



## RESOLUTION

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AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF DESIGN AND CONSTRUCTION OR THE DIRECTOR'S DESIGNEE TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, RELATING TO THE KANEOHE/KAILUA SEWER TUNNEL PROJECT.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, requires that any intergovernmental agreement or amendment thereto which places an obligation on the City and County of Honolulu (the "City") or any department or agency thereof receive the consent and approval of the Council of the City and County of Honolulu; and

WHEREAS, the City is seeking to construct a 200-foot-deep manhole for the Kaneohe/Kailua Sewer Tunnel Project and will be required to drill the manhole shaft along Mokapu Saddle Road near the H-3 interchange ("Manhole Construction Project"); and

WHEREAS, there is a slope in the vicinity of the planned manhole located on property owned by the State of Hawaii by its Department of Transportation (the "State") at Mokapu Saddle Road, that presents a risk of rock falls from loose or potentially unstable material on the slope; and

WHEREAS, the City wishes to proactively provide protection against potential rock falls during drilling and construction of the manhole shaft by installing ring net slope protection on the subject slope ("Slope Protection Improvements"); and

WHEREAS, the Slope Protection Improvements are located within a road right-of-way under the jurisdiction of the State; and

WHEREAS, the State wishes to retain and own the Slope Protection Improvements after the City has completed the Manhole Construction Project; and

WHEREAS, the State requires execution of a Memorandum of Agreement ("MOA") prior to performing the work; and

WHEREAS, a copy of the proposed MOA between the City and the State is attached hereto as Exhibit "A" and incorporated herein by this reference; now, therefore,



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## RESOLUTION

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BE IT RESOLVED by the Council of the City and County of Honolulu that:

- (1) Pursuant to Chapter 1, Article 8 of the Revised Ordinances of Honolulu, the Council hereby consents to and approves of the MOA between the City and the State, attached hereto as Exhibit "A";
- (2) The Director of the Department of Design and Construction or the Director's designee is authorized to execute the MOA with the State in substantially the form attached hereto as Exhibit "A"; and
- (3) The Director of the Department of Design and Construction or the Director's designee is authorized to execute any incidental or related agreements, amendments and documents in furtherance of the above agreement so long as such agreements, amendments and documents do not incur additional obligations on the part of the City;

and



**RESOLUTION**

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BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Director of the Department of Design and Construction, whose mailing address is 650 South King Street, 11<sup>th</sup> Floor, Honolulu, Hawaii 96813, and the Director of the State Department of Transportation, whose mailing address is 869 Punchbowl Street, Room 509, Honolulu, Hawaii 96813.

INTRODUCED BY:

Ernest Martin (b/r)

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DATE OF INTRODUCTION:

June 24, 2014  
Honolulu, Hawaii

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Councilmembers

**Exhibit A**  
**Draft Memorandum of Agreement**

**MOKAPU SLOPE PROTECTION PROJECT**  
**MEMORANDUM OF AGREEMENT**

This MOKAPU SLOPE PROTECTION PROJECT MEMORANDUM OF AGREEMENT ("MOA") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 (hereinafter referred to as "CITY"), and the STATE OF HAWAII by its DEPARTMENT OF TRANSPORTATION, whose mailing address is 869 Punchbowl Street, Honolulu, Hawaii 96813 (hereinafter referred to as "STATE").

WHEREAS, the CITY is seeking to construct a 200 ft. deep manhole for the Kaneohe/Kailua Sewer Tunnel Project and will be required to drill the manhole shaft along Mokapu Saddle Road near the H-3 interchange ("Manhole Construction Project"); and

WHEREAS, there is a slope in the vicinity of the planned manhole located on property owned by the STATE at Mokapu Saddle Road, as shown on the map attached hereto as Exhibit 1 and incorporated herein by reference, that presents a risk of rock falls from loose or potentially unstable material on the slope; and

WHEREAS, the CITY wishes to proactively provide protection against potential rock falls during drilling and construction of the manhole shaft by installing ring net slope protection on the subject slope ("Slope Protection Improvements"); and

WHEREAS, the STATE wishes to retain and own the Slope Protection Improvements, upon satisfaction of the conditions set forth below, after the CITY has completed the Manhole Construction Project;

NOW, THEREFORE, the CITY and the STATE (the "Parties") hereto agree as follows:

**1. Design and Construction.** The CITY shall be responsible for the design, planning and permits, management and construction of the Slope Protection Improvements, provided, however, that the CITY shall obtain the STATE's prior written approval of the final design plans of the Slope Protection Improvements. Without limiting the foregoing, the CITY shall be responsible for any and all costs relating to the construction and management of the Slope Protection Improvements until acceptance of the Slope Protection Improvements by the STATE.

