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December 20, 2024

Daniel E. Orodener  
Executive Officer  
State of Hawaii Land Use Commission  
Department of Business, Economic Development & Tourism  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street Room 406  
Honolulu, HI 96813



Re: Annual Compliance Report for Special Use Permit – Docket No. SP21-411 AES West  
O’ahu Solar, LLC

Dear Mr. Orodener,

Pursuant to Condition No. 11 in the Land Use Commission Decision & Order (“Order”) in Docket No. SP21-411, attached is the 2024 annual compliance report for the AES West O’ahu Solar, LLC project (“Project”).

As detailed in the attached report, the Project complies with all the conditions set forth in the Order, effective June 24, 2021.

Please contact us if there are any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Molly Arbes". There is a small, faint logo or watermark behind the signature.

Molly Arbes  
Senior Director  
Portfolio Asset Management  
AES Clean Energy Services, LLC  
161 Washington St. Eight Tower Bridge, Suite 500  
Conshohocken, PA 19428  
P: 610-283-3032  
E: molly.arbes@aes.com



2024 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	2024 AES Responses
1	<p>The Applicant shall develop and operate the facility, including the implementation of measures to mitigate potential impacts of the Project, in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and permanent Best Management Practices ("BMPs") to ensure that the development and operation of the facility does not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SP.</p>	<p>The Project obtained necessary governmental approvals to complete construction and attained Commercial Operations on Thursday, March 28, 2024.</p> <p>A letter documenting the date of commercial operations from HECO was submitted by AES to the LUC and DPP on July 29, 2024.</p> <p>Temporary and permanent Best Management Practices ("BMPs") were implemented during construction to minimize stormwater runoff from the Project.</p> <p>The Project is in substantial compliance with the representations made to the Planning Commission and the LUC upon receipt of the required governmental approvals.</p>
2	<p>Usable lands of the Petition Area, as required under Condition No. 5a below, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within six months of the start of commercial power generation (referred to as the "initial six-month period"). Extensions to this deadline may be granted by the Director of the DPP for unforeseen circumstances that were beyond the control of the Applicant.</p>	<p>The Project attained Commercial Operations on Thursday, March 28, 2024. Within six months of the start of commercial power generation, compatible agriculture operations were established at the Project, including sheep and cattle production through Griffith Livestock Company and honey production through Meli LLC.</p> <p>A letter documenting details of the two compatible agricultural operations was submitted to the LUC and DPP on July 29, 2024.</p>
3	<p>If at any time during the term of the SUP, no compatible agricultural operations exist on the usable lands of the Petition Area</p>	<p>Please see response to Condition #2. If agricultural operations do not exist or lapse in the specified time frame, AES will</p>

**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	2024 AES Responses
	<p>for six months after the initial six- month period (referred to as the "subsequent six-month periods"), the Applicant shall notify the Planning Commission and the Director of the DPP in writing within 30 days of the end of any subsequent six-month periods. If requested by the Planning Commission, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Planning Commission. Extension to any subsequent six-month period's deadlines may be granted by the Planning Commission for unforeseen circumstances that were beyond the control of the Applicant.</p>	<p>notify the Planning Commission and the Director of DPP as specified in this condition.</p>
4	<p>This SUP shall be valid for a period of 29 years from the date of the LUC's Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the Planning Commission at least 120 days prior to the SUP's expiration, and with the approval of the Land Use Commission.</p>	<p>The Special Use Permit is effective as of June 24, 2021. No request for extension is contemplated at this time.</p>
5	<p>The Applicant, its assignees, or the landowner, shall cause the decommissioning of the Project at the Applicant's, assignee's, or owner's expense by removing all of the equipment related to the solar energy facility within 12 months of the conclusion of Project operation, or it's useful life, and the</p>	<p>AES will decommission the Project within 12 months of the conclusion of Project operation, or it's useful life, in accordance with the requirements of this condition.</p>

