV) owned or provided by the utility, through which the utility provides electrical service to its customers.

2. Application of Tariff

This Tariff shall apply to an RFP issued pursuant to the Framework and Interconnection Requirement Studies arising from the RFP process. In the event that there is a conflict between any provision of this Tariff and that of an RFP issued pursuant to the Framework and reviewed by the Commission in accordance with Sections III.B.2 and IV.B.6.e. of the Framework, the provisions of the RFP shall prevail. The terms and conditions established in a PPA arising from the RFP and approved by the Commission shall ultimately control over the requirements and terms of both this Tariff and the RFP.

3. Independent Observer

As established in the Framework, the duties and responsibilities of an Independent Observer (IO) include, among other duties and responsibilities, reviewing and monitoring the Company's communications, methods, and implementation of this Tariff, the RFP and related IRS processes.

B. INTERCONNECTION STUDY PROCESS FOR COMPETITIVE BIDDING

1. RFP Package Data -- available to all prospective bidders.

RFP packages issued by the Company shall contain general and regional system information to provide prospective bidders with high level guidance relating to the Company's existing transmission infrastructure. For example, RFP packages may include information in the form of an island map with areas of the Transmission System identified that are at or near their loading limits to provide high level guidance to bidders on areas of the island with transmission constraints. These constraints may include "load pockets", which are load-driven transmission constraints as well as areas of generation-driven transmission constraints. Because transmission impacts are to a large extent specific to the characteristics of supply-side proposals, definitive transmission information cannot be provided in these maps. Detailed geographic maps of the transmission system may not be part of this information due to security concerns. Rather, a map of the island with areas of the map shaded to identify areas (rather than circuits) of transmission constraints, may be provided.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

In addition, the RFP shall include applicable transmission planning criteria that will be used in the determination of interconnection requirements and potential Transmission System impacts. The information in the bid package will provide bidders with information (a) that should help in the selection of the proposed project's characteristics, including project site, project size, and project mode of operation, and (b) to estimate the interconnection requirements associated with their Generating Facilities and the opportunity to reflect the costs of the interconnection requirements in their bids.

2. Information Requests During Bidding Process - available to all prospective bidders.

During the bidding process, if a prospective bidder requires clarification or additional technical or operational information pertaining to the Company's System, a written request with specific questions may be submitted to the Company in accordance with the requirements set forth in the RFP. The written request, specific questions, and written Company response will be provided to all bidders.

3. RFP Requirements and Threshold Criteria Screening - evaluation performed on all bids received

Each bid received will be reviewed to ensure that it satisfies all of the RFP and threshold criteria requirements. The Company will determine whether each bid conforms to the specified RFP requirements and meets the minimum threshold criteria. Applicable performance standards may be part of the threshold criteria. These performance standards may vary depending upon factors such as the size of the generating resource(s) being acquired in the RFP, the Company's ability to dispatch the Generating Facility, the operational status (e.g., as-available vs. firm) of the Generating Facility, and the fuel type of the Generating Facility (e.g., run-of-the-river hydro may have different performance standards from wind power).

4. High Level Evaluation -- performed on all bids that pass threshold screening in RFP process
  - a. All bids which pass the threshold screening in the RFP process will undergo a high level evaluation consistent with the requirements identified in the RFP, which will focus primarily on basic steady-state analyses (e.g., identifying thermal line impacts, voltage impacts, and any obvious "fatal flaws").

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- b. For each bid, a high level estimate of the costs of Interconnection Facilities and required System Upgrades will be developed based solely on the high level evaluation identified in Section B.4.a. of this Tariff and on unitized cost estimates (e.g., \$/mile for 138kV line, \$/transformer).
  - c. Results of the high level evaluation and high level estimate of the costs of Interconnection Facilities and required System Upgrades will be factored into the determination of which bids make the short list based on the requirements specified in the RFP.
  - d. Basic curtailment analysis of the proposed Generating Facility and related impacts to operations of existing Generating Facilities may also be factored into the determination of which bids make the short list based on the requirements specified in the RFP.
5. Full Interconnection Requirements Study - performed only on short list bids.
- a. An IRS shall be performed only for bid(s) that have met the RFP requirements, passed the threshold criteria, and made the short list, or as otherwise specified in the RFP.
  - b. An IRS would be performed either serially starting with the bid evaluated as the most competitive at the point of the evaluation process, then proceeding to the next most competitive bid on the short list or in parallel on all or some of the short list bidders simultaneously. The determination of whether or not IRS work is to be performed serially, in parallel, or a combination of the two will be based upon factors such as resource availability, number of short list bids, RFP schedule, and relative competitiveness of one bid to others, and the availability of all information and data from bidders necessary to perform the IRS work
  - c. The Company may if practicable "bundle" IRS work for multiple short list bids into a single IRS if the bids are, among other factors, technically, operationally and geographically (e.g., size, location, technology, timing, operating characteristics, etc.) identical or sufficiently similar to each other.
  - d. The results of the IRS, including identified Interconnection Facilities, System Upgrades, Point of Interconnection, and Grid Connection Point, will be provided to the bidder.
  - e. Bidders shall be responsible for incorporating the costs of their Interconnection Facilities into their bids. The RFP may provide bidders with an opportunity to revise their pricing proposals under certain circumstances. Any pricing change, if permitted under the terms of the RFP, will prompt a re-evaluation of short list bidders in the selection of the winning bid as provided for in the RFP.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- f. The Company may perform the analyses included in the IRS, or the IRS or parts of the IRS may be contracted to an outside consultant specializing in such analyses for complex situations or in situations where the Company does not have available resources to conduct the analyses in a time frame agreeable to the Company.
- g. The scope and cost of the IRS will depend on the complexity of the Company's System and Generating Facility that must be modeled, and the degree to which the Generating Facility will affect the Company's System.
- h. The bidder will be responsible for the cost of the IRS (or such lesser amount as the Company may specify to facilitate the processing of interconnection requests for similarly situated facilities) to be performed in order to evaluate the impacts of the Generating Facility's interconnection to the Company's System.

C. INTERCONNECTION COST AND SYSTEM UPGRADE COST ALLOCATION FOR COMPETITIVE BIDDING

- 1. The bidder shall be responsible for the cost of Interconnection Facilities and shall be responsible for the installation and maintenance of Interconnection Facilities from the Generating Facility to the Point of Interconnection, unless otherwise specified in the RFP.
- 2. Interconnection Facilities from the Generating Facility to the Point of Interconnection shall be built by the bidder, unless the Company agrees otherwise.
- 3. Interconnection Facilities from the Point of Interconnection to the Grid Connection Point shall be built by the Company and paid for by the bidder, unless the Company agrees or determines otherwise. The Company may elect to include Betterments to Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, and such Betterments shall be paid for by the Company. The cost of Betterments to such Interconnection Facilities will not be considered in the bid evaluations. The bidder shall acquire the necessary land and easements for Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, unless the Company agrees otherwise. Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, if built by the bidder, shall be transferred to the Company upon completion, along with the necessary land rights and easements.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

4. The Company shall install and maintain the identified System Upgrades arising from the interconnection of the Generating Facility and shall be responsible for the cost of such System Upgrades.
  - a. The Company's cost for System Upgrades will be considered as a factor in the bid evaluations.
  - b. The degree to which the System Upgrades provide System Benefits and/or Betterments will be considered in the bid evaluations.
5. Standards and Interconnection Agreements
  - a. Interconnection Facilities and System Upgrades owned or to be owned by the Company shall be constructed in accordance with the Company's applicable standards and in accordance with the PPA or the Interconnection Agreement, if there is a separate Interconnection Agreement.
  - b. Generating Facilities and Interconnection Facilities owned by the bidder shall be constructed in accordance with applicable State and County code requirements and in accordance with the PPA or the Interconnection Agreement, if there is a separate Interconnection Agreement.
  - c. The bidder's Generating Facility may be interconnected and operated in parallel with the Company's System in accordance with the terms and conditions of the PPA between the Company and the bidder, and/or the terms and conditions of an Interconnection Agreement between the Company and the bidder, if there is a separate Interconnection Agreement.
  - d. The bidder will be required to furnish, install, operate, and maintain suitable and sufficient equipment, to maintain adequate records, and to follow such operating procedures, as may be specified by the Company to protect the Company's System from damage resulting from the parallel operation of the Seller's Facility, including the equipment, records and operating procedures more fully described in the PPA and/or Interconnection Agreement, if there is a separate Interconnection Agreement.
  - e. Interconnection Facilities shall be designed, installed operated and maintained in accordance with good interconnection practice. The objectives of good interconnection practice include, but are not limited to,
    1. Safety - To protect the safety of utility personnel, utility customers, and the public.

MAUI ELECTRIC COMPANY, LIMITED



RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

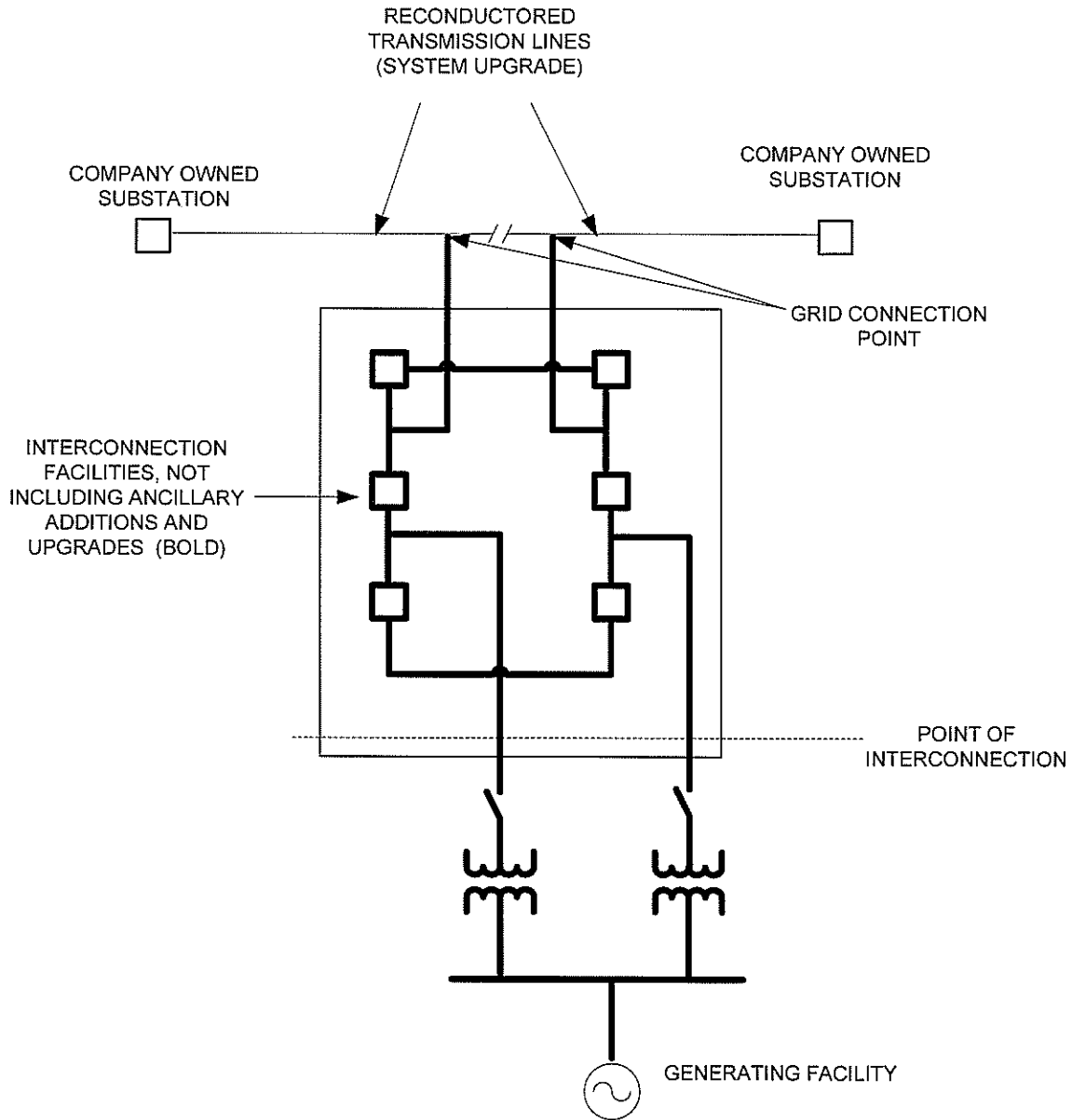
2. Reliability - To maintain the reliability of the utility system for all utility customers.
  3. Power Quality - To provide for acceptable power quality and voltage regulation on the utility system and for all utility customers.
  4. Restoration - To facilitate restoration of power on the utility system.
  5. Protect Utility and Customer Equipment - To protect utility and customer equipment during steady state and faulted system operating conditions.
  6. Protect Generating Facilities - To protect generating facilities from operation of utility protective and voltage regulation equipment.
  7. Utility System Overcurrent Devices - To maintain proper operation of the utility system's overcurrent protection equipment.
  8. Utility System Operating Efficiency - To ensure operation at appropriate power factors and minimize system losses.
- f. The bidder shall obtain, at its expense, any and all authorizations, approvals, permits, and licenses required for the construction and operation of its Generating Facility and the interconnection of its Generating Facility with the Company's System, including but not limited to environmental permits, building permits, rights of way, or easements.
  - g. Where any Company-owned Interconnection Facilities are to be located on the site of the bidder's Generating Facility, the bidder shall provide, at no expense to the Company, a location and access acceptable to the Company for all such facilities.
6. Renewable Energy Facilities
- a. In its IRP process, the Company may propose System Upgrades, to be paid for, owned and maintained by the utility, to encourage the development of Renewable Energy Facilities.
  - b. In its IRP process, the Company may propose to pay for Interconnection Facilities between the Point of Interconnection and the Grid Connection Point, in order to encourage the development of Renewable Energy Facilities.

MAUI ELECTRIC COMPANY, LIMITED

RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

Attachment A



MAUI ELECTRIC COMPANY, LIMITED

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix K – Ground Lease*



**Maui  
Electric**

TABLE OF CONTENTS

1. DEFINITIONS.....	K-2
2. TERM .....	K-17
3. RENT .....	K-17
4. ADDITIONAL PAYMENTS BY TENANT; REAL ESTATE TAXES.....	K-18
5. USE .....	K-20
6. SECURITY OF PREMISES.....	K-20
7. COMPLIANCE.....	K-21
8. MAINTENANCE AND CONSTRUCTION.....	K-21
9. PROHIBITED LIENS .....	K-23
10. HAZARDOUS SUBSTANCES.....	K-23
11. INDEMNIFICATION; LIABILITY OF LANDLORD .....	K-29
12. RIGHT OF CONTEST.....	K-30
13. INSURANCE.....	K-32
14. LOSSES AND LOSS PROCEEDS.....	K-34
15. LANDLORD'S TRANSFERS .....	K-36
16. TENANT'S TRANSFERS .....	K-36
17. LEASEHOLD MORTGAGE.....	K-37
18. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS.....	K-40
19. EVENTS OF DEFAULT; REMEDIES.....	K-41
20. END OF TERM .....	K-46
21. NOTICES .....	K-48
22. NONRECOURSE .....	K-49
23. ADDITIONAL DELIVERIES; THIRD PARTIES .....	K-49
24. GUARANTY .....	K-50
25. ARCHAEOLOGICAL AND HISTORICAL ITEMS .....	K-50
26. MISCELLANEOUS.....	K-51
27. INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE .....	K-52

*Attachments:*

<b>Exhibit A</b>	Legal Description
<b>Exhibit B</b>	Estoppel Certificate
<b>Exhibit C</b>	Tenant's Share of Private Roadway and Subdivision Improvements
<b>Exhibit D</b>	Guaranty

*DRAFT 10-19-17*

**GROUND LEASE**

*BETWEEN*

**MAUI ELECTRIC COMPANY, LIMITED**

as Landlord

*AND*

---

as Tenant

***FOR PREMISES LOCATED AT:***

8001 Pulehu Road  
Wailuku, Maui, Hawaii

TMK No. (2) 3-8-003: 023 & 024 (por.)  
[Subject to change upon completion of subdivision]

[This form of Ground Lease is included in the Request for Proposals for general information only. Landlord reserves the right to revise the Ground Lease to conform to, among other things, the location of the Premises and the Project.]