The STATE shall permit the CITY and its contractor entry upon, and use of, all of such STATE's right(s)-of-way located within or near the route of the Slope Protection

Improvements, whenever necessary for a purpose related to construction and management of the Slope Protection Improvements.

The STATE's determination to accept or reject the Slope Protection Improvements shall be made upon the STATE's review and approval of the Slope Protection Improvements final design plans and provided that, after the CITY's construction of the Slope Protection Improvements and again upon completion of the Manhole Construction Project, the STATE may inspect, at its own cost, the construction of the Slope Protection Improvements to ensure that the work has been performed in conformance with the final design plans approved by the STATE and, if the work has not been performed in conformance with such final design plans, may require the CITY, at the CITY's sole cost and expense, to correct the work to so conform. Additionally, the CITY shall provide the STATE with any and all inspection reports prepared by the CITY's design geotechnical engineer upon the CITY's receipt of such inspection reports. After the STATE's inspections described herein including any inspection by the STATE after any correction work by the CITY and upon completion of the Manhole Construction Project, the STATE shall assume full ownership and responsibility for the Slope Protection Improvements.

2. **Defense and Indemnity.** The CITY agrees to hold harmless, defend and indemnify the STATE, its contractors, subcontractors, consultants or other agents for any claim, liability, suit or action of every manner and description arising out of the CITY's rights and responsibilities in constructing the Slope Protection Improvements or the Manhole Construction Project. The CITY's duty to hold harmless, defend and indemnify the STATE shall terminate upon the STATE's acceptance of Slope Protection Improvements (except as to any ongoing defense and indemnification by the CITY arising prior to the State's acceptance of the Slope Protection Improvements which defense and indemnification shall survive such acceptance), and the STATE will not be indemnified for claims resulting from the STATE's own negligence or intentional misconduct, or the negligence or intentional misconduct of its contractors, subcontractors, consultants and other agents.

Upon the STATE's acceptance of the Slope Protection Improvements, the STATE shall be responsible to the extent permitted by law, for damages or injury caused by the STATE's officers and employees in the course of their employment related to this MOA and the management of the Slope Protection Improvements to the extent that the STATE's liability for such damage or injury has been determined by a court or otherwise agreed to by the STATE, and the STATE shall pay for such damage and injury to the extent permitted by law, provided that funds are appropriated and allotted for that purpose.

3. **Entire Agreement.** The MOA shall not be altered, amended, modified, or otherwise changed, in any respect or particular whatsoever, except by writing duly executed by the Parties. The Parties hereby acknowledge and agree that they will make no claim at any time that this MOA has been orally altered or modified in any respect whatsoever. This MOA constitutes a single integrated written contract, expresses the

entire agreement among the Parties hereto, and supersedes all prior oral and written agreements, representations, negotiations, and correspondence with respect to the matters addressed herein.

4. **Assignment; Successors.** No Party may assign any or all of its rights or interests in, or delegate any part or all of its performance or obligations, under this MOA without the prior written consent of the other Party. Subject to the preceding sentence, this MOA shall apply to, be binding in all respects upon and inure to the benefit of, the respective successors and permitted assigns of the Parties.

5. **Severability.** If any provision of this MOA is held to be illegal, invalid or unenforceable under present or future laws by any court of competent jurisdiction, such provision shall be fully severable; the MOA shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the MOA; and the remaining provisions of this MOA shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this MOA.

6. **Counterparts.** This MOA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties agree that facsimile signatures shall be valid for purposes of execution.