**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	2024 AES Responses
	restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.	
6	<p>The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to any subdivision action or the issuance of a grading or building permit:</p> <p>a. A site plan showing the minimum land area to be made available for compatible agricultural use.</p> <p>b. An alternative design plan(s) that reduces the visual appearance of the Project on native Hawaiian cultural resources and public viewpoints.</p> <p>Alternatives to be considered include, but not limited to, colored SEF infrastructure such as colored photovoltaic (PV) panels and their supporting posts and frames, any energy storage units painted to blend with the existing environment, avoidance of the complete removal of groundcover vegetation, additional screening and landscaping, including tall trees, in select areas, and/or a combination of various recommendations set forth by the cultural practitioner Ms. Lynette Paglinawan, or her representative, and by the United States Bureau of Land Management (BLM) publication or most recent updates to the publication entitled, Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM-Administered Lands.</p>	By letter dated August 31, 2021, the DPP found the information provided by AES to fulfill the intent of Conditions 6a and 6b.
7	As mitigation for impacts to cultural resources, Petitioner shall coordinate with UH West O' ahua to provide cultural orientation and education to AES and its contractors associated with this Project, prior to construction.	By letter dated October 22, 2021, University of Hawai'i West O'ahu affirmed AES and UHWO coordinated to provide cultural orientation and education to AES and its contractors associated with the Project.

**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	2024 AES Responses
8	<p>Prior to the close of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the Project. Such proof may include, but not be limited to, a posted letter of credit, performance bond, escrow account, or similar mechanism from a creditworthy financial institution. This shall be in favor of the owner of the land subject to the SUP, in the amount estimated by the Applicant to decommission the Project at the time of building permit closure. Said security shall remain in place for the duration of the operation of the Project. Evidence of same shall be provided to the Director of the DPP on an annual basis.</p>	<p>In accordance with the executed Agreement to Grant Easement between AES and University of Hawai'i (as amended), AES provided a letter of credit as financial security in the amount of the estimated cost of decommissioning, dismantling, removing the SEF and restoring the land.</p> <p>The security was posted on 10-16-2023, before close of the building permit for the SEF in accordance with this condition, and will be held for the duration of the Project.</p> <p>Attachment 1 includes fully executed letter of credit as evidence in this 2024 annual report.</p>
9	<p>The Applicant shall comply with the recommendations of the U.S. Fish and Wildlife Service ("USFWS") and the State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") regarding the protection of endangered Hawaiian hoary bat and endangered and threatened Hawaiian water bird and shorebird species at the Petition Area.</p>	<p>Please see below for responses to the sub-parts of this condition.</p>
9a	<p>No trees or shrubs greater than 15 feet tall shall be disturbed, trimmed or removed during the Hawaiian hoary bat birthing and pupping season (June 1 through September 15).</p>	<p>No trees or shrubs greater than 15 feet tall were disturbed, trimmed or removed during the Hawaiian hoary bat birthing and pupping season (June 1 through September 15).</p>
9b	<p>Any fences that are erected as part of the Project shall not have barbed wire to</p>	<p>Barbed wire was not installed on any of the Project fences.</p>



**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	2024 AES Responses
	prevent entanglements of the Hawaiian hoary bat.	
9c	A wildlife education and observation program (WEOP) shall be implemented for all construction and regular on-site-staff. Staff shall be trained to identify listed species that may be found on-site (including Hawaiian hoary bat, pueo, Hawaiian seabirds and waterbirds) and to take appropriate steps if these species are observed. If a federally-or state-listed species is observed to be impacted by the Project, a systematic post-construction monitoring program shall be developed and implemented.	Tetra Tech provided wildlife education and orientation program materials, detailing avoidance and minimization measures to comply with conditions 9a through 9l. This was included in AES' Site Orientation and Operations Plan (SOP) for all construction and regular on-site staff. All construction and on-site staff have attested to compliance with the program requirements.
9d	Speed limits shall be established and enforced within the Project area and along the access road.	Speed limits are posted and followed within the Project area.
9e	Construction activities shall be restricted to daylight hours as much as possible during the seabird peak fallout period (September 15-December 15) to avoid the use of nighttime lighting that could attract seabirds.	Construction activities are complete and nighttime construction was avoided to be in compliance with this condition.
9f	Should nighttime construction be required during the seabird fallout period, a biological monitor shall be present in the construction area from approximately one half hour before sunset to one half hour after sunrise to watch for the presence of seabirds. Should a seabird (or other listed species) be observed and appear to be affected by the lighting, the monitor shall notify the construction manager to reduce or turn off construction lighting until the individual(s) move out of the area.	Nighttime construction was not required during the construction or operations of the Project.