## GROUND LEASE

THIS GROUND LEASE (the “**Lease**”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “**Commencement Date**”), between **MAUI ELECTRIC COMPANY, LIMITED**, a Hawaii corporation (“**Landlord**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Tenant**”).

### Recitals:

(a) At the Commencement Date, Landlord owns the following real property (collectively, the “**Premises**”): (i) the land described in **Exhibit A**, consisting of approximately \_\_\_\_\_ acres of land (the “**Land**”) together with an easement over a shared roadway (the “**Private Roadway**”); (ii) all buildings, structures, and other improvements and appurtenances located on the Land other than any buildings, structures and other improvements or appurtenances that may have been constructed by on or behalf of Tenant prior to the commencement date; and (iii) the appurtenances and all the estate and rights of Landlord in and to the Land. The Land consists of one lot in a project consisting of multiple lots known as the New Central Maui Generation Site Subdivision (the “**Subdivision**”).

(b) Landlord and Tenant have entered into a Power Purchase Agreement for Renewable Firm Dispatchable Capacity and Energy dated as of \_\_\_\_\_, 20\_\_ between Landlord, as Company, and Tenant, as Seller, as it may be Modified (the “**Power Purchase Agreement**”).

(c) In connection with the Power Purchase Agreement, and in order to fulfill its obligations under the Power Purchase Agreement, Tenant desires to lease the Premises from Landlord, and Landlord is willing to lease the Premises to Tenant.

### Agreements:

**NOW, THEREFORE**, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord, subject only to Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

## 1. DEFINITIONS

1.1 **Terms not Defined in Lease.** Capitalized terms not defined in this Lease have the meanings given in the Power Purchase Agreement, unless the context clearly indicates otherwise. For example, the following terms used in this Lease are defined in the Power Purchase Agreement: “Extension Term,” “Facility,” “Financing Parties” and “Good Engineering and Operating Practices.”

1.2 **Terms Defined in Lease.** The following definitions apply in this Lease.

“**Additional Rent**” means all sums that this Lease requires Tenant to pay Landlord or a third party, whether or not expressly called Additional Rent, except Fixed Rent.

“**Affiliate**” of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. “*Affiliated*” shall have the correlative meaning.

“**Application**” means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing):

(a) necessary or appropriate for any Construction this Lease allows, 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 Tenant may from time to time reasonably request for such Construction;

(b) to allow Tenant to obtain any abatement, deferral, or other benefit otherwise available for Real Estate Taxes;

(c) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or

(d) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises under this Lease.

“**Approvals**” means 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 Law to commence, perform, or complete any Construction, or for the zoning, rezoning (to the extent this Lease allows), use, occupancy, maintenance, or operation of the Premises, including approval of the State Public Utilities Commission.

“**Bankruptcy Law**” means 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 Proceeding**” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

“**Bankruptcy Sale**” means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.



“**Baseline Assessment**” means a [Phase I and/or Phase II] Environmental Report dated \_\_\_\_\_, 20\_\_ made by \_\_\_\_\_, revealing the environmental conditions of the Land and Premises as of the Commencement Date.

“**Business Day**” means any weekday on which State-chartered banks are open to conduct regular banking business with bank personnel.

“**Casualty**” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

“**Casualty Termination**” means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination. Tenant’s election of a Casualty Termination shall not be effective without Leasehold Mortgagee’s consent.

“**Certifying Party**” shall have the meaning set forth in Section 23.1 hereof.

“**Clean-up**” shall have the meaning set forth in Section 10.11.1 hereof.

“**Common Areas**” shall have the meaning set forth in Section 5.3 hereof.

“**Condemnation**” means: (a) any temporary or permanent taking of (or of the right to use or occupy) any Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

“**Condemnation Award**” means any award(s) paid or payable (whether or not in a separate award) to either party or its mortgagee after the Commencement Date because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation; (b) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (c) any interest on such award; and (d) any other sums payable on account of such Condemnation, including for any prepayment premium under any mortgage.

“**Condemnation Effective Date**” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any Premises subject to the Condemnation.

“**Confidential Information**” shall have the meaning set forth in Section 26.1 hereof.

“**Construction**” means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including the Facility and any other new construction.

“**Contest**” shall have the meaning set forth in Section 12.1 hereof.

“**Contest Conditions**” shall have the meaning set forth in 12.1 hereof.

“**Contest Security**” shall have the meaning set forth in 12.1.1 hereof.

“**Control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

“**County**” means the County of Maui.

“**CPI**” means the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for Urban Wage Earners and Clerical Workers (CPI-W) published for Honolulu, with a base of 1982-1984 = 100. If the CPI ceases to be published, with no successor index, then the parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

“**CPI Adjustment Factor**” means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the Commencement Date.

“**Default**” means any Monetary Default or Nonmonetary Default.

“**Default Interest**” means interest at an annual percentage rate per annum equal to the average daily Prime Rate for the period in question plus four (4) percentage points.

“**Depository**” means an FDIC insured financial institution with its principal office in the State, designated by a Leasehold Mortgagee (or, if no Leasehold Mortgage exists, then by Landlord).

“**Discovered Items**” shall have the meaning set forth in Section 25.1 hereof.

“**Environmental Law**” means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

“**Environmental Report**” shall have the meaning set forth in Section 10.11.1 hereof.

“**Equity Interest**” means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in Tenant.

“**Estoppel Certificate**” means a statement, addressed either to Landlord or Tenant or as directed, in substantially the form of **Exhibit B**, and containing other assurances as Landlord or Tenant reasonably requests.

“**Event of Default**” shall have the meaning set forth in Section 19.1 hereof.

“**Expiration Date**” means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord’s exercise of remedies for an Event of Default, or otherwise.

“**Facility**” means the Facility as described in the Power Purchase Agreement, as it may be Restored, modified, expanded or changed from time to time.

“**Fee Debt Service**” means all payments required from time to time under any Fee Mortgage, including principal, interest, late charges, costs of collection, reimbursement of protective advances, and any other sums any Fee Mortgage secures.

“**Fee Estate**” means Landlord’s fee estate in the Premises, including Landlord’s reversionary interest in the Premises after the Expiration Date.

“**Fee Mortgage**” means any mortgage, collateral assignment, or other lien (as modified from time to time) encumbering all or part of the Fee Estate.

“**Fee Mortgagee**” means a holder of a Fee Mortgage (and its successors and assigns).

“**Fixed Rent**” shall have the meaning set forth in Section 3.1 hereof.

“**Foreclosure Event**” means any: (a) foreclosure sale (or assignment in lieu of foreclosure, Bankruptcy Sale, or similar transfer) affecting the Leasehold Estate; or (b) Leasehold Mortgagee’s exercise of any other right or remedy under a Leasehold Mortgage (or applicable Law) that divests Tenant of its Leasehold Estate.

“**GET**” shall have the meaning set forth in Section 4.8 hereof.

“**Government**” means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and

municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any land use commission, planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.

**"Guarantor"** means \_\_\_\_\_.

**"Hazardous Substances"** includes 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 Law, 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 Law 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.

**"Hazardous Substances Claims"** means (a) any actual, alleged or threatened Hazardous Substances Discharge; (b) any and all enforcement, cleanup, removal, mitigation, remediation or other Government actions instituted, contemplated or threatened pursuant to Environmental Law affecting the Premises; and (c) all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substances.

**"Hazardous Substances Discharge"** means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

“**Immaterial Loss**” means a Casualty or Condemnation whose estimated cost to Restore or value does not exceed \$\_\_\_\_\_ times the CPI Adjustment Factor.

“**Improvements**” means all buildings, structures, and other improvements and appurtenances located or to be located on the Land from time to time, including the Facility.

“**Indemnify**” means, where this Lease states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular matter (the “**Indemnified Risk**”), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor’s indemnity. Counsel retained by Indemnitor to fulfill its obligation to defend Indemnitee(s) shall be subject to Indemnitee’s approval, not to be unreasonably withheld.

“**Indemnitee**” means any party entitled to be Indemnified under this Lease and its agents, directors, employees, Equity Interest holders, mortgagees, and officers.

“**Indemnitor**” means a party that agrees to Indemnify any other Person.

“**Initial Term**” shall have the meaning set forth in Section 2.1 hereof.

“**Insubstantial Condemnation**” means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

“**Landlord**” initially means the Landlord named in the opening paragraph of this Lease. After every transfer of the Fee Estate, “Landlord” means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a Transfer of the Fee Estate occurs, the Transferor (including a Fee Mortgagee, or anyone acting for a Fee Mortgagee, that has acquired and then disposed of the Fee Estate) shall be and hereby is entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such Transfer.

“**Land Use Conditions**” means the covenants, conditions and restrictions set forth in: (1) Zoning Ordinance 2841 of the County of Maui, as reflected in related Unilateral Agreement 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 (2) 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.

**“Land Value”** means, as of the date of a PPA Disconnect, the fair market value of the Land as determined by Landlord in good faith. The fair market value of the Land means the amount that a willing buyer would pay a willing seller for the Land, neither being under a particular compulsion to buy or to sell, each fully aware of all applicable facts about the Land, and assuming a reasonable marketing period, considered as if the Land were vacant and clear of any structures or excavations, and free and clear of all leases (including this Lease), taking into account then-current general economic conditions; costs of construction; sales of comparable parcels; the real estate marketplace; and all other conditions as in effect on the determination date that may reasonably be considered in determining the fair market value of the Land. Land Value shall otherwise be determined in accordance with prevailing standards of appraisal practice at the time of determination.

**“Laws”** means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any State or County land use and zoning, any Real Estate Taxes, or otherwise relating to this Lease or any party’s rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

**“Lease Impairment”** means Tenant’s: (a) canceling, Modifying, restating, surrendering, or terminating this Lease, including upon Loss; (b) consenting, or failing to object, to a Bankruptcy Sale of any Premises; (c) determining that a Total Loss has occurred; (d) exercising any right to treat this Lease as terminated under 11 U.S.C. §365(h)(1)(A)(i) or any comparable provision of Law; (e) subordinating this Lease or the Leasehold Estate to any other estate or interest in the Premises; or (f) waiving any term(s) of this Lease.

**“Lease Termination Notice”** means a Notice stating this Lease has been terminated, and describing in reasonable detail any uncured Defaults.

**“Lease Year”** means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term.

**“Leasehold Estate”** means Tenant’s leasehold estate, and all of Tenant’s rights, privileges, and Pre-Emptive Rights, under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

**“Leasehold Mortgage”** means any mortgage, collateral assignment, or other lien (as modified from time to time) encumbering this Lease and the Leasehold Estate, made

in connection with permitted financing under the Power Purchase Agreement to a Financing Party under the Power Purchase Agreement. A Leasehold Mortgage shall not attach to the Fee Estate.

**“Leasehold Mortgagee”** means a holder of a Leasehold Mortgage (and its successors and assigns), provided: (a) it is a Financing Party under the Power Purchase Agreement; (b) it is not an Affiliate of Tenant; and (c) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

**“Legal Costs”** of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding, including appeals (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

**“Liability Insurance”** means comprehensive general public liability insurance against claims for personal injury, death, or property damage as required under the Power Purchase Agreement, and specifically extended to and covering any events occurring upon, in, or about the Premises or adjoining roads, streets and passageways.

**“Loss”** means a Casualty or Condemnation affecting the Premises.

**“Loss Proceeds”** means any Property Insurance Proceeds or Condemnation Award paid or payable for a Loss.

**“Management Meeting”** shall have the meaning set forth in Section 14.7.1 hereof.

**“Market Value”** of the Land or the Facility means, as of any date of determination, the present fair market value of such estate or improvement (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considering: (a) as if no Loss had occurred; (b) without adjusting for any expectation of any Loss; and (c) as if the Leasehold Estate had been terminated. Market Value shall be determined independently of, and without regard to, any valuation established in a Condemnation unless Tenant Notifies Landlord otherwise. Any such Notice shall not be effective without Leasehold Mortgagee’s consent.

**“Memorandum of Lease”** means a memorandum of this Lease, in recordable form, setting forth following provisions of this Lease: (a) all information any Law requires; (b) the Term of the Lease; (c) any grant of a power of attorney; and (d) such other provisions, except the amount or means of determining Rent, as either party reasonably desires.

**“Modification”** or **“Modify”** means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or

document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

**“Monetary Default”** means Tenant’s failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

**“New Lease”** means a new lease of the Premises and related customary documents such as a memorandum of lease and a deed of Improvements. Any New Lease shall: (a) commence immediately after this Lease terminated; (b) continue for the entire remaining term of this Lease, as if no termination had occurred; (c) give New Tenant the same rights to Improvements that this Lease gave Tenant; (d) have the same terms, and the same priority, as this Lease, subject to any subsequent written amendments made with Leasehold Mortgagee’s consent; and (e) require New Tenant to cure, with reasonable diligence and continuity, within a reasonable time, all Defaults (except Tenant-Specific Defaults) not otherwise cured or waived.

**“New Tenant”** means Leasehold Mortgagee or its designee or nominee, and any of their successors and assigns.

**“Nonmonetary Default”** means Tenant’s: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

**“Notice”** or **“Notify”** means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the “Notices” Article of this Lease.

**“Notice of Default”** means any Notice claiming or giving Notice of a Default or alleged Default.

**“Permitted Exceptions”** means only: (a) the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Commencement Date, listed as exceptions in Tenant’s leasehold policy of title insurance for this Lease; (b) any title exceptions (including Subleases) caused by Tenant’s acts or omissions, consented to or requested by Tenant, or resulting from Tenant’s Default; (c) any Application made at Tenant’s request; (d) this Lease and its terms and provisions; and (e) any state of facts an accurate survey would show.

**“Phase I Environmental Assessment”** means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Landlord 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).



**“Phase II Environmental Assessment”** means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Landlord that goes beyond the investigations of a Phase I Environmental Assessment and involves sampling and testing of the Premises, including (a) an asbestos survey conducted according to the standards of the Asbestos Hazard Emergency Response Act protocol; (b) testing of any transformers on the Premises for PCBs; (c) testing for lead based paints; (d) soil and groundwater sampling to measure the effect of any actual or suspected release or discharge of Hazardous Substances on the Premises; and (e) such other sampling and testing reasonably necessary to determine the environmental condition of the Premises.

**“Permitted Use”** means the construction, maintenance and operation of the Facility, consistent with Good Engineering and Operating Practices.

**“PPA Disconnect”** means any period of time during which the Power Purchase Agreement remains in effect but because of a Tenant Event of Default under the Power Purchase Agreement Landlord is not purchasing power from Tenant.