7. **Notices.** All notices, requests, communications and documents required or permitted by this MOA shall be in writing and shall be deemed given to a Party when (i) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (ii) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (iii) 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):

To STATE:

STATE OF HAWAII  
Department of Transportation  
Honolulu, Hawaii 96813  
Attention: Highways Division Construction and  
Maintenance Branch  
Telephone: (808) 587-2186  
Facsimile: (808) 587-2177

To CITY:

CITY AND COUNTY OF HONOLULU  
Honolulu Hale, 530 South King Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Yonamine  
Telephone: (808) 768-8480

8. **Rules of Construction.** The Parties have participated jointly in the negotiation and drafting of this MOA. In the event an ambiguity or question of intent or interpretation arises, this MOA shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this MOA.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of MOA by their duly authorized officers or agents on the day and year first above written.

CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF DESIGN AND CONSTRUCTION

STATE OF HAWAII  
DEPARTMENT OF

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Director, Department of  
Design and Construction

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Director of Transportation

APPROVED AS TO FORM AND  
LEGALITY:

APPROVAL AS TO FORM:

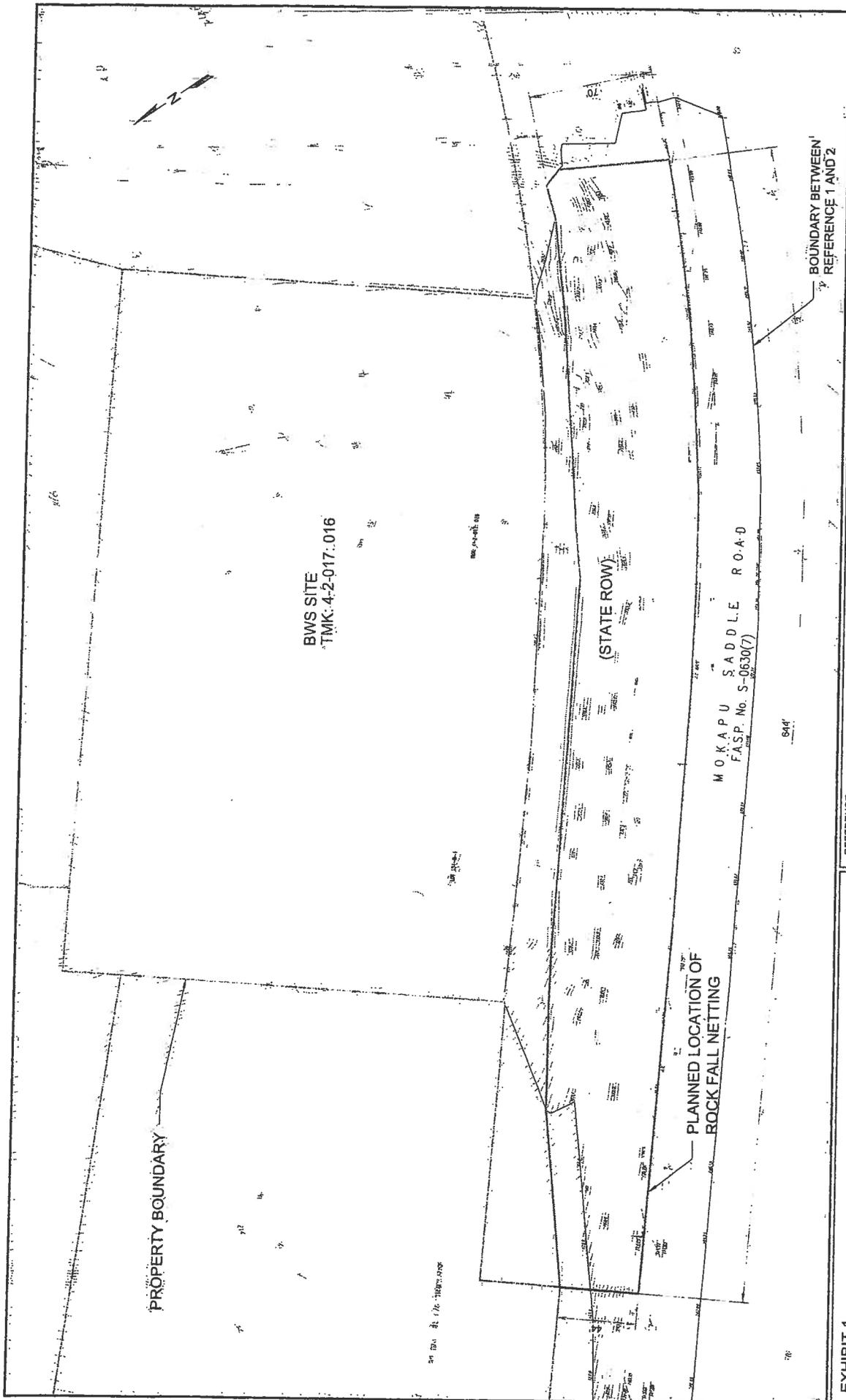
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Deputy Corporation Counsel  
CITY AND COUNTY OF HONOLULU