**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

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9g	Any on-site lighting shall be fully shielded, triggered by motion detector, and fitted with light bulbs having a correlated color temperature of four thousand Kelvin or less, to the extent possible. Lighting shall also be directed away from the solar arrays to minimize the potential for reflection and shall only be used when necessary.	All on-site lighting meets the requirements of this condition.
9h	Construction of overhead lines shall be minimized to reduce the collision risk for seabird species.	Overhead lines have been minimized to the extent possible.
9i	Prior to clearing vegetation within the Project area, pre-construction pueo surveys shall be conducted by a qualified biologist following the Pueo Project survey protocol. If a ground nest or an owl nesting on the ground is observed, an approximately 50-foot buffer shall be established and marked in the field. In accordance with existing protocol for UH West O'ahu, a designated UH West O'ahu representative shall be contacted immediately, and that representative shall provide notification to DOFAW. No vegetation clearing shall occur until pueo nesting ceases.	<p>A preconstruction pueo survey based on the Pueo Project protocol was conducted on the evenings of December 9 and December 23, 2021. Transect surveys were conducted on December 21 and December 22, 2021. No pueo were detected at the Project.</p> <p>Due to construction delays, additional supplemental preconstruction pueo survey based on the Pueo Project protocol was conducted on the evenings of March 3 and March 18, 2022. Transect surveys were conducted on March 23 and March 24, 2022. No pueo were detected at the Project.</p>
9j	If a live pueo is observed on-site by Project staff, all activities within 50 feet of the bird shall cease, and the bird shall not be approached.	No live pueo have been observed on-site.
9k	No rodent baiting shall occur as part of the Project to prevent secondary poisoning from toxins in pueo prey.	Rodent baiting did not occur at the Project.
9l	No surface water features shall be created by the Project during construction or	Surface water features were not present at the Project during operations.

**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	2024 AES Responses
	operation to avoid attracting waterbirds to areas with sub-optimal habitat.	
10	The Applicant shall establish the Project within two years of the date of the LUC's Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Land Use Commission shall be informed and receive a copy of any request for extension of this deadline. The Planning Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant.	The Special Use Permit is effective as of June 24, 2021. No request for extension is contemplated at this time.
11	On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the DPP, the State Office of Planning, and the Land Use Commission that demonstrates the Applicant's compliance with conditions of the SUP.	This report shall serve the annual report to the DPP, State Office of Planning and LUC to demonstrate compliance with conditions of the SUP.
12	Major modifications to: (1) The Project plans, including but not limited to significant increases in the number of PV panels; (2) Amendments to the conditions of approval; (3) Significant expansions of the approved area; or (4) Change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the LUC. Minor modifications including minor additions to accessory uses and structures, and: new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.	There have been no major modifications to the Project plans including but not limited to significant increases in the number of PV panels, amendments to the conditions of approval, significant expansions of the approved area, or changes in uses stated herein.



**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

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13	<p>The Applicant and/or landowner shall notify the Director of the DPP of:</p> <ul style="list-style-type: none"> <li>a. Any change or transfer of licensee on the property;</li> <li>b. Any change in uses on the property;</li> <li>c. Termination of any uses on the property; and/or</li> <li>d. Transfer in ownership of the property.</li> </ul>	<p>There have been no change or transfer in licensee of the property, change in uses on the property, termination of any uses on the property, or transfer in ownership of the property.</p>
14	<p>Enforcement of the conditions of the SUP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein.</p>	<p>There has been no failure to perform the conditions imposed by the Special Use Permit.</p>
15	<p>Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic or archaeological resources, including human skeletal remains, are found and/or identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division (SHPD) shall be contacted immediately as required by HRS Chapter 6E and its applicable rules. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referenced to in these Findings of Fact and Conclusions of Law are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD</p>	<p>The Archaeological Monitoring Plan (AMP) was submitted to the State Historic Preservation Division (SHPD) on May 11, 2021 (HICRIS #2020PR32397, Submission No M4PG8G3C9W4W).</p> <p>A newly identified historic property consisting of artifact concentration associated with the former plantation camp, Pump Camp 5 was identified during construction.</p> <p>Requirements in the AMP were followed to address the new finds during construction. Please see response to permit condition 17 for notification details.</p>

**AES West O'ahu Solar, LLC**

2024 Annual Report – Special Use Permit Compliance (SP21-411)

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	that mitigation measures have been implemented to its satisfaction.	
16	<p>Archaeological/Historic Sites. Petitioner shall adhere to mitigation commitments as specified in the SHPD letter dated January 4, 2021 or as modified by SHPD:</p> <ul style="list-style-type: none"> <li>a. Avoidance of adverse impacts to SIHP Site 50-80-08-5593 Feature 2 (2A through 2E) within the project area;</li> <li>b. Historic American Engineering Record (HAER) documentation of SIHP Site 50-80-08-5593 Feature 2;</li> <li>c. Incorporation of the portion of SIHP Site 20-80-09-2268 within and immediately adjacent to the project area into an Addendum to the existing Ditch Historic Context Study (Mason Architects, Inc. 2018); and</li> <li>d. Data Recovery in the form of archaeological monitoring in the immediate vicinity of "Pump Camp 5." Prior to any ground disturbance or construction, Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the LUC that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The SHPD shall be notified at the initiation of the Project.</li> </ul>	<p>Please see response to each subpart of the mitigation commitments specified in the SHPD letters dated January 4, 2021 and December 21, 2021:</p> <ul style="list-style-type: none"> <li>a. Avoidance of adverse impacts to SIHP Site 50-80-08-5593 Feature 2 (2A through 2E) within the project area: Project has been designed to avoid Features 2A, 2B, 2C. By letter dated Mar 10, 2021, Cultural Surveys Hawaii on behalf of AES, submitted a request to the SHPD for approval of alternative mitigation measures for 2D and 2E. By email dated April 30, 2021, SHPD concurred with the proposed mitigation commitments for 2D and 2E. This approval is formalized in the SHPD letter dated December 21, 2021.</li> <li>b. Historic American Engineering Record (HAER) documentation of SIHP Site 50-80-08-5593 Feature 2: HAER documentation was accepted by US National Park Service and was subsequently submitted to SHPD on October 1, 2021. SHPD's acceptance of the HAER documentation is detailed in SHPD letter dated December 21, 2021.</li> <li>c. Incorporation of the portion of SIHP Site 20-80-09-2268 within and immediately adjacent to the project area into an Addendum to the existing Ditch Historic Context Study (Mason Architects, Inc. 2018): Addendum to Thematic Historic Context Study: Irrigation Ditches In Hawaii was submitted to SHPD on September 7, 2021. SHPD's acceptance of the addendum is detailed in SHPD letter dated December 21, 2021.</li> </ul>



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2024 Annual Report – Special Use Permit Compliance (SP21-411)

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		<p>d. Data Recovery in the form of archaeological monitoring in the immediate vicinity of "Pump Camp 5.": Archeological monitoring took place during construction in the area of Pump Camp 5 as stated in the AMP.</p> <p>The AMP was approved and SHPD has found the preservation mitigation commitments to be acceptable and have determined that required historic preservation commitments have been successfully implemented.</p> <p>The draft Archaeological Monitoring Report (AMR) was submitted to SHPD on July 1, 2024 under submission# 2020PR32397.015.</p>
17	<p>Petitioner shall employ archaeological monitors for Pump Camp 5 feature. Petitioner shall submit an archaeological monitoring plan for ground disturbing activities to the SHPD for its review and acceptance or approval prior to project initiation. Data obtained from the archaeological monitoring plan shall be provided to the SHPD upon the completion of the monitoring of the Project.</p>	<p>An AMP was submitted to SHPD on May 11, 2021 (HICRIS #2020PR32397, Submission No M4PG8G3C9W4W) and was approved by SHPD on December 21, 2021.</p> <p>By email dated 11/20/2023, data obtained from the archaeological monitoring was provided to SHPD. SHPD is in the process of assigning State Inventory of Historic Places (SIHP) number to the newly identified historic property consisting of artifacts associated with remnants of Pump Camp 5.</p>

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**ATTACHMENT 1 – LETTER OF CREDIT**



**National Bank of Canada**

New York Branch, [slc@nboc.com](mailto:slc@nboc.com)  
The Park Avenue Tower  
65 East 55th Street, 8th Floor  
New York, NY 10022  
Tel: 1-844-479-3124  
Fax: 1-844-494-8443  
SWIFT: BNDCUS33

Irrevocable Standby Letter of Credit Number no. OVNY84251

October 16, 2023

**Beneficiary:**

University of Hawai'i, the state university and a body corporate  
of the State of Hawai'i  
Bachman Hall, 2444 Dole Street  
Honolulu, Hawai'i 96822  
ATTN: Kalbert K. Young, Vice President for Budget and  
Finance/Chief Financial Officer

Ladies and Gentlemen:

We hereby establish, in favor of the University of Hawai'i, the state university and a body corporate of the State of Hawai'i ("Beneficiary"), our irrevocable standby Letter of Credit Number OVNY84251 (this "Letter of Credit") for the account of AES DE Holdings VIII, LLC, a Delaware limited liability company ("Applicant") on behalf of AES West Oahu Solar, LLC, a Delaware limited liability company ("Project Company"), in the initial amount of USD2,242,958.62 (Two million two hundred forty-two thousand nine hundred fifty-eight and 62/100 United States Dollars) and authorize the Beneficiary, to draw at sight on National Bank of Canada New York Branch ("Issuer") at Issuer's New York Branch.

Subject to the terms and conditions hereof, this Letter of Credit secures Project Company's certain obligations to Beneficiary under the Option Agreement to Grant System Easement dated August 30, 2019 ("Initial Agreement"), between Beneficiary and Project Company, and as amended by that certain Amendment No. 1 to Option Agreement to Grant System Easement, dated May 12, 2020 ("1st Amendment"), as further amended by that certain Amendment No. 2 to Option Agreement to Grant System Easement, dated December 15, 2021 ("2nd Amendment"), and as further amended by that certain Amendment No. 3 to Option Agreement to Grant System Easement, dated as of September 29, 2022 ("3rd Amendment") and that certain Amendment No. 4 to Option Agreement to Grant System Easement dated August 7, 2023, together with the Grant of System Easement Agreement dated September 29, 2022, as amended by that certain Amendment No. 1 to Grant of System Easement dated August 7, 2023 ("4th Amendment"), between Beneficiary and Project Company (collectively the "Blanket Easement") (prior to its replacement by the Amended Long Term Easement) and subsequently with the Amended and Restated Grant of System Easement Agreement to be entered into by and between Beneficiary, as grantor, and Project Company, as grantee ("Amended Long Term Easement" (upon its execution and replacement of the Blanket Easement) (the Initial Agreement, the 1st Amendment, the 2nd Amendment, the 3rd Amendment, the 4th Amendment, the Blanket Easement and the Amended Long Term Easement (when the Amended Long Term Easement replaces the Blanket Easement), as the same may be further amended by mutual agreement of the Beneficiary and Project Company are collectively, the "Agreement").



**National Bank of Canada**  
New York Branch, slc@nboc.com

This Letter of Credit is issued with respect to the obligations of Project Company under the Agreement. This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request. This Letter of Credit is not transferable. Drawing requests and sight drafts presented to Issuer for payment substantially in the form attached hereto as Exhibit A ("Sight Draft") shall be accompanied by a Beneficiary's drawing certificate signed by an authorized representative of Beneficiary substantially in the form attached hereto as Exhibit B ("Drawing Certificate").

Special conditions:

1- Funds available upon presentation of Drawing Documentation. Funds under this Letter of Credit are available to the Beneficiary upon presenting to the Issuer the following Documentation (hereafter collectively the "Drawing Documentation"): (a) a copy of the Letter of Credit, (b) Sight Draft and (c) Beneficiary's Drawing Certificate. No other evidence of authority, certificate, or documents is required.

2- Presentation of Drawing Documentation. Drawing Documentation must be presented at Issuer's office at National Bank of Canada, New York Branch, 65 East 55th Street, 8th Floor, New York, NY 10022 on or before the Expiration Date (as defined herein) by secure electronic transmission, personal presentation, courier, or messenger service. All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile or other electronic transmission (pdf format) of documents to 1-(844) 494-8443 or at SLC(AT)NBOC.COM or other such number and/or email address as specified from time to time by the Issuer. If presentation is made by facsimile or other electronic transmission, you may contact us at 1-(844) 479-3124 to confirm our receipt of the facsimile or electronic transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation. If presented by facsimile or electronic transmission, original documents are not required. Any document so received in electronic form must apparently be sent from an electronic address linked to the domain name "(AT)hawaii.edu" and shall be considered, for all purposes, as an original.

3- Issuer will honor the claim. We the Issuer hereunder agree, to honor drafts drawn under and in conformity with this Letter of Credit, within the maximum amount of this Letter of Credit, presented to the Issuer on or before the Expiration Date, provided that the Issuer also receives the Drawing Documentation. The Issuer's payment under this Letter of Credit shall be made by wire transfer, as the Beneficiary may request in writing.

4- Issuer payment deadline. If the Beneficiary presents compliant Drawing Documentation at or before noon of any day other than a day on which all commercial banks in the State of New York are authorized or required to be closed (hereafter a "Banking Day"), the Issuer hereunder shall pay to the Beneficiary the requested amount under the Letter of Credit in immediately available funds within two (2) Banking Days after receipt of compliant Drawing Documentation. The Issuer waives any right to delay payment. If the Expiration Date is not a Banking Day, then the Drawing Documentation submitted on the next Banking Day shall be deemed timely and compliant.

5- Partial drawings permissible. Partial drawings are permitted and the Letter of Credit shall, except to the extent reduced thereby, survive any partial drawings.





**National Bank of Canada**  
New York Branch, slc@nboc.com

6- Letter of Credit secures performance of Obligations. The Letter of Credit is issued by the Issuer hereunder in favor of the Beneficiary to secure the Project Company's full and complete performance of the Project Company's obligations under the Agreement with respect to the decommissioning, dismantling, and removal of the Improvements (as defined in the Agreement), repairing any damage and restoring the Property to a condition reasonable satisfactory to the Beneficiary (hereafter collectively the "Obligations").

7- Letter of Credit term. This Letter of Credit is effective immediately and is scheduled to expire at 5:00 p.m. New York Time on October 16, 2024 (unless the term of the Agreement is extended, in which case the term of this Letter of Credit will be similarly extended by amendment issued by Issuer) (hereafter the "Expiration Date"). However, this Letter of Credit shall be deemed automatically extended without amendment for successive periods of 1 (one) year unless at least 30 (thirty) calendar days prior to the then current expiration date, the Bank notifies the Beneficiary by courier or registered mail (at the Beneficiary's above-stated address) that it elects not to extend the Letter of Credit for any such additional period.

8- Issuer obligation not affected by Project Company insolvency. The obligations assumed by the Issuer pursuant to this Letter of Credit shall be of an autonomous, independent and of precise nature (described in clause 6.), so that they shall not be affected and shall remain in full force and effect even if there is a situation of insolvency affecting the Project Company, whether insolvency is declared pursuant to a voluntary filing by the Project Company or pursuant to a filing by any third party.

Likewise, the Issuer expressly acknowledges that this Letter of Credit will not be prejudiced in any way by any action taken by the Beneficiary regarding the approval of a composition with the creditors of the Project Company in the context of insolvency. In the event the Project Company declared insolvent, the obligations of the Issuer under this Letter of Credit will remain fully in force in accordance with the terms hereby agreed.

9- Claim for Payment. Any claim made by the Beneficiary under this Letter of Credit ("Claim for Payment") shall: (1) be accompanied by a Sight Draft and a Beneficiary's Drawing Certificate, (2) specify the amount that the Beneficiary is drawing against the Letter of Credit and (3) be sent to the address of the Issuer specified above.

10- Notice to Beneficiary. Any notice to the Beneficiary shall be made in writing and delivered by courier or registered post to the Beneficiary with receipt acknowledged or by certified mail, return receipt requested at the addresses set forth above, or to such other address as the Beneficiary may specify by written notice to the Issuer. No amendment to the terms of this Letter of Credit that adversely affects the Beneficiary shall be effective without the Beneficiary's written consent.

11- Applicant to pay costs. Applicant shall pay all costs in connection with this Letter of Credit and the Beneficiary shall not be liable or responsible for paying any such costs.

12- Governing law. This Letter of Credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98"), and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of the State of Hawai'i, including the Uniform Commercial Code applicable in the State of Hawai'i.



**National Bank of Canada**  
New York Branch, slc@nbc.com

13- Hawai'i courts have jurisdiction. Issuer, Beneficiary and Applicant expressly agree to submit all conflicts and disputes resulting from the execution, construction, application, or enforcement of this Letter of Credit to the exclusive jurisdiction of the circuit courts of the State of Hawai'i, with express waiver of any other forum.

SHOULD YOU HAVE OCCASION TO COMMUNICATE WITH US REGARDING THIS LETTER OF CREDIT, PLEASE DIRECT YOUR CORRESPONDENCE TO OUR OFFICE, MAKING SPECIFIC MENTION OF THE LETTER OF CREDIT NUMBER INDICATED ABOVE. ALTERNATIVELY, SUCH PRESENTATIONS MAY ALSO BE DELIVERED IN ELECTRONIC FORM, IN PDF FORMAT, TO THE EMAIL ADDRESS SLC@NBOC.COM. Any document so received in electronic form must apparently be sent from an electronic address linked to the domain name "@hawaii.edu" and shall be considered, for all purposes, as an original.

All Parties to this Letter of Credit are advised that the U.S. Government has in place certain sanctions against certain countries, individuals, entities, and vessels. National Bank of Canada entities, including branches and, in certain circumstances, subsidiaries are/will be prohibited from engaging in transactions or other activities within the scope of applicable sanctions.

NATIONAL BANK OF CANADA NEW YORK BRANCH

By:

DocuSigned by:  
  
2F9F004181854F5...  
Lucas Atassi  
Senior Advisor

DocuSigned by:  
  
6392D51C6C074D3...  
Domenica Patulli  
Manager





**National Bank of Canada**  
New York Branch, slc@nboc.com

EXHIBIT A to Irrevocable Standby Letter of Credit No. OVNY84251

Sight Draft

(UNIVERSITY OF HAWAI'I Letterhead)

TO:

NATIONAL BANK OF CANADA NEW YORK BRANCH  
65 EAST 55TH STREET, 8TH FLOOR  
NEW YORK, NEW YORK, USA 10020

Sight Draft

AT SIGHT, pay to the Order of the UNIVERSITY OF HAWAI'I, the sum of ..... United States Dollars (USD.....).  
Drawn under NATIONAL BANK OF CANADA NEW YORK BRANCH Letter of Credit No.  
OVNY84251 dated October 16, 2023.

UNIVERSITY OF HAWAI'I

By .....  
Kalbert K. Young  
Its Vice President for Budget and Finance/Chief Financial Officer

Date: ..... , ..



**National Bank of Canada**  
New York Branch, slc@nboc.com

EXHIBIT B to Irrevocable Standby Letter of Credit Number no. OVNY84251

Drawing Certificate

(UNIVERSITY OF HAWAII Letterhead)

TO:

NATIONAL BANK OF CANADA NEW YORK BRANCH  
65 EAST 55TH STREET, 8TH FLOOR  
NEW YORK, NEW YORK, USA 10020

Re: Irrevocable Standby Letter of Credit Number no. OVNY84251 issued in favor:

Beneficiary:

University of Hawai'i, the state university and a body corporate of the State of Hawai'i  
Bachman Hall, 2444 Dole Street  
Honolulu, Hawai'i 96822  
ATTN: Kalbert K. Young, Vice President for Budget and Finance/Chief Financial Officer

Ladies/Gentlemen:

This Drawing Certificate is presented in accordance with the terms of your Irrevocable Standby Letter of Credit Number no. OVNY84251 held by us (the "Letter of Credit"). We hereby certify that:

1. In connection with the Option Agreement to Grant System Easement dated August 30, 2019 ("Initial Agreement"), between Beneficiary and Project Company, and as amended by as amended by that certain Amendment No. 1 to Option Agreement to Grant System Easement, dated May 12, 2020 ("1st Amendment"), and as further amended by that certain Amendment No. 2 to Option Agreement to Grant System Easement, dated December 15, 2021 ("2nd Amendment") and as further amended by that certain Amendment No. 3 to Option Agreement to Grant System Easement, dated September 29, 2022 ("3rd Amendment"), and by that certain Amendment No. 4 to Option Agreement to Grant System Easement dated August 7, 2023 ("4th Amendment"), together with initially the Grant of System Easement Agreement dated September 29, 2022, as amended by that certain Amendment No. 1 to Grant of System Easement dated August 7, 2023, between Beneficiary and Project Company (collectively the "Blanket Easement") (prior to its replacement by the Amended Long Term Easement) and subsequently with the Amended and Restated Grand of System Easement Agreement to be entered into between Beneficiary, as grantor, and Project Company, as grantee ("Amended Long Term Easement") (upon its execution and replacement of the Blanket Easement) (the Initial Agreement, the 1st Amendment, the 2nd Amendment, the 3rd Amendment, the 4th Amendment, the Blanket Easement and the Amended Long Term Easement (when the Amended Long Term Easement replaces the Blanket Easement), as the same may be further amended by mutual agreement of the Beneficiary and Project Company are collectively the "Agreement") the undersigned Beneficiary under Letter of Credit is making a demand for payment under the Letter of Credit in the amount of USD....., which amount, together with all previous



**National Bank of Canada**  
New York Branch, slc@nboc.com

drawings honored pursuant to the Letter of Credit, does not exceed the current Stated Amount of the Letter of Credit, and

2. (Beneficiary to make the following statements in this paragraph 2:)

(Project Company has failed to fully and completely perform the Project Company's Obligations under the Agreement, particularly with respect to the decommissioning, dismantling, and removal of the Improvements (as defined in the Agreement), repairing any damage and restoring the Property to a condition reasonable satisfactory to the Beneficiary)

3. The amount demanded hereby has been calculated in accordance with the terms of the Agreement.

Capitalized terms that are used but not defined in this Drawing Certificate have the respective meanings assigned to those terms, directly or by reference, in the Agreement or in the wording of the Letter of Credit.

This Drawing Certificate has been executed and delivered by a duly authorized officer of the undersigned on the date first above written.

Beneficiary:

By:

Name:

Title:

**Certificat de réalisation**

Identifiant d'enveloppe : 14DDB0C60B85491587DF63FE049E5B7C  
 Objet: Complete with DocuSign: ovny84251.pdf  
 \*Modèle(s) appliqué(s)? / Template(s) applied?: Oui  
 Enveloppe source:  
 Nombre de pages du document: 7  
 Nombre de pages du certificat: 3  
 Signature dirigée: Activé  
 Horodatage de l'enveloppe: Activé  
 Fuseau horaire: (UTC-05:00) Heure normale de l'Est (États-Unis et Canada)

Etat: Complétée

Émetteur de l'enveloppe:  
 Domenica Patulli  
 600, De la Gauchetière Street West  
 Montreal, QC H3B 5B1  
 domenica.patulli@bnc.ca  
 Adresse IP: 163.116.142.113

**Suivi du dossier**

Etat: Original  
 2023-10-16 16:28:39

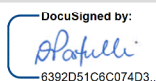
Titulaire: Domenica Patulli  
 domenica.patulli@bnc.ca

Localisation: DocuSign

**Événements de signataire**

Domenica Patulli  
 domenica.patulli@bnc.ca  
 Commercial FIN-Transact  
 Niveau de sécurité: Adresse de courriel,  
 Authentification de compte (aucune)

**Signature**

DocuSigned by:  
  
 6392D51C8C074D3...

Sélection d'une signature : Image de signature  
 téléversée  
 En utilisant l'adresse IP: 163.116.142.113

**Horodatage**

Envoyée: 2023-10-16 16:29:58  
 Consultée: 2023-10-16 16:30:07  
 Signée: 2023-10-16 16:30:18

**Divulgence relative aux Signatures et aux Dossiers électroniques:**

Accepté: 2022-03-02 11:59:49  
 Identifiant: 5f5347e5-3b64-44ed-a8f5-ab6c1ee9b2d6

Lucas Atassi  
 Lucas.Atassi@bnc.ca  
 Lettres de Garantie / Letters of Guarantee  
 Banque Nationale du Canada / National Bank of  
 Canada  
 Niveau de sécurité: Adresse de courriel,  
 Authentification de compte (aucune)

DocuSigned by:  
  
 2F0F004181854F5...

Sélection d'une signature : Image de signature  
 téléversée  
 En utilisant l'adresse IP: 163.116.142.116

Envoyée: 2023-10-16 16:30:19  
 Consultée: 2023-10-16 16:39:36  
 Signée: 2023-10-16 16:39:41

**Divulgence relative aux Signatures et aux Dossiers électroniques:**

Non offert par DocuSign

**Événements de signataire en personne Signature****Horodatage**

Événements de livraison à l'éditeur

État

Horodatage

Événements de livraison à l'agent

État

Horodatage

Événements de livraison intermédiaire État

Horodatage

Événements de livraison certifiée État

Horodatage

Événements de copie carbone État

Horodatage

Événements de témoins

Signature

Horodatage

<b>Événements notariaux</b>	<b>Signature</b>	<b>Horodatage</b>
<b>Récapitulatif des événements de l'enveloppe</b>	<b>État</b>	<b>Horodatages</b>
Enveloppe envoyée	Haché/crypté	2023-10-16 16:29:58
Livraison certifiée	Sécurité vérifiée	2023-10-16 16:39:36
Signature complétée	Sécurité vérifiée	2023-10-16 16:39:41
Complétée	Sécurité vérifiée	2023-10-16 16:39:41
<b>Événements de paiement</b>	<b>État</b>	<b>Horodatages</b>
<b>Divulgateion relative aux Signatures et aux Dossiers électroniques</b>		

Any agreement signed using DocuSign will be deemed as duly and validly delivered and be deemed to be an original and valid document and will have the same legal effect as an agreement signed by hand. Electronic signatures will be deemed originals and compliant with applicable law.

# Electronic Record of Contracts

This document was generated as a record of certain contracts created, accepted and stored electronically.



## Summary of Contracts

This document contains the following contracts.

Title	ID
Letter (State of Hawaii Land Use Commission and AES)	239cd540-0294-46c3-a6dc-d27e9bda2fdf

## Contract signed by:

<b>Molly Arbes</b>	Signer ID: b92fbb6d-cff6-48e7-b23f-1e90abd14e8b
	Email: molly.arbes@aes.com
Date / Time:	Dec 20, 2024 at 4:58 PM EST
IP Address:	12.97.27.80
User Agent:	Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/131.0.0.0 Safari/537.36 Edg/131.0.0.0