**“PPA Restoration”** means either (a) the Power Purchase Agreement is reinstated following a termination of the Power Purchase Agreement; or (b) Tenant’s Event of Default under the Power Purchase Agreement has been cured and Landlord is purchasing power from Tenant (or its permitted successor assignee) in accordance with the Power Purchase Agreement.

**“Person”** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind. (This does not limit any Transfer restriction.)

**“Prime Rate”** means the “prime rate” of interest, as published from time to time by The Wall Street Journal in the “Money Rates” section of its Western Edition Newspaper (or the average prime rate if a high and a low prime rate are therein reported). The Prime Rate shall change without notice with each change in the prime rate reported by The Wall Street Journal, as of the date such change is reported. Any such rate is a general reference rate of interest, may not be related to any other rate, may not be the lowest or best rate actually charged by any lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by lenders or market rates in general.

**“Prohibited Lien”** means 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 Tenant (or anyone claiming through Tenant), but only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate.

**“Property Insurance”** means (a) insurance providing coverage for the Premises and the Facility against loss, damage, or destruction by fire and other hazards

encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time during the Term, in an amount equal to \_\_\_\_\_% of the replacement value (without deduction for depreciation) of the Facility and in any event sufficient to avoid co-insurance, with “ordinance or law” coverage; (b) Pollution Legal Liability Environmental Insurance: (i) from an insurance carrier with a rating of no less than A–X in Best’s Insurance Guide, and (ii) providing commercially reasonable coverage and deductibles (to the extent available) with respect to (i) known and unknown pre-existing conditions; (ii) unknown and later discovered conditions; (iii) on-site and off-site third-party claims for bodily injury or property damage; and (iv) legal defense expenses; and (c) such other casualty insurance required by the Power Purchase Agreement with respect to the Premises. Such insurance may contain a deductible clause not exceeding \$ \_\_\_\_\_ times the CPI Adjustment Factor. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Premises; coverage for terrorism; an “increased cost of construction” endorsement; and an endorsement covering demolition and cost of debris removal.

**“Property Insurance Proceeds”** means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, Depository, or any Fee Mortgagee or Leasehold Mortgagee, excluding proceeds of Tenant’s business interruption insurance in excess of Rent.

**“Real Estate Taxes”** means all general and special real estate taxes (including sales taxes, use taxes, and the like), conveyance taxes, transfer taxes, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof.

If at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term “Real Estate Taxes,” to the extent that such Real Estate Taxes

would be payable if the Premises were the only property of Landlord subject to such Real Estate Taxes.

**“Remaining Premises”** means any Premises that Landlord continues to own after a Total Loss.

**“Removal Period”** shall have the meaning set forth in Section 20.2 hereof.

**“Rent”** means Fixed Rent and Additional Rent.

**“Requesting Party”** shall have the meaning set forth in Section 23.1 hereof.

**“Restoration”** and **“Restore”** means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Loss, subject to such Construction as Tenant shall perform in conformity with this Lease, subject to any changes in Law that would limit the foregoing.

**“Restoration Funds”** means any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

**“Rules”** means the rules of the Subdivision regulating use of the property, activities, and conduct within the Subdivision as may be established and amended from time to time by Landlord in its sole discretion. Any such Rules may be set forth in a declaration recorded against the parcels in the Subdivision at Landlord’s sole discretion.

**“Scheduled Expiration Date”** means the date upon which the Power Purchase Agreement terminates, i.e., the end of the Term (as defined in the Power Purchase Agreement) *plus* any Extension Term (defined in the Power Purchase Agreement).

**“Security Deposit”** means a cash sum in the amount of \$\_\_\_\_\_.

**“State”** means the State of Hawaii.

**“Subdivision Improvements”** shall have the meaning set forth in Section 4.3 hereof.

**“Sublease”** means, for the Premises, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of subletting; or (d) Modification or assignment of (a) through (c). (Any reference to Subleases does not diminish, impair, limit, or waive any limit on Subleases.)

**“Subrent”** means all money due and payable by Subtenants under Subleases.

“**Substantial Casualty**” means a Casualty that, pursuant to Law, prevents the Premises from being Restored for the Permitted Use.

“**Substantial Condemnation**” means any Condemnation that (a) takes the entire Premises; or (b) in Tenant’s reasonable determination (with Leasehold Mortgagee’s consent) renders the remaining Premises unsuitable for the Permitted Uses.

“**Subtenant**” means any Person entitled to occupy, use, or possess any Premises under a Sublease.

“**Temporary Condemnation**” means a Condemnation of the temporary right to use or occupy all or part of the Premises.

“**Tenant-Specific Default**” means any Nonmonetary Default that by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates.

“**Term**” means the Initial Term, as it may be extended by any Extension Term.

“**Total Loss**” means any (a) Condemnation that affects all or substantially all the Premises; or (b) Loss after which Tenant cannot legally Restore the Facility for its Permitted Use.

“**Transfer**” of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect:

(a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance);

(b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holders of such Equity Interest(s);

(c) any transaction described in (b) affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or

(d) any transaction that is in substance equivalent to any of the foregoing.

A transaction affecting Equity Interests, as referred to in clauses (b) through (d), shall be deemed a Transfer by Tenant even though Tenant is not technically the transferor. However, a “Transfer” shall not include any of the foregoing (provided that the other party to this Lease has received Notice thereof) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in

beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

**“Unavoidable Delay”** means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within 30 days after such obligor knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

**“Underground Storage Tank”** means any 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.

**“Waiver of Subrogation”** means a provision in, or endorsement to, any property insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either party to this Lease for any loss such policy covers.

**1.3 Principles of Interpretation.** A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each of these terms shall be interpreted as if followed by the words “(or any part of it)” except where the context clearly requires otherwise: Fee Estate; Improvements; Land; Leasehold Estate; Premises; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord’s option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word “or” includes the word “and.”

**1.4 Conflict between Lease and Power Purchase Agreement.** To the extent there exists any conflict between the provisions of this Lease and the Power Purchase Agreement, the Power Purchase Agreement shall control.

## 2. TERM

2.1 **Initial Term.** The initial term of this Lease (the “**Initial Term**”) shall: (a) commence on the Commencement Date; and (b) end on the Scheduled Expiration Date, unless terminated sooner. If the Commencement Date is not the first (or the Expiration Date is not the last) day of a Lease Year, then from the Commencement Date through the day before the first Lease Year (or from the day after the last Lease Year through the Expiration Date), the parties shall have all the same rights and obligations under this Lease (including regarding Rent) that they do during the first (or the last, as applicable) full Lease Year, all prorated daily.

2.2 **Automatic Termination.** Notwithstanding anything to the contrary in this Lease, this Lease shall automatically terminate upon termination of the Power Purchase Agreement, without Notice.

2.3 **Tenant’s Option to Terminate.** Tenant shall have the right to terminate this Lease upon Notice to Landlord if the Power Purchase Agreement does not come into full force and effect because one or more conditions precedent could not be satisfied due to Landlord’s failure to perform its obligations under the Power Purchase Agreement. Tenant shall include in the Notice the effective date of the termination of the Lease, which shall be not less than 30 days after the date of the Notice.

## 3. RENT

3.1 **Fixed Rent.** Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, a net annual rental (the “**Fixed Rent**”) as follows:

3.1.1 \$1.00 per year, as long as the Power Purchase Agreement remains in effect and Landlord is purchasing power from Tenant pursuant to the Power Purchase Agreement; or

3.1.2 10% of the Land Value per year, increased annually by the CPI Adjustment Factor, commencing on the date a PPA Disconnect occurs and continuing for the period a PPA Disconnect remains in effect.

If there is no longer a PPA Disconnect, and a PPA Restoration occurs, the Fixed Rent shall be restored to \$1.00 per year until any new PPA Disconnect occurs.

3.2 **Annual or Monthly Payment; Proration; Etc.** If Rent is \$1.00 per year, Tenant shall pay Fixed Rent annually in advance, otherwise Tenant shall pay Fixed Rent in equal monthly installments in advance on the first day of each month. Tenant shall pay all Rent payable to Landlord by good and sufficient check payable to Landlord or by wire transfer, at such address as Landlord shall designate from time to time.

3.3 **Additional Rent.** In addition to Fixed Rent, Tenant shall pay Landlord (or the appropriate third party, as applicable), as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within 15 days after receipt of an invoice and reasonable backup documentation.

3.4 **No Offsets.** Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

#### 4. **ADDITIONAL PAYMENTS BY TENANT; REAL ESTATE TAXES**

4.1 **Landlord's Net Return.** This Lease shall constitute an absolutely "net" lease. The Fixed Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises, except as this Lease expressly provides. Tenant shall pay as Additional Rent and discharge (subject to Tenant's right of Contest as this Lease expressly provides), before failure to pay creates a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction affecting the Premises.

4.2 **No Tenant Obligation.** Notwithstanding anything to the contrary in this Lease, Tenant need not pay the following items payable, accrued, or incurred by Landlord: (a) Fee Debt Service; (b) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate or the Premises; and (c) any costs or expenses that Landlord incurs in or for any Management Meeting, except to the extent that this Lease requires Tenant to pay such costs or expenses.

4.3 **Tenant's Share of Road Infrastructure and Other Subdivision Improvements.** Landlord and Tenant acknowledge and agree that the following subdivision improvements (the "**Subdivision Improvements**") will be constructed: (i) a Private Roadway through the Subdivision to connect the Land and other lots within the Subdivision to Pulehu Road, the public road owned by the County of Maui; and (ii) other subdivision improvements at Landlord's sole discretion, including but not limited to a landscape buffer along Pulehu Road. The cost to design, construct, operate and maintain the Private Roadway and the other Subdivision Improvements shall be shared by Tenant in the manner and proportion as set forth in **Exhibit C**.

4.4 **Real Estate Taxes.** Tenant shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term, before failure to pay creates a material risk to Landlord of forfeiture or penalty, subject however to Tenant's right of Contest as this Lease expressly provides. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes, except late payment

because Landlord failed to remit any payment for Real Estate Taxes (paid to Landlord by Tenant) in accordance with Tenant's reasonable instructions (provided they involve only ministerial functions) or failed to forward promptly Tenant a copy of any applicable bill that Landlord receives. In the latter case Landlord shall pay such interest and penalties. Tenant shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant has paid any Real Estate Taxes that this Lease requires Tenant to pay. Tenant shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions.

**4.5 Assessments in Installments.** To the extent Law allows, Tenant may apply to have any assessment payable in installments. Upon approval of such application, Tenant shall pay and discharge only such installments as become due and payable during the Term.

**4.6 Utilities.** Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Landlord shall have absolutely no liability or responsibility for the foregoing.

**4.7 Security Deposit.** Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit. Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. If Tenant Defaults on any provision of this Lease, Landlord may, without prejudice to any other remedy it has, apply all or part of the Security Deposit to any Rent or other sum in default, any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease, or any expense, loss, or damage that Landlord may suffer because of Tenant's Default.

**4.8 General Excise Tax.** Tenant will pay to Landlord at the time and together with each payment of Rent that is subject to GET, an amount which, when added to Rent (whether actually or constructively received by Landlord), shall yield to Landlord, after deduction of the GET, an amount equal to that which Landlord would have realized had no such GET been imposed. For the purposes of this Section, "**GET**" means the State of Hawaii general excise tax on gross income, any sales or value added taxes under any successor, similar or new federal, state or county law that may be hereafter enacted, on account of the receipt, actual or constructive, by Landlord of the rental payments, reimbursement of gross income taxes, and any other taxable gross income attributable to the Premises or this Lease. For purpose of illustration only, the amount necessary to reimburse Landlord is as of the Commencement Date 4.1666%.

**4.9 Conveyance Tax.** Tenant shall pay the conveyance tax imposed under Hawaii Revised Statutes Chapter 247 that is due and payable upon the Commencement



Date. Tenant shall provide Landlord with proof satisfactory to Landlord that the conveyance tax has been paid.

## 5. USE

5.1 **Permitted Use.** Tenant shall use the Premises for the Permitted Use and only for the Permitted Use. Tenant shall continuously use and operate the Premises for the Permitted Use.

5.2 **Permitted Use Unique.** Landlord has leased the Premises to Tenant solely for the purpose of Tenant's providing electrical power to Landlord's system pursuant to the Power Purchase Agreement. The State Public Utilities Commission has authorized Landlord to enter into this Lease only in connection with and for the purposes of the Power Purchase Agreement. Tenant acknowledges and agrees that the Premises cannot be used for any purpose other than the Permitted Use. Tenant waives and relinquishes any right it may have under Bankruptcy Law, in any Bankruptcy Proceeding, or otherwise to assert the Premises should be used for a purpose other than the Permitted Use.

5.3 **Common Areas.** All access roads made available or maintained by the Landlord providing access from the Premises to public roads ("**Common Areas**") shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to all Common Areas. Tenant agrees to comply with all of Landlord's rules and regulations with respect to the Common Areas.

5.4 **Exclusive Control.** Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises, subject only to Permitted Exceptions.

5.5 **Operational Costs.** Tenant shall timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises and the provision of services to the Premises.

## 6. SECURITY OF PREMISES

6.1 **Secured Facility.** Tenant shall secure the Facility and prevent access to the Facility by unauthorized personnel in the same manner or higher as Landlord secures its power generating facilities in the County. Notwithstanding Landlord's then current security procedures for its own facilities, Landlord may require Tenant to maintain personnel on the Premises 24 hours a day 7 days a week to monitor the security and safety of the Premises and Facility.

6.2 **Limited Access to Premises.** Tenant will maintain barriers on the Premises to prevent unauthorized persons or vehicles from entering or crossing through the Premises and adjacent lands owned or operated by Landlord.

6.3 **Personnel.** Tenant shall conduct security and background checks on all Tenant employees, independent contractors, and other persons who are regularly allowed access to the Facility and shall require all such persons to take periodic drug tests. Tenant shall not allow on the Premises any persons who do not pass such security checks or drug tests.

## 7. COMPLIANCE

7.1 **Generally.** Tenant shall during the Term, at Tenant's expense, in all material respects, subject to Tenant's right of Contest: (a) comply with all Laws and Permitted Exceptions; (b) comply with all Rules; (c) comply with the Land Use Conditions; (d) procure all Approvals required by Law other than the approval of the Power Purchase Agreement by the State Public Utilities Commission; and (e) comply with all Approvals.

7.2 **Power Purchase Agreement.** Tenant shall during the Term, at Tenant's expense, in all material respects, comply with Tenant's obligations under the Power Purchase Agreement.

7.3 **Notice of Inspections.** Tenant shall give Landlord Notice of any proposed inspection of the Premises or the Facility by any Government agency immediately upon Tenant's receipt of notice of such inspection.

7.4 **Copies of Notices.** Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

## 8. MAINTENANCE AND CONSTRUCTION

8.1 **Obligation to Maintain.** Except to the extent that (a) this Lease otherwise expressly provides or allows or (b) Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, subject to Loss (governed by other provisions of this Lease), reasonable wear and tear, and any other condition that this Lease does not require Tenant to repair. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises (including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, drainage, retention basins, bridges, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises, together with any sidewalks and streets adjacent to the Premises) may require by Law from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating. Tenant shall remove trash and debris from the Premises and the adjoining sidewalk, and maintain them in a reasonably clean condition.