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Deputy Attorney General

**Exhibit 1**  
**Slope Protection Improvements Map**



BOUNDARY BETWEEN  
REFERENCE 1 AND 2



REFERENCE:  
 1. Topographic Survey State ROW from ControlPoint Surveying, Inc., Received January 22, 2014.  
 2. Topographic Survey of BWS Site and Kaneohe background from ControlPoint Surveying, Inc., Received March 9, 2013.

NOTE:  
 1. Where there are no survey elevations topographic information is based on City's GIS Map.

**EXHIBIT 1**  
**SLOPE PROTECTION IMPROVEMENTS MAP**  
 Kaneohe, Oahu, Hawaii

**SUMMARY OF PROPOSED COMMITTEE DRAFT:**

**Resolution 14-147 -  
MEMORANDUM OF AGREEMENT WITH THE STATE DEPARTMENT OF  
TRANSPORTATION RELATING TO THE KANEOHE/KAILUA SEWER TUNNEL  
PROJECT**

**PROPOSED CD1:**

- A. Adds a new WHEREAS paragraph incorporating by reference the proposed Memorandum of Agreement attached as Exhibit "A."
- B. Makes miscellaneous technical and nonsubstantive amendments.

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

**RESOLUTION 14-147, CD1**

Introduced: 06/24/14

By: ERNEST MARTIN (BR)

Committee: INTERGOVERNMENTAL  
AFFAIRS AND HUMAN  
SERVICES

Title: RESOLUTION AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF DESIGN AND CONSTRUCTION OR THE DIRECTOR'S DESIGNEE TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, RELATING TO THE KANEOHE/KAILUA SEWER TUNNEL PROJECT.

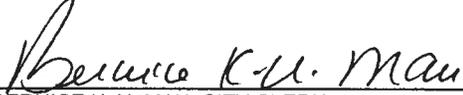
Voting Legend: \* = Aye w/Reservations

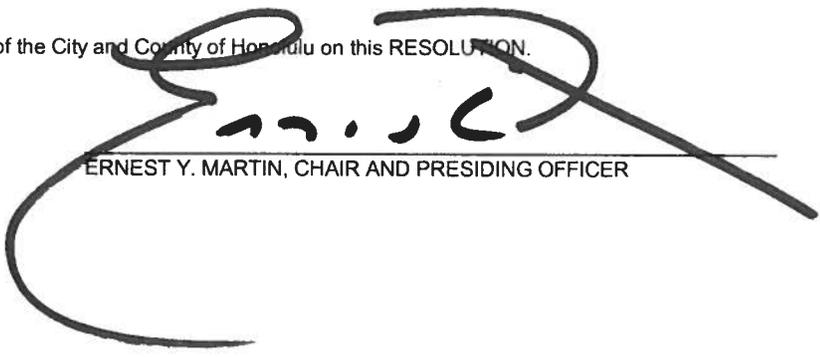
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07/24/14	INTERGOVERNMENTAL AFFAIRS AND HUMAN SERVICES	CR-233 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
08/13/14	COUNCIL	CR-233 AND RESOLUTION 14-147, CD1 WERE ADOPTED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER