**LICENSE AGREEMENT**

[NON-CONDOMINIUM]

 THIS LICENSE AGREEMENT (“License”) is entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ( “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state and business type or name of property owner(s)/lessee], whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Licensor”), and HAWAIIAN ELECTRIC COMPANY, INC., a Hawai‘i corporation, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Licensee”).

WITNESSETH:

WHEREAS, Licensor is the [INSERT ONE: ground lessee OR fee simple owner] of the Property described below; and

 WHEREAS, Licensor and Licensee have entered into a Charge Up Commercial Pilot Participation Agreement (“Participation Agreement”), attached hereto as Exhibit A and made a part hereof, under which Licensee will provide and install Make Ready Infrastructure as defined below to support the installation by Licensor of electric vehicle charging ports; and

 WHEREAS, Licensee desires to use and Licensor desires to license certain areas within the Property for Licensee to situate the Make Ready Infrastructure;

 NOW, THEREFORE, in consideration of the recitals above, as well as the premises and the mutual covenants and agreements contained in this License, the parties hereby agree as follows:

1. Licensed Area. Licensor is the [Insert one of the following 2 paragraphs]

[ground lessee under that certain [Ground Lease] dated \_\_\_\_\_\_\_\_ by and between Licensor and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Ground Lessor”). Licensor is owner of all the buildings, fixtures, walkways, roads, and other improvements located on or upon that certain real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and described in Exhibit B [Property Description] (the “Property”), attached hereto, pursuant to that certain [Limited Warranty Deed], Document Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ recorded with the State of Hawai‘i Bureau of Conveyances on \_\_\_\_\_\_\_\_\_\_\_.]

[fee simple owner of that certain real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and described in Exhibit B [Property Description] (the “Property”), attached hereto, pursuant to that certain [Limited Warranty Deed], Document Number \_\_\_\_\_\_\_\_\_\_\_, recorded with the State of Hawai‘i Bureau of Conveyances on \_\_\_\_\_\_\_\_\_\_\_\_\_. Licensor is also the owner of all the buildings, fixtures, walkways, roads, and other improvements located on or upon the Property. ]

The Licensed Area of the Property consists of [INSERT DESCRIPTION OF LICENSED AREA (example: approximately X square feet as shown in the drawing attached hereto and incorporated herein as Exhibit C)].

2. Licensed Use and Right of Entry. The Licensed Area shall be used by the Licensee for the construction, installation, reconstruction, inspection, operation, maintenance, repair, and removal of electrical infrastructure, which may include but is not limited to transformers, meters, panels, conduits, wires, lines, connectors, jackets and conduits (collectively, “Make Ready Infrastructure”).

In addition to the license granted herein, Licensor also grants to Licensee and its contractors a right of entry over, under, upon, across and through the Property, including the Licensed Area and Licensor’s appurtenant interests, if any, for the aforesaid use.

3. Nonexclusive Use. Licensor reserves the right to use any portions of the Licensed Area not occupied by the Make Ready Infrastructure; provided, however that such reserved right shall not be exercised in any manner that interferes with the Licensee’s use of the Licensed Area, the Make Ready Infrastructure, or Licensee’s access to and maintenance thereof.

4. Term. The term (“Term”) of this License shall begin upon the Effective Date and end concurrent with the termination date of the Participation Agreement (defined therein as ten (10) years from the In-Service Date of the Charging Equipment).

(a) If the Participation Agreement is extended beyond its term, the parties agree to extend the Term of the License accordingly. Any such extension of the Term shall continue under the terms and conditions of this License, except as may otherwise be agreed to in writing by the parties.

5. No Fees. Licensee shall not be charged any rent or fees under this License.

 6. Due Care and Diligence. Licensee will use due care and diligence to keep the Make Ready Infrastructure in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the Property by Licensor as is reasonably necessary.

 7. Compliance with Law. All work performed by Licensee with respect to the Make Ready Infrastructure shall comply with all applicable federal, state, and local statutes, regulations, rules and ordinances.

8. Condemnation. If at any time any portion of Property constituting the Licensed Area is condemned or taken by any governmental authority, Licensee shall have the right to claim and recover from the condemning authority, but not from the Licensor, such compensation for the damages to Licensee’s Licensed Area and the Make Ready Infrastructure, which shall be payable to Licensee, to the extent of its interest.

9. Licensor Warranty. Licensor, for itself, its heirs and assigns, covenants with Licensee, its successors and assigns, that Licensor [DELETE IF LICENSOR DOES NOT HOLD FEE TITLE TO THE PROPERTY, is siesed in fee simple of the property and] has good right to grant this License; that Licensee shall enjoy the rights accorded by this License without hindrance and free from all encumbrances; and that Licensor will warrant and defend Licensee against the claims and demands of all persons claiming the whole or any part of the Licensed Area.

10. Termination. Licensee may terminate this License upon ten (10) days prior written notice to Licensor in the event that the Participation Agreement is terminated as provided in Section VII (Term and Termination) of the Participation Agreement.

 11. Notices. All notices, consents, and waivers under this License shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by certified mail, return receipt requested, or (iii) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses as follows:

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| --- | --- |
| In the case of Licensor:[INSERT ADDRESS] | with a copy to:[INSERT ADDRESS] |
|  |  |
| In the case of Licensee: Via U.S. MailHawaiian Electric Company, Inc.P.O. Box 2750Honolulu, HI 96840Attention: Land and Rights of Way, AL20-NCVia Overnight Mail or Hand Delivery:Hawaiian Electric Company, Inc.1099 Alakea Street, 14th FloorHonolulu, HI 96813Attention: Land and Rights of Way | with a copy to:Via U.S. Mail:Hawaiian Electric Company, Inc.P.O. Box 2750Honolulu, HI 96840Attention: Legal Dept., AL20-NCVia Overnight Mail or Hand Delivery:Hawaiian Electric Company, Inc.1099 Alakea Street, Suite 20FHonolulu, HI 96813Attention: Legal Dept. |
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Either party hereto may from time to time change its address for notification purposes by giving the other prior written notice of the new address and the date upon which it will become effective.

12. Amendment. No revision of this License shall be valid unless made in writing and signed by the parties hereto.

13. Assignment. This License may not be assigned by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Licensee shall have the right, without the consent of Licensor, to assign its interest in this License to any affiliated company owned in whole or in part by Hawaiian Electric Industries, Inc. ("HEI"); provided, further, that (i) such assignee shall have assumed all obligations of Licensee under this License and (ii) such assignee is a utility regulated by the State of Hawaiʻi Public Utilities Commission.

14. Coordination. Licensee shall have the right to perform, with its own employees or by other contractors, all work related to this License, and Licensee shall coordinate its activity with Licensor.

15. Transfer of Property. Should Licensor, at any time during the term of this License, sell or transfer all of the Property or any portion of the Property which includes the Licensed Area to a purchaser, such sale or transfer shall be subject to the License and Licensee's rights hereunder and the rights of Licensee in the Licensed Area.

 16. 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 License, the prevailing party shall be awarded its reasonable attorneys’ fees and costs.

 18. No Waiver. The failure at any time of either party to enforce any of the provisions of this License, or to require at any time performance by the other party of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions, nor in any way construed to affect the validity of this License or any part hereof, or the right of any party thereafter to enforce each and every such provision.

19. Governing Law/Applicable Forum. This License is made under and shall be governed by the laws of the State of Hawai‘i. Each party agrees and consents that any claim arising out of this License, however defined, shall be brought in the State of Hawai‘i in a court of competent jurisdiction.

 20. Entire Agreement. This License constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof with respect to such subject matter. No amendment, modification, or addition to this License shall be binding upon any party hereto unless reduced to writing and signed by each party.

21. No Recordation. The parties agree that this License may not be recorded, however, Licensor agrees to enter into a commercially reasonable Memorandum of License Agreement, which may be recorded by Licensee, at Licensee’s sole cost and expense.

[DELETE THIS SECTION IF LICENSOR HOLDS TITLE IN FEE SIMPLE 22. Consent and Acknowledgment. By its execution below, Ground Lessor hereby consents to this License and agrees to acknowledge, recognize, assume all obligations under, and abide by this License should Ground Lessor become the Licensor hereunder.]

*[Signatures begin on the following page]*

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

 *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

By*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

LICENSOR

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

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

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|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary SignatureType or print name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary Public, First Circuit, State of Hawaii My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_[Affix Seal] |

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| **APPROVED**Land & Rights of WayBy \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **HAWAIIAN ELECTRIC COMPANY, INC.**,a Hawaii corporationBy\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: ERIN P. KIPPEN Title: Vice PresidentLICENSEE |

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

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

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|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary SignatureType or print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary Public, First Circuit, State of HawaiiMy commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_[Affix Seal] |

**CONSENT AND JOINDER**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Lessee of Property, as more particularly described in that certain Lease(?) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby consents to and joins in the License Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation, to which this Consent and Joinder is attached.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 Name:

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

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

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|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary SignatureType or print name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary Public, First Circuit, State of Hawaii My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_[Affix Seal] |

Exhibit A

[Add Participant Agreement]

Exhibit B

[Add property description]

Exhibit C

[ Add Site Plan drawing showing Licensed Area]