8.2 **Acceptance of Premises.** Tenant acknowledges that it has, or has had the opportunity, to inspect carefully the Premises, and accepts the Premises in **AS IS** condition **WITH ALL FAULTS**. Tenant further acknowledges that neither Landlord nor its agents or employees have made any representations or warranties of any kind whatsoever as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or its agents or employees agreed to make any repairs, undertake any alterations, or construct any improvements to the Premises or with respect to the Premises.

8.3 **Construction.** At Tenant's sole cost and expense, Tenant shall construct the Facility in accordance with the requirements of the Power Purchase Agreement. Tenant shall not commence Construction until it has the applicable necessary Approvals. Prior to commencement of any Construction, Tenant shall cause each entity involved in such Construction, who is a direct contractor of Tenant and who has mechanic lien rights under Chapter 507 of the Hawaii Revised Statutes, to deliver to Landlord a performance and payment bond in a form acceptable to Landlord and from a surety reasonably acceptable to Landlord, covering the faithful performance of such entity's contract with the Tenant and the payment of all obligations arising thereunder, and naming Landlord as an obligee. Tenant shall complete Construction of the Facility within the time periods required by the Power Purchase Agreement. Tenant shall pay for all Construction when and as required by the parties that perform such Construction. All Improvements that Tenant constructs on the Land shall become part of the Premises.

8.4 **Plans and Specifications.** To the extent that Tenant obtains plans and specifications or surveys (including working plans and specifications and "as-built" plans and specifications and surveys) for any Construction, Tenant shall promptly upon Landlord's request give Landlord a copy, subject to the terms of any agreement between Tenant and the applicable architect, engineer, or surveyor. Tenant shall exercise reasonable efforts to cause its agreements with such professionals to permit these deliveries, which are for Landlord's information only except to the extent, if any, this Lease otherwise expressly states.

8.5 **Applications.** Upon Tenant's request, Landlord shall, without cost to Landlord, promptly join in and execute any Application as Tenant reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law) upon Landlord; (b) no uncured Event of Default exists; and (c) Tenant reimburses Landlord's Legal Costs. Promptly upon Tenant's request and without charge (except reimbursement of Landlord's Legal Costs), Landlord shall furnish all information in its possession that Tenant reasonably requests for any Application.

## 9. PROHIBITED LIENS

9.1 **Tenant's Covenant.** If a Prohibited Lien is filed, Tenant shall, within 30 days after receiving Notice from Landlord of such filing (but in any case within 15 days after Landlord Notifies Tenant 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. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Lease shall be construed to: (a) limit Tenant's right of Contest; or (b) obligate Tenant regarding any lien that results from any act or omission by Landlord.

9.2 **Protection of Landlord.** Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the Fee Estate. Nothing in this Lease shall be deemed or construed in any way to constitute Landlord's consent or request, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any construction, nor as giving Tenant 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 Fee Estate. Tenant shall Indemnify Landlord against any claims arising out of Construction undertaken by Tenant or anyone claiming through Tenant, and against all Prohibited Liens.

## 10. HAZARDOUS SUBSTANCES

10.1 **Baseline Assessment.** Tenant has obtained a Baseline Assessment and has provided Landlord with a copy of the results of the Baseline Assessment. Any Hazardous Substances not disclosed in the Baseline Assessment and subsequently discovered on the Premises shall be presumed to be present as a result of Tenant's use and occupancy of the Premises during the Term, unless Tenant shall prove, by clear and convincing proof, that the Hazardous Substances: (a) were present on the Premises prior to the Term; (b) migrated onto the Premises as the result of the activities of a third party; or (c) are present on the Premises as the result of Landlord's improper actions.

10.2 **Compliance with Environmental Law.** Tenant shall keep and maintain the Premises, 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 Premises or any portion of the Premises to be in violation of, any Environmental Law.

10.3 **Use of Hazardous Substances.** Tenant shall not cause or allow any Hazardous Substances Discharge, except (a) in the ordinary course of Tenant's business

(b) in accordance with the instructions of the manufacturer and for the purpose described in such instructions, and (c) in strict compliance with all applicable Environmental Law. Tenant shall not install or remove any Underground Storage Tank on, within, under or about the Premises without first obtaining Landlord's written approval. Tenant shall not accept hazardous waste (as defined under any Environmental Law) generated off the Premises for any purpose, including treatment, storage or disposal.

**10.4 List of Hazardous Substances.** On the Commencement Date and on each anniversary of the Commencement Date, and at any other time Landlord requests, Tenant shall provide Landlord with a written list identifying any Hazardous Substances then used, stored, or maintained upon the Premises, 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 Landlord may reasonably require or as may be required by Law.

**10.5 Notice of Disturbance of Any Hazardous Substances.** Tenant shall provide Landlord 30 days' prior Notice before commencing any activities, including repair or remodeling of the Facility or the Premises or installation or removal of any personal property from the Premises, which could result in the disturbance of any Hazardous Substances. Together with such Notice, Tenant shall advise Landlord of protective measures to be taken by Tenant to ensure that Hazardous Substances shall not be released and to ensure compliance with Environmental Law. Tenant shall comply with all reasonable conditions (including adequate assurance of financial resources to comply with Environmental Law) that may be imposed by Landlord in connection with Tenant's proposed activities.

**10.6 Hazardous Substances Claims.** Tenant shall immediately Notify Landlord of: (a) any Hazardous Substances Claims; or (b) Tenant's discovery of any occurrence or condition of the Premises which could subject Tenant or Landlord to any liability, or restrictions on ownership, occupancy, transferability or use of the Premises under any Environmental Law.

**10.7 Remediation and Removal.** Except for the use of Hazardous Substances permitted by this Lease, Tenant shall cause any Hazardous Substances Discharge to be: (a) remediated on-site in accordance with applicable Environmental Law; or (b) removed from the Premises 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. Tenant shall deliver to Landlord copies of any hazardous waste manifest reflecting the proper disposition of such Hazardous Substances. Except in emergencies or as otherwise required by law, Tenant shall not take any remedial or removal action in response to a Hazardous Substances Discharge without first Notifying Landlord.

**10.8 Proceedings on Hazardous Substances Claims; Indemnity.** Tenant 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 Landlord of Tenant's intention to do so and affording Landlord the opportunity to join and participate as a party if Landlord so elects in such proceedings. Tenant shall be solely responsible for and shall Indemnify the Indemnitee against any Hazardous Substances Claims, including: (a) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (b) all reasonable costs and expenses incurred by Landlord in connection therewith, including Legal Costs.

**10.9 Assurance of Performance.**

**10.9.1 Landlord's Phase II Environmental Assessment.** Landlord may, but shall not be required to, engage such contractors as Landlord determines to be appropriate to perform from time to time a Phase II Environmental Assessment, including environmental sampling and testing, of: (i) the Premises, the surrounding soil and any adjacent areas, and any ground water located under or surface water located adjacent to the Premises or any adjoining property; (ii) Tenant's compliance with all Environmental Law and the provisions of this Lease; and (iii) the provisions made by Tenant for carrying out any removal or remedial action that may be required by reason of the nature of Tenant's business and operations on the Premises.

**10.9.2 Cost of Assessment.** All costs and expenses incurred by Landlord in connection with any such Phase II Environmental Assessment shall be paid by Landlord, except that if any such Phase II Environmental Assessment shows that: (i) the environmental condition of the Premises has materially declined in comparison to the Baseline Assessment; (ii) Tenant has failed to comply with the provisions of this Lease with respect to Hazardous Substances; (iii) the Premises (including surrounding soil and any underlying groundwater or adjacent surface water) has become contaminated due to operations or activities not attributable to Landlord; or (iv) 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 Tenant.

**10.9.3 Conducting Assessment.** Each Phase II Environmental Assessment shall be conducted: (a) only after advance Notice of such assessment has been provided to Tenant at least 10 days' prior to the date of the assessment; and (b) in a manner reasonably designed to minimize the interruption of Tenant's operations and use of the Premises. Landlord shall repair any substantial damage to the Premises or to Tenant's property that is directly caused by the Phase II Environmental Assessment.

**10.10 Tenant's Obligations Prior to and Upon Surrender.**

**10.10.1 Tenant's Phase I and Phase II Environmental Assessment**

**Deposit.** No later than 18 months prior to the Scheduled Expiration Date, Tenant shall deposit with Landlord a sum equal to the then current estimated cost of conducting a Phase I and Phase II Environmental Assessment of the Premises. Landlord shall hold such sum for Tenant and shall apply or reimburse such sum as provided in this section.

**10.10.2 Tenant's 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, Tenant, at Tenant's sole cost and expense shall cause a Phase I Environmental Assessment of the Premises to be conducted, or provide Landlord with a report based upon a Phase I Environmental Assessment conducted no earlier than 3 months prior to the beginning of the last year of the Term. In addition, no later than the end of the Term, Tenant shall (A) cause all Hazardous Substances previously owned, stored or used by Tenant to be removed from the Premises and disposed of in accordance with all Environmental Law; and (B) remove any Underground Storage Tanks or other containers installed or used by Tenant to store any Hazardous Substances on the Premises, and repair any damage to the Premises caused by such removal.

(b) Upon termination of this Lease and Tenant's satisfactory compliance with all of the requirements of this section, Landlord shall return to Tenant, without interest, the amount deposited in accordance with this section. In the event that Tenant does not cause a Phase I Environmental Assessment to be conducted or does not provide Landlord with a timely report based upon an assessment conducted no earlier than 3 months prior to the beginning of the last year of the Term, Landlord may (but shall not be required to) cause a Phase I Environmental Assessment to be conducted and may apply the sums previously deposited by Tenant to pay for such assessment. If the assessment costs more than the amount of the deposit, Tenant shall pay to Landlord, upon demand, the difference. If the assessment costs less than the amount of the deposit, Landlord shall, no later than 30 days after payment in full of such costs, return to Tenant a sum equal to the amount by which the deposit exceeds the actual costs of such assessment.

(c) If either Tenant's or Landlord's Phase I Environmental Assessment identifies areas of concern that in Landlord's reasonable judgment indicate that further investigation is required, Tenant, at Tenant's sole cost and expense, shall cause a Phase II Environmental Assessment of the Premises to be conducted. If Tenant does not cause such Phase II Environmental Assessment to be conducted, Landlord may (but shall not be required to) cause a Phase II Environmental Assessment to be conducted and may apply the sums previously deposited by Tenant to pay for such assessment. If the assessment costs more than the amount of the deposit, Tenant shall pay to Landlord, upon demand, the difference. If the assessment costs less than the amount of the deposit, Landlord shall, no later than 30 days after payment in full of such costs, return to Tenant a

sum equal to the amount by which the deposit exceeds the actual costs of such assessment. Tenant hereby expressly acknowledges and agrees that Tenant's covenant and obligation to pay all costs and expenses associated with any Phase II Environmental Assessment required under this section, whether commissioned by Tenant or Landlord, shall survive termination of this Lease.

#### 10.11 **Clean-up.**

10.11.1 **Environmental Report.** If any written report containing results of any Phase I Environmental Assessment ("**Environmental Report**") shall: (i) reveal that the environmental condition of the Premises has materially declined in comparison to the Baseline Assessment; or (ii) Tenant has materially violated any warranty, representation, or covenant of this section; or (iii) recommend the repair, closure, remediation, removal or other clean-up (collectively, the "**Clean-up**") of any Hazardous Substances found on or about the Premises, and if Landlord determines that Tenant is responsible for such Clean-up, then:

(a) Landlord shall provide Tenant with a copy of such Environmental Report and with a written explanation of the reasons why Landlord believes that Tenant 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, Tenant fails either (i) to complete the Clean-up, or (ii) 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 Landlord shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Government, and to recover all of the costs and expenses of such Clean-up from Tenant as Additional Rent together with Default Interest from the date Landlord incurred such costs and expenses until paid in full.

10.11.2 **Emergency.** If the Environmental Report reveals a situation which, in Landlord's sole discretion, constitutes an emergency, then Landlord shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Government, and to recover all of the costs and expenses of such Clean-up from Tenant as Additional Rent together with interest at the Default Interest from the date Landlord incurred such costs and expenses until paid in full.

10.11.3 **Submission of Report to Government.** To the extent required by Law, Landlord shall be entitled to submit the Environmental Report to any Government.



**10.11.4 Completion of Clean-up Before Surrender or Termination.**

Tenant shall complete Clean-up prior to surrender of the Premises and termination of this Lease, and shall fully comply with all Environmental Law and requirements of any Government over the Clean-up, including any requirement to file such assessment, mitigation plan, risk assessment or other information with any such Government prior to such surrender or termination.

**10.11.5 Tenant's Inability to Complete.**

Should any such Clean-up for which Tenant is responsible not be completed or should Tenant not receive any Government approvals regarding the Premises or areas adjacent to the Premises required under Environmental Law prior to the expiration or sooner termination of this Lease, including any extensions of this Lease, then (i) Tenant shall deposit with Landlord an amount of money equal to the balance of the estimated costs of the Clean-up; and (ii) if the nature of the Clean-up makes the Premises untenable or unleaseable until the Clean-up is completed, then Tenant shall be liable to Landlord as a holdover tenant, subject to the terms and conditions set forth in this Lease, until the Clean-up has been sufficiently completed to make the Premises suitable for lease to third parties.

**10.12 Confidentiality.**

**10.12.1 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, Tenant agrees that Tenant shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, to any Person, including any Government, without the prior written consent of Landlord. Upon completion of any Clean-up of the Premises, Tenant shall deliver and return to Landlord, all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises whether provided to Tenant by Landlord or not.

**10.12.2 Scope of Obligation.**

Tenant's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, include but are not limited to Tenant's officers, employees, agents, attorneys, environmental consultants and contractors. Tenant's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, shall survive the termination of this Lease.

**10.13 Copies of Environmental Reports.**

Tenant shall provide Landlord with a copy of any and all environmental assessments, audits, studies and reports regarding Tenant's past or current activities on the Premises or the environmental condition of the Premises within 30 days of Tenant's receipt of such materials. Tenant shall be obligated to provide Landlord with a copy of such materials without regard to whether they are

generated by Tenant or prepared for Tenant, or how Tenant comes into possession of such materials.

10.14 **Survival of Agreements.** The covenants of this section, including the indemnification provision, shall survive the expiration or termination of this Lease, or any termination of Tenant's interest in the Premises.

## 11. INDEMNIFICATION; LIABILITY OF LANDLORD

11.1 **Obligations.** Tenant shall Indemnify Landlord against any: (a) wrongful act, wrongful omission, or negligence of Tenant (and anyone claiming by or through the Tenant) or its partners, members, directors, officers, or employees; (b) breach or default by Tenant under this Lease; or (c) breach of any representation or warranty Tenant makes in this Lease. Tenant shall also Indemnify Landlord against the following during the Term and so long as Tenant remains in possession after the Expiration Date: (u) any Contest Tenant initiates; (v) any Application made at Tenant's request; (w) use, occupancy, control, management, operation, and possession of the Premises; (x) any Construction and any agreements that Tenant (or anyone claiming through Tenant) makes for any Construction; (y) the condition of the Premises or any street, curb or sidewalk adjoining the Premises, or of any roadways or easements adjoining or appurtenant to the Premises; and (z) any accident, injury or damage whatsoever caused to any person in or on the Premises or upon or under roadways or easements adjoining or appurtenant to the Premises. Tenant shall be required to Indemnify Landlord notwithstanding the acts or omissions or negligence of Landlord, but Tenant shall not be required to Indemnify Landlord regarding Landlord's intentional acts or gross negligence. This paragraph does not apply to Environmental Law and Hazardous Substances Discharges, which are covered in Section 10.8.

11.2 **No Liability of Landlord.** During the Term: (a) Tenant is and shall be in exclusive control and possession of the Premises; and (b) Landlord shall not be liable for any injury or damage to any property (of Tenant or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Landlord's intentional act or gross negligence. Landlord's right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and the Power Purchase Agreement and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Landlord from or against any liability of Landlord: (y) to third parties existing at or before the Commencement Date; or (z) arising from Landlord's intentional acts or omissions or gross negligence.

11.3 **Indemnification Procedures.** Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee, including, without limitation, under Sections 9.2, 10.8, 11.1, 17.5, 18.2, and 26.7 of this Lease:

11.3.1 **Prompt Notice.** Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

11.3.2 **Selection of Counsel.** Indemnitor shall select counsel reasonably acceptable to Indemnitee. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

11.3.3 **Cooperation.** Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

11.3.4 **Settlement.** Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (w) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (x) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (y) the continued effectiveness of this Lease is not jeopardized in any way; and (z) Indemnitee's interest in the Premises is not jeopardized in any way.

11.3.5 **Insurance Proceeds.** Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

## 12. RIGHT OF CONTEST

12.1 **Tenant's Right; Contest Conditions.** Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "**Contest**"). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

12.1.1 **No Fines.** Such deferral or noncompliance shall not subject Landlord to a material risk of any fine or penalty, except civil penalties for which Tenant has given Landlord a bond, letter of credit, or other security reasonably satisfactory to

Landlord (the “**Contest Security**”) in an amount equal to the reasonably estimated amount of such civil penalties.

12.1.2 **No Liability.** Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Tenant has given Landlord Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability.

12.1.3 **No Forfeiture.** Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost.

12.1.4 **No Cost to Landlord.** Such Contest shall be without cost, liability, or expense to Landlord.

12.1.5 **Diligence.** Tenant shall prosecute such Contest with reasonable diligence and in good faith.

12.1.6 **Payment.** If required for such Contest, Tenant shall have paid the Contested Real Estate Taxes or other matter.

12.1.7 **Collection of Real Estate Taxes.** If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Landlord and the Fee Estate.

12.1.8 **No Tax Deed.** If, at any time, payment of any Real Estate Taxes is necessary to prevent the imminent (i.e., within 30 days) delivery of a tax deed of the Fee Estate for nonpayment, then Tenant shall pay or cause to be paid the sums in sufficient time to prevent delivery of such deed.

12.1.9 **No Event of Default.** No Uncured Event of Default shall exist under this Lease at the time of such Contest.

12.1.10 **Security.** If the amount at issue in such Contest (and all other Contests then pending) exceeds an amount equal to \$\_\_\_\_\_, then Tenant shall, before proceeding with such Contest, give Landlord Contest Security equal to such excess (less any Contest Security otherwise provided for the same Contest).

12.1.11 **Named Parties.** If Landlord has been named as a party in any action, then Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord’s place, if permissible under the circumstances.

12.2 **Landlord Obligations and Protections.** Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions; and (b) such Contest must be initiated or prosecuted in Landlord’s name. In such case, Landlord shall cooperate, as Tenant reasonably requests, to permit the Contest to be prosecuted in

Landlord's name. Landlord shall give Tenant any documents, deliveries, and information in Landlord's control and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses as Landlord incurs or reasonably anticipates incurring, for Tenant's Contest and Landlord's assistance with such Contest.

**12.3 Miscellaneous.** Tenant shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Tenant concludes Tenant's Contest of any Real Estate Taxes, Tenant shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Tenant's Contest of a Law, Tenant shall comply with such final determination. Landlord may contest any matter for which Tenant is entitled to prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; and (b) Tenant fails to commence such Contest within 15 days after receipt of such Notice.

**12.4 Contest Security.** Landlord shall promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

### **13. INSURANCE**

**13.1 Tenant to Insure.** Tenant shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent): (a) Property Insurance; and (b) Liability Insurance.

**13.2 Nature of Insurance Program.** All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "B+-VIII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published); and (b) are lawfully doing business in the State. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease. Except with Lessor's prior written approval, the policy shall not have a deductible amount in excess of \$50,000 for any one occurrence.

**13.3 Policy Requirements and Endorsements.** All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

13.3.1 **Insureds.** Liability Insurance policies shall name Landlord as an “additional insured” and all mortgagees this Lease allows as “additional insureds.” Property Insurance policies shall name Landlord and any Fee Mortgagee as loss payee as its interest may appear and each mortgagee this Lease allows under a standard noncontributing mortgagee clause. Notwithstanding anything to the contrary in this paragraph, all Property Insurance Proceeds shall be paid and applied as this Lease provides.

13.3.2 **Primary Coverage.** All policies shall be written as primary policies not contributing to or in excess of any coverage that Landlord may carry.

13.3.3 **Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for Tenant’s indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Tenant’s failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.

13.3.4 **Notice to Landlord.** The insurance carrier shall give the additional insureds 30 days’ prior Notice of cancellation or nonrenewal, except 10 days for nonpayment of premiums. Tenant shall advise Landlord of such notice within 5 days of receipt.

13.4 **Deliveries to Landlord.** On the Commencement Date, and no later than 10 days before any Liability Insurance or Property Insurance expires or is cancelled, Tenant shall deliver to Landlord certificates of insurance evidencing Tenant’s maintenance of all Liability Insurance and Property Insurance this Lease requires, in each case providing coverage for at least one year from the date delivered. In the event of any dispute regarding Tenant’s compliance with the insurance requirements of this Lease, Tenant may at Tenant’s option obtain a certificate from a reputable insurance broker located in the State and acceptable to Landlord, confirming such compliance. Such certificate shall be dispositive.

13.5 **Waiver of Certain Claims.** To the extent that Landlord or Tenant purchases any policy of property insurance, the party purchasing such insurance shall attempt to cause the insurance carrier to agree to a Waiver of Subrogation, if not already in the policy. Landlord and Tenant waive any right that either may have against the other on account of any loss or damage to their respective property to the extent that the loss or damage is insured under their respective insurance policies.

13.6 **No Representation.** Neither party makes any representation that the limits, scope, or forms of insurance coverage this Lease requires are adequate or sufficient.

## 14. LOSSES AND LOSS PROCEEDS

14.1 **Notice.** If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

14.2 **Casualty.** If a Casualty occurs which is not a Substantial Casualty, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall Restore with reasonable promptness regardless of cost. If the Casualty is a Substantial Casualty, then Tenant may, by Notice to Landlord, given within \_\_\_\_ after \_\_\_\_\_, terminate this Lease effective \_\_ after such Notice, provided that Tenant assigns to Landlord all Property Insurance Proceeds (and rights thereto) arising from the Casualty.

14.3 **Substantial Condemnation.** If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. The Condemnation Award shall be allocated as follows:

14.3.1 **Prepayment Premium.** To Leasehold Mortgagee, to the extent that both (1) because of such Condemnation, any Leasehold Mortgagee imposes any fee or charge that such Leasehold Mortgagee could not have collected but for the Condemnation and the related prepayment of such Leasehold Mortgagee's loan; and (2) the Condemnation Award was directly or indirectly increased by such fee or charge.

14.3.2 **Costs and Expenses.** To reimburse Landlord and Tenant (subject to the rights of Leasehold Mortgagees) for their actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

14.3.3 **Tenant's Claim.** Tenant shall, subject to the rights of Leasehold Mortgagees, receive such portion of the Condemnation Award as shall equal the lesser of (a) all sums secured by all Leasehold Mortgages; and (b) the Market Value of the Facility at the Condemnation Effective Date.

14.3.4 **Landlord's Claim.** Landlord shall, subject to the rights of Fee Mortgagees, receive such portion of the Condemnation Award as shall equal the Market Value of the Land, at the Condemnation Effective Date.

14.3.5 **Landlord's Residual Claim.** Landlord shall, subject to the rights of Fee Mortgagees, receive the entire remaining Condemnation Award.

14.4 **Insubstantial Condemnation.** If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after

Casualty. Whether or not the Condemnation Award is adequate, Tenant shall, at its expense, Restore in compliance with this Lease. After Tenant has completed and fully paid for Restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant as if it arose from a Substantial Condemnation that affected only the part of the Premises taken, with an equitable allocation of all elements taken into account in determining such distribution.

**14.5 Temporary Condemnation.** If a Temporary Condemnation occurs (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall receive any Condemnation Award (to the extent for periods within the Term), without affecting Tenant's obligations in any way.

**14.6 Use of Loss Proceeds.**

**14.6.1 Assignment to Depository.** All Loss Proceeds shall be paid to Depository, to be disbursed by Depository, subject to the terms of the Senior Leasehold Mortgage and this Lease. If Landlord receives any Loss Proceeds, Landlord shall promptly remit them to Depository.

**14.6.2 Immaterial Loss.** If a Loss is an Immaterial Loss, then (subject to the terms of the Leasehold Mortgage on disbursement of Loss Proceeds to Restore) the Depository shall release all Loss Proceeds to Tenant, to be applied first to Restoration.

**14.6.3 Material Loss.** If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Tenant from time to time, upon the following terms, for Restoration. Depository shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Tenant from time to time as Restoration progresses in accordance with the procedures required by the Leasehold Mortgagee. If no Leasehold Mortgage exists, then Depository shall disburse the Loss Proceeds from time to time pursuant to normal and customary disbursement procedures consistent with this Lease, but excluding any requirement for a guaranty, bond, security, or other credit enhancement or credit support measures.

**14.6.4 Loss Proceeds in Trust.** Until Tenant has completed and paid for Restoration, Tenant shall hold all Loss Proceeds in trust to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant shall not be entitled to receive any further installment of Loss Proceeds until Tenant has satisfied, bonded, or otherwise discharged such Prohibited Lien when and as this Lease requires.

**14.6.5 Remaining Loss Proceeds.** When Tenant has completed and paid for Restoration, Depository shall release to Tenant, and Tenant may retain (subject to rights of Leasehold Mortgagees) any remaining Loss Proceeds.



14.6.6 **Insufficient Restoration Funds.** If Restoration Funds are insufficient to Restore, then Tenant shall nevertheless Restore at its expense. Depository shall not release any Loss Proceeds until and unless Tenant has expended on such Restoration an amount equal to any such insufficiency.

#### 14.7 **Disputes.**

14.7.1 **Good Faith Negotiations.** Except as otherwise expressly set forth in this Lease, before submitting any dispute about a Loss (including its characterization), Restoration, timing of Restoration, Loss Proceeds, Restoration Funds, or the use of such proceeds or funds to dispute resolution or litigation, the presidents, vice presidents, or authorized delegates from both Landlord and Tenant having full authority to settle the dispute shall personally meet in Hawaii and attempt in good faith to resolve the dispute (“**Management Meeting**”). Landlord and Tenant shall endeavor to hold the Management Meeting within thirty (30) days after the date of a request for a Management Meeting. Landlord and Tenant shall not file a complaint or initiate other formal dispute resolution proceedings until ninety (90) days after the date of a request for a Management Meeting, except as might be necessary to preserve a right or claim that would expire during the ninety-day period.

### 15. **LANDLORD’S TRANSFERS**

15.1 **Landlord’s Right to Convey.** Landlord may Transfer the Fee Estate from time to time. Landlord will promptly Notify Tenant of a Transfer.

15.2 **Release of Landlord.** Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord after the Transfer, provided that such successor Landlord assumes Landlord’s past, present, and future obligations under this Lease. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

### 16. **TENANT’S TRANSFERS**

16.1 **Tenant’s Limited Right.** Tenant may only Transfer this Lease to an assignee of all of the rights and obligations of the Seller under the Power Purchase Agreement. Tenant may not Transfer this Lease to any other Person, and any such Transfer shall be void. Any permitted assignee of Tenant shall assume all obligations and liabilities of Tenant under this Lease. Tenant shall pay all transfer and other taxes payable on account of any Transfer by Tenant or any holder of any Equity Interest in Tenant. Tenant shall promptly Notify Landlord of any Transfer. No Transfer shall affect any obligations of Tenant or rights of Landlord under this Lease.

16.2 **Subleases.** Tenant shall not enter into or Modify any Sublease, without Landlord's prior consent which may be withheld in Landlord's sole discretion. No Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any Sublease shall expire no later than one hour before the Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant's obligation to cure it. Tenant shall take all steps reasonable and necessary to prevent any such Default.

16.3 **Conditions to Effectiveness of Certain Transactions.** No assignment of this Lease or Sublease shall be effective or have any validity unless and until such assignment or Sublease otherwise complies with this Lease and Landlord has received: (a) in the case of an assignment, an executed counterpart of the assignment and an assumption of this Lease by the assignee, in recordable form, effective as of the date of assignment; (b) in the case of a Sublease, a copy of the executed Sublease complying with this Lease; and (c) Notice of the assignee or Subtenant.

## 17. LEASEHOLD MORTGAGE

17.1 **Leasehold Mortgage.** Provided that any Monetary Default or material Nonmonetary Default has been, or simultaneously is, cured, Tenant may grant a Leasehold Mortgage to a Financing Party under the Power Purchase Agreement in connection with a permitted financing under the Power Purchase Agreement.

17.2 **Leasehold Mortgagee's Remedies.** Without Landlord's consent, at any time (a) any Leasehold Mortgagee may initiate and complete any Foreclosure Event and exercise any other rights and remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Leasehold Mortgage; and (b) any transferee through a Foreclosure Event, and its successors and assigns, may assign this Lease to a Person who simultaneously assumes all of the rights and obligations of the Seller under the Power Purchase Agreement.

17.3 **Lease Impairments.** Any Lease Impairment made without Leasehold Mortgagee's consent shall (at Leasehold Mortgagee's option) be null, void, and of no force or effect, and not bind Tenant, Leasehold Mortgagee, or New Tenant.

17.4 **Notices.** Any Notice of Default from Landlord to Tenant shall have no effect unless Landlord gives a copy to Leasehold Mortgagee. If any Default occurs for which Landlord intends to exercise any remedy, Landlord shall promptly give Leasehold Mortgagee a Notice of Default.

17.5 **Right to Cure; Indemnity.** Any Leasehold Mortgagee shall have the right, but not the obligation, to perform any obligation of Tenant under this Lease and to cure any Default. Landlord shall accept performance by or at the instigation of a Leasehold Mortgagee in fulfillment of Tenant's obligations, for the account of Tenant and with the

same force and effect as if performed by Tenant, provided that such performance is rendered within the cure period that applies to a Leasehold Mortgagee under this Lease.

**17.5.1 Opportunity to Cure.** Landlord shall accept Leasehold Mortgagee's cure of any Default at any time until 90 days after Leasehold Mortgagee has received the Notice of Default for that Default. If Leasehold Mortgagee cannot reasonably cure any Nonmonetary Default within Leasehold Mortgagee's cure period under the preceding sentence, it shall have such further time as it reasonably needs so long as it proceeds with the diligence expected of an experienced independent power producer willing and able to exert commercially reasonable efforts to achieve such cure. If Leasehold Mortgagee cannot reasonably cure a Default without possession, or if any Tenant-Specific Default(s) occur(s), Leasehold Mortgagee shall be entitled to such additional time as it reasonably needs to consummate a Foreclosure Event and obtain possession, provided Leasehold Mortgagee timely exercises its cure rights for all other Defaults. If Leasehold Mortgagee consummates a Foreclosure Event, Landlord shall waive all Tenant-Specific Defaults, provided that all other Defaults are cured.

**17.5.2 Indemnity for Cure Activities.** Notwithstanding anything to the contrary in this Lease, if any Leasehold Mortgagee (or a representative of Leasehold Mortgagee) desires to enter the Premises to cure any Default, then by entering the Premises, such Leasehold Mortgagee shall be deemed to have agreed to Indemnify Landlord in the same manner as this Lease requires Tenant to Indemnify Landlord, but solely regarding direct damages that Landlord suffers as a result of any acts or omissions of such Leasehold Mortgagee or its representative on or in the Premises in seeking to cure any such Default.

**17.6 Cure Rights Implementation.** Whenever Leasehold Mortgagee's time to cure a Default or consummate a Foreclosure Event has not expired, Landlord shall not terminate this Lease, accelerate any Rent, or otherwise interfere with Tenant's or Leasehold Mortgagee's possession and quiet enjoyment of the Leasehold Estate. Leasehold Mortgagee may enter the Premises to seek to cure a Default. This right or its exercise shall not be deemed to give Leasehold Mortgagee possession.

**17.7 New Lease.** If this Lease terminates for any reason (except with Leasehold Mortgagee's consent or because of a Total Loss), even if Leasehold Mortgagee failed to timely exercise its cure rights for a Default, Landlord shall promptly give Leasehold Mortgagee a Lease Termination Notice. By giving notice to Landlord on or before the day that is 30 days after Leasehold Mortgagee receives Landlord's Lease Termination Notice, Leasehold Mortgagee may require Landlord to promptly enter into a New Lease with New Tenant. Landlord need not do so, however, unless New Tenant has, consistent with the Lease Termination Notice: (a) cured all reasonably curable Defaults (except Tenant-Specific Defaults); and (b) reimbursed Landlord's reasonable costs and expenses (including reasonable attorneys' fees and expenses) to terminate this Lease, recover the Premises, and enter into the New Lease.

**17.8 New Lease Implementation.** If Leasehold Mortgagee timely requests a New Lease in conformity with this Lease, then from the date this Lease terminates until the parties execute and deliver a New Lease, Landlord shall not: (a) operate the Premises in an unreasonable manner; (b) terminate Sublease(s) except for the Subtenant's default; or (c) lease any Premises except to New Tenant. When the parties sign a New Lease, Landlord shall transfer to New Tenant all Subleases (including any security deposits Landlord held), service contracts, Premises operations, and net income Landlord collected from the Premises during the period described in the previous sentence, and Landlord shall cause every Fee Mortgagee to subordinate unconditionally to the New Lease.

**17.9 Certain Proceedings.** If Landlord or Tenant initiates any mediation, litigation, or other dispute resolution proceeding affecting this Lease, then the parties shall simultaneously Notify Leasehold Mortgagee. Leasehold Mortgagee may participate in such proceedings on Tenant's behalf, or exercise any or all of Tenant's rights in such proceedings, in each case (at Leasehold Mortgagee's option) to the exclusion of Tenant. No settlement shall be effective without Leasehold Mortgagee's consent, unless Tenant simultaneously pays the settlement and the claimant has released (or does not assert) any claim against Leasehold Mortgagee.

**17.10 No Merger.** If the Leasehold Estate and the Fee Estate are ever commonly held, they shall remain separate and distinct estates (and not merge) without Leasehold Mortgagee's and Fee Mortgagee's consent.

**17.11 No Personal Liability.** No Leasehold Mortgagee or New Tenant shall ever have any liability under this Lease beyond its interest in this Lease, even if it becomes Tenant or assumes this Lease. Any such liability shall terminate if and when any such Tenant assigns (and the assignee assumes) or abandons this Lease (or a New Lease).

**17.12 Multiple Leasehold Mortgages.** If at any time multiple Leasehold Mortgagees exist: (a) any consent by or notice to Leasehold Mortgagee refers to all Leasehold Mortgagees; (b) except under clause (a), the most senior Leasehold Mortgagee may exercise all rights of Leasehold Mortgagee(s), to the exclusion of junior Leasehold Mortgagee(s); (c) to the extent that the most senior Leasehold Mortgagee declines to do so, any other Leasehold Mortgagee may exercise those rights, in order of priority; and (d) if Leasehold Mortgagees do not agree on priorities, a written determination of priority issued by a title insurance company licensed in the State (or such insurer's designated authorized title agent, e.g. Title Guaranty of Hawaii, Inc.), selected by Landlord in its sole discretion, shall govern.

**17.13 Further Assurances.** Upon request from Tenant or any Leasehold Mortgagee (prospective or current), Landlord shall promptly, under documentation reasonably satisfactory to the requesting party: (a) agree directly with Leasehold Mortgagee that it may exercise against Landlord all Leasehold Mortgagee's rights in this Lease; and (b) certify (subject to any then-existing exception reasonably specified) that

this Lease is in full force and effect, that no Lease Impairment has occurred, that to Landlord's knowledge no Default exists, the date through which Rent has been paid, and other similar matters as reasonably requested.

17.14 **Miscellaneous.** Notwithstanding anything to the contrary in this Lease, Leasehold Mortgagee may: (a) exercise its rights through an affiliate, assignee, designee, nominee, subsidiary, or other Person, acting in its own name or in Leasehold Mortgagee's name (and anyone acting under this clause (a) shall automatically have the same protections, rights, and limitations of liability as Leasehold Mortgagee); (b) refrain from curing any Default; (c) abandon such cure at any time; or (d) withhold consent or approval for any reason or no reason, except where this Lease states otherwise. Any such consent or approval must be written. To the extent any mortgagee's rights under this Lease apply after this Lease terminates, they shall survive such termination.

## 18. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS

18.1 **Quiet Enjoyment.** So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

18.2 **Access and Inspection.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees may enter the Premises upon reasonable Notice to: (a) ascertain whether Tenant is complying with this Lease and the Power Purchase Agreement; (b) cure Tenant's Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective Transferee or Fee Mortgagee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against any claims arising from Landlord's entry upon the Premises (except upon termination of this Lease or an Event of Default).

18.3 **Title.** Notwithstanding anything to the contrary in this Lease, all Improvements located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Tenant. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant during the Term.

## 19. EVENTS OF DEFAULT; REMEDIES

19.1 **Definition of “Event of Default.”** An “Event of Default” means the occurrence of any one or more of the following:

19.1.1 **Monetary Default.** If a Monetary Default occurs and continues for 30 days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 **Prohibited Liens.** If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 15 days after Notice from Landlord.

19.1.3 **Power Purchase Agreement.** If a Default by Tenant occurs under the Power Purchase Agreement, which continues beyond any cure or grace period allowed under the Power Purchase Agreement.

19.1.4 **Bankruptcy or Insolvency.** If Tenant ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within 180 days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant’s assets or Tenant’s interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 180 days).

19.1.5 **Nonmonetary Default.** If any other Nonmonetary Default occurs and Tenant does not cure it within 30 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within 30 days from such Notice, if Tenant shall not (a) within 30 days from Landlord’s Notice advise Landlord of Tenant’s intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to 30 days).

19.2 **Remedies.** If an Event of Default occurs, then Landlord shall, at Landlord’s option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord’s remedies include:

19.2.1 **Termination of Tenant’s Rights.** Landlord may terminate Tenant’s right to possess the Premises by any lawful means, in which case this Lease and

the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

**19.2.2 Taking Possession.** Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Landlord. Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any right to service of notice of intention to re-enter provided in any Law and any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by writ of any court or judge or in case of re-entry or repossession by Landlord or any expiration or termination of this Lease. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms “enter,” “re-enter,” “entry,” and “re-entry,” as used in this Lease, are not restricted to their technical legal meanings.

**19.2.3 Suits Before Expiration Date.** Landlord may sue for damages or to recover Rent from time to time at Landlord’s election.

**19.2.4 Receipt of Moneys.** No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord’s right to enforce payment of any Rent payable or later falling due, or Landlord’s right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord’s election, on account of Tenant’s liability.

**19.2.5 No Waiver.** No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be Modified except by a written instrument executed by Landlord. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

19.2.6 **Security Devices.** Landlord may change the locks and other security devices providing admittance to the Premises.

19.2.7 **Conditional Limitation.** Landlord may serve upon Tenant a written 30-day notice of cancellation and termination of this Lease. Upon the expiration of such 30-day period, this Lease and the Term shall automatically and without any action by anyone terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 30-day period were the Expiration Date. The passage of such 30-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant shall then quit and surrender the Premises to Landlord but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this paragraph. This paragraph is intended to establish a conditional limitation and not a condition subsequent. Nothing in this paragraph shall limit Landlord's right to commence and prosecute a summary possession proceeding under Chapter 666 of the Hawaii Revised Statutes.

19.2.8 **Damages.** Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Such damages shall include, at Landlord's election, either (a) the present value, calculated at a discount rate equal to the then-current Prime Rate of the excess of the total Fixed Rent under this Lease over the fair market rental value of the Premises for the balance of the Term; or (b) the Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease, less (in the case of this clause (b) only) Landlord's actual proceeds of reletting less Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant's default, including after expiration of the Term. Notwithstanding any Law to the contrary, (x) Landlord need not commence separate actions to enforce Tenant's obligations for each month's Rent not paid, or each month's accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such Rent and damages; and (y) Landlord may not recover any consequential damages for Tenant's Default.

19.2.9 **Injunction of Breaches.** Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

19.2.10 **Continue Lease.** Landlord may at Landlord's option maintain Tenant's right to possession. In that case, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.



19.2.11 **Restoration Funds.** Upon any termination of this Lease, to the extent that Landlord or Depository then holds any Restoration Funds, they shall be applied solely as Landlord directs, including as a payment toward any sums then payable to Landlord.

19.3 **Proceeds of Reletting.** Landlord shall apply any proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

19.3.1 **Landlord's Costs.** *First*, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessioning, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

19.3.2 **Preparation for Reletting.** *Second*, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting;

19.3.3 **Costs of Maintenance and Operation.** *Third*, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

19.3.4 **Residue.** *Fourth*, to pay to itself any balance remaining on account of Tenant's liability to Landlord.

19.4 **Tenant's Late Payments; Late Charges.** If Tenant fails to make any payment to Landlord required under this Lease within 10 days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within 10 days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to 3% of any payment that Tenant fails to pay within 10 days after such payment is first due and payable. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

19.5 **Landlord's Right to Cure.** If Tenant at any time fails to make any payment or take any action this Lease requires, then Landlord, after 10 Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may

permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this paragraph; and (b) Default Interest on (a).

**19.6 Holding Over.** If for any reason or no reason Tenant remains in the Premises after the Expiration Date, or fails to remove Improvements required to be removed after the Removal Period under Section 20.2, then Landlord will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date or fails to remove Improvements required to be removed after the Removal Period under Section 20.2, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to: \$\_\_\_\_\_ times the CPI Adjustment Factor, together with all Additional Rent owed for such period.

**19.7 Waivers.** Landlord and Tenant irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Landlord and Tenant regarding the Premises, enforcement of this Lease, Tenant's use or occupancy of the Premises, any claim of injury or damage arising between Landlord and Tenant, or any actions of Landlord in connection with or relating to the enforcement of this Lease. Tenant waives any right of redemption provided for by Law. Tenant waives any right to interpose any counterclaim in any action by Landlord to enforce this Lease or Landlord's rights and remedies under this Lease.

**19.8 Accord and Satisfaction; Partial Payments.** No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a partial payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

**19.9 Miscellaneous.** Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

**19.9.1 Survival.** No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Lease.

19.9.2 **Multiple Suits.** Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord's election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

19.9.3 **Receipt of Monies.** Unless such payment shall fully cure all Monetary Defaults, no receipt of moneys by Landlord from Tenant after the giving of a termination notice or a notice to obtain possession, or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice previously given to Tenant, waive Landlord's right to enforcement of Rent payable by Tenant or thereafter falling due, or waive Landlord's right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or after a final order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment, unless such payments fully cure all Monetary Defaults. Any sums so collected (without thereby curing all Monetary Defaults) shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.

19.9.4 **No Double Recovery.** In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord's damages.

## 20. END OF TERM

20.1 **Improvements.** Upon the termination of this Lease, at Landlord's option (a) all Improvements shall become Landlord's property; or (b) Tenant shall remove all Improvements at no cost to Landlord, and shall leave the Land in a clean and orderly condition free of all debris. Landlord shall Notify Tenant of Landlord's election to have Tenant remove the Improvements not later than ninety (90) days before the Expiration Date.

20.2 **Tenant's Removal of Improvements.** If Tenant is required to remove the Improvements upon termination of the Lease, Tenant shall have reasonable access to the Premises for a period of up to six (6) months after the Expiration Date to dismantle, pack and remove the Improvements from the Premises (the "**Removal Period**"). Tenant shall work promptly and diligently to remove the Improvements. The Removal Period shall end upon Tenant's completion of removal of the Improvements from the Premises. If Tenant fails to remove the Improvements within the Removal Period, the Holding Over provisions of Section 19.6 of this Lease shall apply. The terms and provisions of this Lease shall apply during the Removal Period, including Tenant's obligations to provide insurance and to Indemnify Landlord.

**20.3 Landlord's Removal of Improvements.** If Landlord determines that Tenant is not making diligent efforts to remove the Improvements, Landlord shall Notify Tenant of Landlord's intention to remove the Improvements at Tenant's cost. If 30 days after such notice to Tenant Landlord in its reasonable judgment continues to believe Tenant is not diligently removing the Improvements, Landlord may remove the Improvements at Tenant's cost.

**20.4 Actions Upon Surrender.** Upon the later of (a) any Expiration Date and (b) the expiration of the Removal Period:

**20.4.1 Condition of Premises.** Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Tenant to Restore.

**20.4.2 Surrender of Premises.** Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires.

**20.4.3 Free and Clear.** Tenant shall deliver the Premises free and clear of all: (a) Subleases, and (b) liens except (i) liens that Landlord or any of its agents caused, or (ii) the recorded title exceptions affecting the Fee Estate that are prior to this Lease as of the Commencement Date and listed as exceptions in Tenant's leasehold policy of title insurance for this Lease.

**20.4.4 Assignment of Rights.** Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises.

**20.4.5 Orderly Transition.** The parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires.

**20.4.6 Real Estate Taxes.** The parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default).

**20.4.7 Memorandum of Lease.** The parties shall terminate the Memorandum of Lease.

**20.4.8 Deposits.** Tenant shall assign to Landlord, and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the Premises.

## 21. NOTICES

21.1 **Special Notices.** All Notices of Default, Renewal Notices, and similar substantive Notices shall be in writing and addressed to Landlord and Tenant (and their designated copy recipients), and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or Person as a party may designate by notice to the other party):

Landlord: Maui Electric Company, Limited  
Central Pacific Plaza  
220 South King Street, Suite 2100  
Honolulu, Hawaii 96813  
Attention: Director Energy Procurement  
E-mail:

With a copy to:  
Hawaiian Electric Company, Inc.  
P.O. Box 2750  
Honolulu, Hawaii 96840  
Attention: Legal Department  
E-mail: legalnotices@hawaiianelectric.com

Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone No.: (\_\_\_\_)  
Facsimile No.: (\_\_\_\_)  
E-mail:

21.2 **Ordinary Notices.** Notices in the ordinary course of business with respect to this Lease (for example for the regular payment of Rent under this Lease as opposed to late payments) shall be in writing and addressed to Landlord and Tenant as provided in the foregoing paragraph, and may be sent by first class mail or e-mail, in which case they shall be deemed delivered three Business Days after deposit in the United States mail, provided that no postal strike (or other event likely to disrupt postal service) is then in effect.

21.3 **Change of Address.** Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt.

21.4 **Acknowledgment; Notice by Counsel.** Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

## 22. NONRECOURSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and its parent, subsidiary(ies), or affiliated corporations or other entities, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including the proceeds thereof). No property or assets whatsoever, except Landlord's interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. The limitation of liability and limitation of remedy in this paragraph shall not apply in any way to, and shall not be construed to limit or preclude, personal liability (if any) arising under any Supplementary Agreement. No shareholder, officer, member, manager, director, agent, or employee of Tenant or Landlord shall have any liability under this Lease, but this shall not limit any liability arising under the express terms of any Supplementary Agreement. (This Lease sometimes refers to this paragraph as the "**Nonrecourse Clause.**")

## 23. ADDITIONAL DELIVERIES; THIRD PARTIES

23.1 **Estoppel Certificates.** Up to twice a year, each party to this Lease (a "**Requesting Party**") may require the other party (a "**Certifying Party**") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. The Certifying Party shall sign, acknowledge, and return such Estoppel Certificate within 15 days after request, even if the Requesting Party is in Default. Any Estoppel Certificate shall bind the Certifying Party.

23.2 **Further Assurances.** Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

23.3 **Memorandum of Lease.** Upon request by either, the parties shall promptly execute, acknowledge, and deliver duplicate originals of a Memorandum of Lease. Either party may record such Memorandum of Lease. Any taxes and fees imposed upon such recording shall be paid by Tenant. If the parties amend this Lease, then the parties shall have the same rights and obligations regarding a memorandum of such amendment as they do for the Memorandum of Lease.

23.4 **Modification.** Any Modification of this Lease must be in writing signed by the party to be bound.

23.5 **Successors and Assigns.** This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions.

23.6 **No Third-Party Beneficiaries.** Nothing in this Lease confers on any Person (except Landlord, Tenant, Leasehold Mortgagees, and Fee Mortgagees) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

## 24. GUARANTY

24.1 **Guaranty.** Concurrently with the execution and delivery of this Lease, Tenant shall deliver to Landlord a Guaranty in the form attached hereto as **Exhibit D** executed by Guarantor and acknowledged.

## 25. ARCHAEOLOGICAL AND HISTORICAL ITEMS

25.1 **Discovery of Items.** In the event any human remains, artifacts, historical items, or any of them (collectively the “**Discovered Items**”) are discovered on the Premises, Tenant shall, at Tenant’s sole expense and subject to the approval of Landlord, be responsible to: (a) cause all excavation in the immediate area which may damage the Discovered Items and the potential historic site to cease; (b) cause the site to be stabilized and secured to temporarily protect the Discovered Items against damage, theft, or both; (c) cause the Discovered Items to be left untouched so that their archaeological or historical context may be accurately documented; and (d) cause the discovery to be reported immediately to Landlord and to Government 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, Tenant 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.

25.2 **Human Remains.** In the case of the discovery of human remains, Tenant shall, at Tenant’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 Landlord and to Government possessing jurisdiction over such matters. Tenant shall also be responsible to obtain written verification that the mitigation plan has been successfully implemented.

25.3 **Landlord’s Reservation.** If any Discovered Items are discovered, then Landlord shall have the right at all reasonable times to enter the Premises for the purposes of searching for, exploring for, and removing any of the Discovered Items for preservation as permitted by Law. All objects, antiquities and specimens of Hawaiian or

other ancient art or handicraft or of prehistoric, historic or archaeological interest found on the Premises belong to and shall remain the property of Landlord.

**25.4 Studies by Tenant.** In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Tenant or anyone acting by or through Tenant, Tenant shall not permit such studies to be commenced without the prior written consent of Landlord, unless Tenant is required by applicable Law to permit such studies, in which case Landlord's consent shall not be required but Tenant shall provide Landlord with prior Notice of the commencement of such studies and shall advise Landlord of the applicable Law mandating such studies. In any event, Tenant shall upon completion of such studies cause a complete copy of the results of such studies to be provided to Landlord at the earliest opportunity.

## **26. MISCELLANEOUS**

**26.1 Confidential Information.** Without limitation of the promises in Section 10.12, each party agrees that, except as otherwise provided by applicable Laws, or in connection with proceedings before the State of Hawaii Public Utilities Commission or other governmental body with jurisdiction over the Premises, or in connection with the evaluation for financing of the Premises, or as part of disclosure to its affiliates, attorneys, consultants, and advisers in order to conduct its business or proceedings to enforce this Lease or the Power Purchase Agreement, or to record a Memorandum of Lease under Section 23.3 of this Lease, such party (including its officers, directors, employees, representatives, brokers, attorneys and advisers) shall keep the contents of this Lease and any information related to the Premises, Tenant and the transaction contemplated by this Lease 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 Lease, or any of their respective officers, directors, employees, representatives, brokers, attorneys or advisers. Tenant may retain possession of all or any part of the Confidential Information to the extent such Confidential Information relates solely to the Property and Tenant's operations thereon.

**26.2 Costs and Expenses; Legal Costs.** In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.



**26.3 No Consequential Damages.** Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

**26.4 No Waiver by Silence.** Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

**26.5 Performance Under Protest.** If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.

**26.6 Survival.** All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

**26.7 No Broker.** Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease and no person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall Indemnify the other party against any breach of such representation.

**26.8 Unavoidable Delay.** Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

## **27. INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE**

**27.1 Captions.** The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

**27.2 Counterparts.** This Lease may be executed in counterparts.

**27.3 Delivery of Drafts.** Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

**27.4 Entire Agreement.** This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

**27.5 Governing Law.** This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.

**27.6 Partial Invalidity.** If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

**27.7 No Party Deemed Drafter.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers.

**27.8 Reasonableness.** Wherever this Lease states that a party shall not unreasonably withhold approval: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter.

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease as of the Commencement Date.

**MAUI ELECTRIC COMPANY, LIMITED** \_\_\_\_\_

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

**Landlord**

**Tenant**

EXHIBIT A

[Insert Legal Description – to be finalized upon completion of subdivision]

**Exhibit B**

**ESTOPPEL CERTIFICATE**

This ESTOPPEL CERTIFICATE (the “**Certificate**”) is delivered as of \_\_\_\_\_ (the “**Effective Date**”), by \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (“**Certifying Party**”) based on these facts:

(a) Maui Electric Company, Limited, a Hawaii corporation (“**Landlord**”) owns the real property described in Exhibit A of the Lease attached hereto as Exhibit 1 (“**Landlord’s Premises**”).

(b) Landlord has leased Landlord’s Premises (the “**Leased Premises**”) to \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (“**Tenant**”), by that certain Ground Lease dated as of \_\_\_\_\_, \_\_\_\_ (as amended, restated, renewed, modified, or supplemented from time to time, the “**Lease**”). All Section references in this Certificate refer to the Lease.

(c) The Lease has been amended or modified only as follows: \_\_\_\_\_.

(d) [A memorandum of the Lease was [recorded in the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_] [filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_, and noted on Transfer Certificate of Title No. \_\_\_\_\_]].

(e) [Landlord/Tenant] has requested that Certifying Party deliver this Certificate.

NOW, THEREFORE, Certifying Party certifies and acknowledges as follows, all as of the Effective Date:

1. **Definitions.** Capitalized words used in this Certificate without definition shall have the same meaning as in the Lease.

2. **Recitals.** The statements set forth in the recitals of this Certificate are true and correct and are incorporated into the text of this Certificate by this reference.

3. **Copy of Lease.** Attached as **Exhibit 1** is a true and complete copy of the Lease.

4. **Term.** The term of the Lease commenced on \_\_\_\_\_ and expires on \_\_\_\_\_, unless extended or sooner terminated as provided by the terms and conditions thereof.

5. **Status.** [If Certifying Party is Landlord: Except as the public record discloses, Landlord: (a) is landlord under the Lease; (b) has not conveyed, mortgaged, or assigned Landlord's Premises or Landlord's interest in the Lease; and (c) has not agreed to do so.] [If Certifying Party is Tenant: Tenant (a) is tenant under the Lease; and (b) is in full and complete possession of the Premises, such possession having been delivered by Landlord under the Lease and accepted by Tenant as complying with the terms and conditions of the Lease.]

6. **Monthly Rent.** The amount of the current base monthly rent due and payable by Tenant is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

7. **Payments.** Tenant is current in payment of: (a) Fixed Rent through and including the payment that was due on \_\_\_\_\_; and (b) all Additional Rent for which Landlord has billed Tenant, except: \_\_\_\_\_. There has been no prepayment of rent other than as provided by the Lease.

8. **Security Deposit.** Tenant has given Landlord a security deposit under the Lease in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which security deposit does not accrue interest for the benefit of Tenant.

9. **Prior Assignments.** Certifying Party has received no written notice of an assignment of the Lease.

10. **Full Force and Effect.** To Certifying Party's knowledge, the Lease: (a) is in full force and effect; (b) has not been amended, cancelled, supplemented, surrendered, or terminated except as this Certificate states; and (c) contains the entire agreement between Landlord and Tenant (and any parties related to either of them) about the Leased Premises and the Lease.

11. **No Default.** To Certifying Party's knowledge, there are no existing defaults on the part of either Tenant or Landlord under the Lease, nor has any event occurred that, with passage of time or giving of notice or both, would constitute such a default.

12. **No Termination.** Certifying Party has neither given nor received any notice of termination of the Lease.

13. **No Defenses.** Certifying Party does not have or hold any defense, offset, claim, counterclaim, or right of recoupment against its obligations under the Lease.

14. **Guarantor.** The obligations of Tenant under the Lease are guaranteed by: \_\_\_\_\_ under that certain Guaranty of Lease dated \_\_\_\_\_ ("**Guaranty**"). The Guaranty has been amended or modified only as follows: \_\_\_\_\_.

[Signature is on the following page.]

Certifying Party has read this Certificate and acknowledges and understands the certifications and representations made herein. Certifying Party hereby executes this Certificate, intending reliance hereon by [Landlord/Tenant], and its respective successors and assigns. Certifying Party has full authority to execute this Certificate, which has been duly authorized by all necessary action.

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Certifying Party**

Attachment:

Exhibit 1 = Copy of Lease

EXHIBIT C

[Insert Tenant's Share of Private Roadway and Subdivision Improvements – to be determined upon completion of subdivision]

## Exhibit D

### GUARANTY OF LEASE

THIS GUARANTY OF LEASE (“**Guaranty**”), is made as of the day of , 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (*[collectively]*) the “**Guarantor**”, in favor of MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, its successors and assigns (“**Landlord**”).

#### Recitals:

(a) \_\_\_\_\_ (“**Tenant**”) is entering into that certain Ground Lease of even or approximate date herewith (as it may hereafter be amended from time to time, the “**Lease**”), pursuant to which Tenant is leasing from Landlord certain real property located at \_\_\_\_\_ (“**Premises**”).

(b) Guarantor is *[the owner]* *[an affiliate]* of Tenant, and it is a material inducement and condition precedent to Landlord’s entering into the Lease that Guarantor guarantee Tenant’s Lease obligations pertaining to Hazardous Substances and Improvements.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms set forth in this Guaranty, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. **Definitions.** Capitalized words used in this Guaranty without definition shall have the same meaning as in the Lease. In the event of a conflict between capitalized terms defined herein and in the Lease, the Lease shall control.

2. **Absolute and Unconditional Guaranty.** Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Landlord the full and punctual performance by Tenant of the following obligations under the Ground Lease to be performed and observed by Tenant: (a) Tenant’s obligations under Article 10 (Hazardous Substances) of the Lease; and (b) Tenant’s obligations under Sections 20.1 (Improvements), 20.2 (Tenant’s Removal of Improvements) and 20.3 (Landlord’s Removal of Improvements) of the Lease (collectively, the “**Guaranteed Obligations**”). Guarantor shall be jointly and severally liable with Tenant and with any other guarantors of any of Tenant’s obligations under the Lease. The Guarantor agrees that if an Event of Default occurs under the Lease with respect to the Guaranteed Obligations, Landlord may proceed directly against and recover from the Guarantor before, after, simultaneously with, or without proceeding against Tenant or any other guarantors.

3. **Primary and Direct.** Guarantor’s liability under this Guaranty shall be primary and direct. This is a guaranty of payment and not just a guaranty of collection.



In any right or action which shall accrue to Landlord under the Lease, Landlord may, at its option, proceed against Guarantor without having commenced any action, exhausted other remedies, or having obtained any judgment against Tenant, or having proceeded against Tenant or any collateral posted as security under the Lease.

4. **Modification to Lease.** The obligations of the Guarantor under this Guaranty shall not be terminated, affected, or impaired in any manner by: (a) any changes, modifications, or amendments to the Lease; (b) any extension, or renewal of the term of the Lease, or expansion of the Premises; or (c) Landlord's waiver of any terms, covenants, conditions, or agreements of the Lease; all of which may be done without notice to, or the consent of, the Guarantor.

5. **Guaranty Not Affected by Any Events Other Than Full Performance.** The obligations of the Guarantor under this Guaranty shall not be terminated, affected, or impaired in any manner by reason of: (a) the assertion by Landlord against Tenant of any of the rights or remedies available to Landlord under the Lease; (b) the release or discharge of Tenant from any of Tenant's obligations under the Lease by operation of any bankruptcy, insolvency, or similar law or the actual or purported rejection of the Lease by a trustee in bankruptcy on behalf of Tenant; (c) the waiver by Landlord of, or the failure of Landlord to exhaust or pursue, any of its rights or remedies available against Tenant or any other guarantor; (d) the granting by Landlord of any indulgences or extensions of time to Tenant; (e) any subletting of all or any part of the Premises or any assignment or other transfer of the Lease; (f) any defenses, setoffs, or counterclaims of Tenant; (g) Landlord's release or discharge of any other guarantor or surety; (h) Landlord's receipt, application, release, or impairment of any security or collateral given to secure the performance and observance of the terms and covenants of the Lease; or (i) any dealings or course of conduct between Tenant and Landlord.

6. **Guarantor's Waivers.** Guarantor waives (a) notice and proof of notice of non-payment of rent or any other amounts to be paid by Tenant under the Lease; (b) notice and proof of notice of default or nonperformance of any of Tenant's other covenants, conditions and agreements contained in the Lease; (c) counterclaim, setoff, deduction, diminution, abatement, recoupment, suspension, deferment, reduction or other defense; (d) opportunity to cure any event of default; (e) any rights which may accrue to Guarantor should Tenant be involved in any bankruptcy, insolvency or reorganization proceeding; (f) notice of acceptance of this Guaranty or any other notice or demand to which Guarantor might otherwise be entitled; (g) all defenses other than payment and performance in full; and (h) all suretyship defenses.

7. **Guarantor's Representations.** Guarantor represents and warrants that

(a) Guarantor has the right, power and authority (without the consent of any other person, entity or governmental authority) to enter into, and to perform its obligations under, this Guaranty.

(b) Guarantor has taken all requisite corporate, partnership, or limited liability company action to approve the execution, delivery and performance of this Guaranty, the person signing on behalf of Guarantor is authorized and empowered to do so, and the execution and delivery of this Guaranty are not in contravention of its charter, by-laws or other governing documents, and have been authorized by its partners, members, managers, and/or its board of directors, as applicable.

(c) This Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms.

(d) The statements set forth in the recitals of this Guaranty are true and correct and are incorporated into the text of this Guaranty by this reference.

(e) Guaranty agrees to promptly supply Landlord with such financial information as may be reasonably requested by Landlord from time to time.

(f) Guarantor is not in default under any agreement to which it is a party or by which it is bound, or bound by any decree, ruling, judgment, order or injunction which (together or singly) would materially and adversely affect its ability to perform under this Guaranty, and there is no action, proceeding or investigation pending or threatened against Guarantor which (together or singly) could materially and adversely affect its ability to perform under this Guaranty.

(g) Neither the execution and delivery of this Guaranty nor its performance under this Guaranty shall result in a breach of or default under any agreement, decree, ruling, judgment, order or injunction to which Guarantor is a party or by which it may be bound.

(h) Guarantor is not insolvent nor will it, as a result of this Guaranty, be rendered insolvent; Guarantor is not undercapitalized and will not become undercapitalized as a result of this Guaranty; and Guarantor has not incurred and does not intend to incur debts beyond its ability to pay as its debts mature, and, in fact, all accounts payable are current and not overdue.

8. **Landlord's Fees.** Guarantor is liable to Landlord for any expenses, including reasonable attorneys' fees and court costs, incurred by Landlord in enforcing any obligations of Guarantor under this Guaranty.

9. **If Payments Recovered from Landlord.** In the event that any obligation is paid by Tenant or Guarantor and thereafter all or any part of such payment is recovered from Landlord as a preferential or fraudulent transfer under the United States Federal Bankruptcy Code or state insolvency law or applicable bankruptcy laws and regulations or another jurisdiction, or any other similar United States federal or state law now or hereafter in effect, the liability of Guarantor under this Guaranty, any respect to such

obligation so paid and recovered shall continue and remain in full force and effect as if, to the extent of such recovery, such payment had not been made. As used in this Guaranty, "state" includes the District of Columbia, the commonwealth of Puerto Rico, any United States territory, and any other political subdivision that is the equivalent of any of the foregoing.

10. **Continuing Guaranty.** This Guaranty is a continuing Guaranty and shall (a) remain in full force and effect until all of Tenant's obligations under the Lease and all of Guarantor's obligations under this Guaranty shall have been paid, performed or discharged in full; (b) be binding upon Guarantor and its heirs, personal representatives, successors, transferees and assigns, as applicable; (c) inure to the benefit of and be enforceable by Landlord and its successors, transferees and assigns; and (d) continue to be effective or be reinstated (as the case may be) if Tenant's performance under the Lease or Guarantor's performance under this Guaranty is rescinded or revoked in the event of insolvency, bankruptcy or reorganization. Guarantor waives any right of indemnification, subrogation or reimbursement that it may have against Tenant. Guarantor agrees that it is not made a creditor of Tenant by virtue of this Guaranty.

11. **Multiple Recoveries.** Guarantor agrees that repeated and successive demands may be made and recoveries may be had under this Guaranty as and when, from time to time, Tenant shall fail to pay or perform an obligation when due and that notwithstanding the recovery under this Guaranty for or in respect of any given failure by Tenant under the Lease, this Guaranty shall remain in force and effect and shall apply to each and every subsequent such failure.

12. **Notices.** All notices and communications under this Guaranty shall be made in writing and may be delivered by hand (including overnight courier) or by first-class certified or registered mail, return receipt requested, to the following addresses:

To Landlord: Maui Electric Company, Limited.  
Central Pacific Plaza  
220 South King Street, Suite 2100  
Honolulu, Hawaii 96813  
Attention: Director Energy Procurement  
E-mail:

With a copy to:  
Hawaiian Electric Company, Inc.  
P.O. Box 2750  
Honolulu, Hawaii 96840  
Attention: Legal Department  
E-mail: legalnotices@hawaiianelectric.com

To Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

Either party may change its address (or its addressee) to another address within the United States by notice to the other. All notices and communications shall be effective upon receipt (or refusal to accept delivery).

13. **Joint and Several.** If Guarantor consists of more than one person and/or entity, their obligations shall be joint and several, and each agreement, representation or warranty shall be deemed to have also been made separately on its own behalf by each person or entity comprising Guarantor.

14. **Successors and Assigns.** In the event of an assignment by Landlord of the Ground Lease, the rights hereunder may be transferred by Landlord to such successor, transferee or assign. Guarantor may not assign or transfer its rights or obligations hereunder without the express prior written consent of Landlord. Any attempted assignment in violation of this section shall be null and void.

15. **Governing Law; Venue.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Hawaii, without reference to any principles of conflict of laws. Venue for all actions or proceedings relating to or arising out of this Guaranty shall be in the County in which the Premises are located.

16. **Waiver of Jury Trial. GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO OR ARISING UNDER THIS GUARANTY.**

17. **Remedies Cumulative.** The exercise by Landlord of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise by Landlord of any other right or remedy. No termination of the Ground Lease or recovery of the Premises shall deprive Landlord of any of its rights and remedies against Guarantor under this Guaranty.

18. **Severability.** If any provision of this Guaranty or the application of any provision shall to any extent be void, unenforceable or invalid, then such provision shall be reinterpreted to the greatest extent possible to make it enforceable and valid, and the rest of this Guaranty shall be unaffected thereby and continue in full force and effect.

19. **Modification to Guaranty.** No waiver or modification of any provision of this Guaranty shall be effective unless in writing and signed by Landlord, and no waiver by Landlord shall be applicable except in the specific instance for which it is given.

20. **Entire Agreement.** This Guaranty is the full and complete agreement of the parties, and Landlord has made no promises or representations to Guarantor except as set forth herein.

21. **Interpretation and Construction.** The various headings of this Guaranty are inserted for convenience only and shall not affect the meaning or interpretation of this Guaranty or any provisions hereof. The use of the singular shall be deemed to refer to the plural whenever the context so requires. The use of the masculine, feminine, or neuter genders shall be deemed to refer to another gender wherever the context so requires.

22. **Counterparts; PDF.** This Guaranty may be executed in counterparts, each of which is deemed an original, and such counterparts constitute one and the same instrument, which may be sufficiently evidenced by a counterpart. A facsimile, telecopy, PDF, or other reproduction of this Guaranty may be executed by one or more parties, and an executed copy of this Guaranty may be delivered by one or more parties by facsimile, PDF e-mail, and such execution and delivery is valid, binding and effective for all purposes. At the request of the Landlord, the Guarantor agrees to execute an original of this Guaranty as well as any facsimile, telecopy or other reproduction hereof. Duplicate counterpart signature pages may be combined into one Guaranty.

**[Signature is on the following page.]**

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first above written.

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**Guarantor**

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix L – Selection Criteria*



**APPENDIX L**  
**SELECTION CRITERIA**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

## 1. Non-Price Related Criteria

Proposals will be evaluated using the following non-price criteria to assess their merit in the general areas of project development feasibility and operational viability:

**Community Outreach** – Gaining community support is an important part of a project’s viability and success. Proposals will be evaluated on their plan to inform the neighboring community of the project, incorporate changes based on community input, and any community outreach efforts that have been performed to date. At a minimum, proposals should include a detailed community outreach plan that describes the proposer’s intentions to work with the neighboring community to provide project information during project development and construction and to address any local and community issues that may arise. Additional preference will be given to proposers who have made initial efforts or have already established contacts to work with the local community or have proposed a community benefits package. Also preference will be given to developers and/or their selected community consultant that have successfully worked with one or more Hawaii communities for project development (energy or projects with similar community issues). This criteria is aligned with the Companies new community engagement process whereby all developers will be required to engage in community outreach prior to signing a PPA with the Companies. This process is also outlined in the RFP document.

**Cultural Resource Impacts** – Projects should be mindful of their potential impact to cultural resources. Hawaii law requires parties to identify (1) valued cultural, historical, or natural resources in the area in question, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (2) the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Proposals will be evaluated on their plan to assess and mitigate their impact to cultural resources and any assessments that have been conducted to date. At a minimum, proposers should have already contracted with an outside consultant to begin a cultural impact assessment for the project. Additional preference will be given to Proposals that are further along in the assessment process and are able to provide a mitigation/action plan or are able to provide a date for when a mitigation/action plan will be available that addresses any identified cultural resource issues.

**Environmental Review and Permitting Plan** – Completing any necessary environmental review and obtaining the required permitting in a timely manner is important to meeting construction schedules. Proposals will be evaluated on their plan to identify, apply for, and secure the required permits for the project, any permitting activity that has been completed to date, and the degree of certainty offered by the Proposer in securing the necessary permits. At a minimum, proposers should have identified all major permits and approvals required and have a preliminary plan for securing the permits. Additional preference will be given to Proposals that are able to provide a greater degree of certainty that there will be no major environmental issues associated with the project, the plan to secure the required permits is realistic and achievable, or have already received all or a majority of the required permits.

**Experience and Qualifications** –Developers with a demonstrated ability to construct and interconnect projects to the Maui Electric grid can reasonably be expected to be able to successfully complete a project with a higher level of confidence than those without any prior experience. Therefore, proposals will be evaluated based on the prior local experience of the Developer in connecting projects to the Maui Electric



grid. At a minimum, the proposer and its team should have experience with developing at least one project of a similar type to the one being proposed. Additional preference will be given to proposers with experience in successfully developing and constructing multiple projects that are similar to the one being proposed.

**Financial Strength and Financing Plan** – This criterion addresses the comprehensiveness and reasonableness of the financial plan for the project as well as assesses the financial strength and capability of the proposer to develop the project. A complete financial plan addresses the following issues: project ownership, capital cost and capital structure, sources of debt and equity, and evidence that the project is financeable. The financial strength of proposers or their credit support providers will be considered, including their credit ratings. At a minimum, the Proposal should include a basic financial plan for the project covering the sources of debt and equity, capital structure, etc and provide evidence of general support for the project financing. The financing participants are expected to be reasonably strong financially. Additional preference will be given to financial plans that are more comprehensive and also achievable, provide stronger evidence (letter from a financial institution or bank) that the project is financeable, and that can demonstrate that the proposer has the capability and financial strength to develop and finance the project. Developers and their sources of capital that have investment grade credit ratings from a reputable credit rating agency (S&P, Moody's, Fitch) will also be given preference, with those that have higher credit ratings ranked higher.

**State of Project Development and Schedule** – Projects that are further along in development generally have lower project execution risk and a greater probability of being able to be successfully placed into service. At a minimum, projects should be able to demonstrate that there is a reasonable chance that the project will be able to achieve commercial operations by the end of 2022. Additional preference will be given to proposals that are able to demonstrate via a detailed critical path schedule, including identifying adequate slack time, that there is a high likelihood that the project will be able to achieve commercial operations by the end of 2022.

**Site Control** – This criterion relates to the status of site ownership and control by the project sponsor as well as the maturity of site control. In addition, the zoning of the site and the status of easements are considered. At a minimum, the proposer should have executed a letter of intent for the site and have a reasonable plan for addressing zoning, rights of ways, and easements. Additional preference will be given to proposers who own the site or have executed an agreement or option to purchase or lease the site, if the site is already properly zoned, or has obtained or has letters of intent to obtain any required rights of ways and easements. It is anticipated and acceptable that there may be non-exclusive agreements or options for a particular site which would be contingent upon selection of projects.

**Environmental Compliance / Impacts** – This criterion relates to the potential environmental impacts associated with each project, the quality of the plan offered by the proposer to mitigate and manage any environmental impacts (including any pre-existing environmental conditions), and the plan of bidders to remain in environmental compliance over the term of the contract. These impacts are reflected on a technology specific basis. At a minimum proposed projects should be expected to have a minimal impact for most environmental areas and proposals should provide a preliminary plan to mitigate the identified impacts to remain in environmental compliance which should not significantly affect the project timeline.

Additional preference will be given to proposals that provide a more detailed plan as well as those that have already proactively taken steps to mitigate environmental impacts.

**O&M Plan** – Operations and maintenance is an important aspect of project operations. This is especially important in the context of the new Renewable Dispatchable Model PPA structure, which relies on the continued performance of the Facility in exchange for fixed monthly payments. Proposals will be evaluated on their plan for operating and maintaining the Facility throughout the contract term including the status of any agreements with an O&M provider, the reasonableness of the O&M funding levels and mechanism, staffing levels, as well as any design plans that identify and incorporate features to ensure appropriate reliability is built into the project. At a minimum, proposals should include a reasonable O&M plan that identifies expected funding and staffing levels. Additional preference will be given to proposals that provide a more comprehensive plan or those that have identified a potential O&M provider or have already executed a minimum letter of intent with a reputable O&M provider.

**Model PPA Contract Exceptions** – Proposers are encouraged to accept the contract terms identified in the Model PPA. Any proposed changes (to those items identified as negotiable in the Model PPA) should be accompanied by supporting rationale and Maui Electric reserves the right to reject any proposed change based on its evaluation. Proposals will be evaluated based on the number and complexity of contract exceptions proposed with proposals having fewer proposed changes being rated more favorably. At a minimum, proposers should not propose major, substantive revisions to the contract and should generally be willing to work with HECO to revise the contract terms.

**Ramp Rate** – Facilities with higher ramp rates provide Maui Electric with greater operational control of the grid. Proposals will be evaluated on their ability to control the rate at which their energy output is able to change based on the level of dispatch with preference given to facilities that are able to support a higher ramp rate.

**Cycling** – Maui Electric prefers generating units with the ability to cycle on and offline multiple times a day to support operational flexibility. Proposals will be evaluated on their ability to cycle on and offline with preference given to those that provide the ability to cycle more frequently.

**Generator Inertia** – Maui Electric needs to replace the inertia that will be lost with the retirement of the Kahului Power Plant which is approximately 15.25 MJ/MVA. Proposals will be evaluated by the aggregate amount of generator inertia provided, as expressed by an H-constant.

## **2. Detailed Evaluation**

The objective of the detailed evaluation is to select the Proposal(s) which provide the greatest value consistent with Maui Electric's objectives and requirements as set forth in this RFP. The preferred Proposal(s) do not necessarily have to be the lowest cost option(s) or have the most favorable non-price factor evaluation. Maui Electric prefers viable Projects which provide a low-cost with limited risk and that provide resource diversity, operational reliability, operational flexibility, and the ability to meet system operational requirements.

Maui Electric will evaluate Proposals by assessing the proposed cost of the delivered energy and operating characteristics of the proposed Project. The evaluation will be based on the total net cost to Maui Electric of integrating a Proposer's proposed Project onto the Maui Electric System which includes:

1. The cost of the electric capacity and energy purchased.
2. The fuel cost savings and any other direct savings resulting from the displacement of generation by the proposed Project.
3. The estimated increase in operating cost, if any, incurred by Hawaiian Electric to maintain system reliability.
4. Any required transmission system or distribution system upgrade costs that are required to interconnect the Proposed project to the system that are not included in the Proposal price
5. The cost of reduced efficiency in operating the system as a result of accepting the Proposer's electric energy onto the system.
6. The cost of imputed debt, if applicable.

For conducting this analysis, Hawaiian Electric will replace units in a reference resource plan with the proposed resource and re-run its resource plan with the specific Proposal.

During the detailed evaluation process, Hawaiian Electric may elect to have face to face meetings with Proposers to better assess the Proposals and the status of the proposed Project(s). The detailed evaluation will also include a risk assessment of the Proposals to assess, in more detail, the viability of each Proposal as well as a sensitivity analysis of key factors including Project economics, if applicable.