

STATE OF HAWAI'I  
DEPARTMENT OF HAWAIIAN HOME LANDS  
**HAWAIIAN HOMES COMMISSION MEETING AGENDA**  
91-5420 Kapolei Parkway, Kapolei, O'ahu, Hawai'i  
Tuesday, July 9, 2019, at 10:00 a.m.

*Note: Commission Meeting Packets will be available at [dhhl.hawaii.gov](http://dhhl.hawaii.gov), by Friday, July 5, 2019.*

**I. ORDER OF BUSINESS**

- A. Roll Call
- B. Approval of Agenda
- C. Public Testimony on Agendized Items

**II. ITEMS FOR DECISION MAKING**

**A. REGULAR AGENDA**

Land Management Division

- F-1 Approval to Issue a Right-of-Entry Permit and Conditional Approval for a General Lease to Innergex Renewables USA LLC and Delegate to the HHC Chairman the Authority to Negotiate the Final Terms and Conditions of the Lease at Kalaeloa, Oahu, Tax Map Key No. (1) 9-1-013:038 & 040.


**III. EXECUTIVE SESSION** (discussion to be held during lunch break)

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on these matters.

- 1. Kalaeloa Renewable Energy Project
- 2. *Civil Beat Law Center for the Public Interest, Inc. v. City and County of Honolulu*

**IV. ANNOUNCEMENTS AND ADJOURNMENT**

- A. Next Meeting – July 15 & 16, 2019, Kapolei, Oahu
- B. Adjournment

  
\_\_\_\_\_  
William J. Aila Jr., Chairman  
Hawaiian Homes Commission

**COMMISSION MEMBERS**

Randy K. Awo, Maui	Zachary Z. Helm, Moloka'i
David B. Ka'apu, West Hawai'i	Pauline N. Namu'o, O'ahu
Dennis L. Neves, Kaua'i	Patricia Teruya, O'ahu
Vacant, East Hawai'i	Vacant, O'ahu

Special Accommodations (such as Sign Language Interpreter, large print, taped material) can be provided, if requested, at least five (5) working days before the scheduled meeting on the respective island by calling the **Information & Community Relations Office**, on Oahu, (808) 620-9590.

**ITEM F-1**

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

July 9, 2019

To: Chairman and Members, Hawaiian Homes Commission

Through: Peter “Kahana” Albinio, Jr., Acting Administrator  
Land Management Division

From: Allen G. Yanos, Property Development Agent  
Land Management Division

Subject: Approval to Issue a Right-of-Entry Permit and Conditional Approval for a General Lease to Innergex Renewables USA LLC and Delegate to the HHC Chairman the Authority to Negotiate the Final Terms and Conditions of the Lease at Kalaeloa, Island of Oahu, Tax Map Key Nos. (1) 9-1-013:038 and 040

APPLICANT:

Innergex Renewables USA LLC, a Delaware limited liability company (“Innergex”)

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission (“HHC”) authorizes the following:

1. Issuance of a Right-of-Entry permit (“ROE”) to Innergex for two parcels as shown highlighted in Exhibit “A” attached hereto. The ROE shall be for due diligence activities to assess the potential of developing an estimated 20MW solar project (“project”) on Hawaiian home lands in Kalaeloa, Island of Oahu;
2. Conditional approval of the General Lease to Innergex or its authorized assignee for the development, construction, operations, management, and maintenance of the project on the two parcels, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit “B”;
4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and a General Lease with Innergex, and ancillary documents reasonably necessary or contemplated in connection with the Project; and
5. Prescribe such terms and conditions deemed prudent and necessary by the HHC.

LOCATION:

Hawaiian home lands in Kalaeloa, Island of Oahu, identified as Tax Map Key No. (1) 9-1-013:038, consisting of 97.538 acres, and (1) 9-1-013:040, consisting of 49.177 acres, shown on the attached Exhibit “A”.

DISCUSSION/HISTORY

On December 21, 2018, the Department of Hawaiian Home Lands (“DHHL”) solicited developers for renewable energy projects in Kalaeloa, on the Island of Oahu through a competitive process. Through the public solicitation, DHHL will offer the land under a ROE for due diligence activities with the option for a long-term general lease to develop, construct, operate, manage, and maintain the project. The project would generate revenue for the Hawaiian Home Lands Trust and provide community benefits for the impacted community. The primary authority for this process is Section 171-95.3, HRS, which permits DHHL to lease land for a renewable energy project and to negotiate directly with a renewable energy producer.

There were four applicants that responded to DHHL’s solicitation by the January 18, 2019 deadline to be considered for selection to develop the project. Following evaluation of their proposals, Innergex was ranked first pursuant to the process for selecting the finalist that would enter into negotiations to proceed with the leasing process. A schedule of the selection and leasing process is attached in Exhibit “C”. Following negotiations with Innergex, DHHL confirmed Innergex’s selection as the developer to proceed with the leasing process.

Innergex’s parent company, Innergex Renewable Energy Inc., was founded in 1990 and is a developer, acquirer, owner, and operator of utility-scale renewable power-generating facilities of solar power, wind power, and hydroelectric power in Canada, the United States, France, Chile, and Iceland. As an independent power producer, it owns interest in 68 operating facilities with an aggregate gross installed capacity of 3,072 MW. As of September 30, 2018, the parent company had \$4.39 billion in total assets. Innergex is also the same developer that received final awards for its 15 MW Ulupalakua, Maui and 30 MW Waimea, Hawaii Island solar projects under HECO’s 2018 RFP.

DHHL conducted a beneficiary consultation meeting on March 21, 2019 at the Kapolei Middle School, on Oahu, where DHHL and Innergex presented background information and details about the project at Kalaeloa. Invitations to attend the beneficiary consultation meeting were mailed to 1,453 DHHL lessees and applicants residing in the Kapolei 96707 zip code area where the project would be located.

The HHC accepted the beneficiary consultation report providing the official public record of beneficiary issues, questions, concerns, and comments made at the March 21, 2019 beneficiary consultation meeting in Kapolei, Oahu at its April 16, 2019 meeting.

The HHC will conduct two public hearings on Oahu where the project will be located, in satisfaction of one of the requirements under Section 171-95.3(c), HRS. The hearings, scheduled for July 8 and 9, 2019, at the Hale Pono conference facility at DHHL’s headquarters in Kapolei, Oahu, will be held just prior to decision-making by the HHC scheduled for July 9, 2019. As this request for approval is being submitted prior to the conclusion of the public hearings at which the HHC will be present, feedback from those hearings are not included in this discussion.

Notices of the public hearings were published in the newspapers statewide on June 24, 2019. An outline of Innergex's proposal for the project will be distributed to the attendees at the two public hearings where the HHC will receive oral and written testimony from the general public.

Developers are hesitant to expend funds and resources to develop a project under circumstances where there is uncertainty. DHHL's attempt to reduce this uncertainty has been provided through the ROE and option for a general lease where, upon the satisfaction of all terms and conditions set forth now, the developer will have the certainty of obtaining a long-term lease for the development, construction, operations and maintenance of its project and, more importantly, satisfy HECO's RFP requirement for site control. Otherwise, undertaking due diligence first for the development of the project under a short-term ROE and then applying separately for a long-term lease of the land that may not materialize would involve substantial developer risk. The term sheet attached to the ROE reflects the key commercial terms and conditions of Innergex's offer for a general lease. The final terms and conditions of a general lease, however, must be negotiated. For that reason, Land Management Division respectfully requests that the HHC Chairman be delegated the authority to negotiate the final terms and conditions of a general lease, and, if necessary, the ROE.

DHHL's selection and leasing process schedule coincides well with the upcoming HECO RFP anticipated for July 2019; thus, timely approval by the HHC of Innergex's request for the ROE would greatly enhance its ability to respond to HECO's RFP and satisfy HECO's site control requirement. Otherwise, Innergex would need to wait for another RFP to develop its project, resulting in delay of the revenue generation and community benefits that DHHL is seeking.

Land Management Division believes that Innergex's proposed project is in the best interests of the Hawaiian Home Lands Trust for the following reasons:

- The project will generate a substantial revenue stream for the Hawaiian Homes Land Trust over at least twenty-five (25) years on lands that lack infrastructure, have use restrictions and limitations for development, and have not typically generated much revenue in the past.
- The Kapolei community and specifically, the Kapolei Community Development Corporation, a regional Hawaiian homestead association to provide community-based economic development opportunities, support the project because if the lease option is exercised, the community benefits will help partially fund the Heritage Center expansion and overhead costs that will serve the region's homestead communities.
- Innergex has developed a reputation for earning the respect of the communities that host its projects due to its core values of transparency, integrity, responsibility, and collaboration. The Kapolei community will be encouraged to work closely with Innergex and its team to fully understand the project and its potential impacts and overall benefits during the entire term of the lease.
- The project will be another renewable energy resource for Oahu and be DHHL's contribution to help achieve the State's commitment to clean energy by having the utility companies generate 100% of their electricity sales from renewable energy resources by the Year 2045.

PLANNING AREA:

Kalaehoa, Oahu

LAND USE DESIGNATION:

Industrial (per the Oahu Island Plan 2014)

CURRENT STATUS:

The two parcels are flat, undeveloped land, with karst topography, and characterized by tall grass, shrubs, and trees featuring historical revetments (concrete aircraft shelters) and concrete bunkers from World War II. There is a tenant under a short-term ROE on Parcel 38 and two tenants under short-term ROEs on Parcel 40.

CHARACTER OF USE:

Due diligence studies to assess the potential for a solar project under a ROE and if the option for the long-term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a solar production facility. The project would be built around the existing historical structures that will be preserved and not used.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

Issuance of the ROE:

Upon issuance of the ROE permit, Innergex will be conducting due diligence studies including studies related to the preparation of an HRS Chapter 343 environmental assessment for the renewable energy project.

Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL’s exemption list. Innergex will be preparing an environmental assessment in accordance with HRS Chapter 343 for this renewable energy project.

CONSISTENCY WITH DHHL PLANS, POLICIES, AND PROGRAMS

**General Plan (2002)**

The recommended action is consistent with the following goals and objectives of the General Plan:

***Land Use Planning***

Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities and community services in a native Hawaiian-friendly environment.

- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

### ***Land and Resource Management***

#### Goals:

- Be responsible, long-term stewards of the Trust's lands and the natural, historic and community resources located on these lands.

#### Objectives:

- Manage interim land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.
- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

### ***Economic Development***

#### Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust's mission.

#### Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.

### **Oahu Island Plan (2014)**

The recommended action is consistent with the Oahu Land Use "Industrial" designation for the parcels which recognized that some of the lands were being utilized for energy production and were in long-term dispositions for the purposes of revenue generation.

### **Kapolei Regional Plan (2010)**

The Kapolei Regional Plan identified support for the Heritage Center as a priority project of the Kapolei community which the community benefits generated while the project is operation will help partially fund.

### **Beneficiary Consultation Policy (2009)**

This project is compliant and consistent with the Beneficiary Consultation Policy.

### **Program Plans**

#### ***Ho`omalū Energy Policy (2009)***

Objective 2 of the *Ho`omalū Energy Policy* is "Ko`o: Facilitate the use of diverse renewable energy resources" and the second listed activity for that objective is to:

Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide "firm" renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump-storage hydropower, solar-thermal and second priority to "as-available" renewable energy power such as wind, solar-photovoltaic, and wave.

### **AUTHORITY**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended, reads in part... "In the management of any retained available lands not required for leasing under Section 207(a), the department

may dispose of such lands to the public, including native Hawaiians, on the same terms, conditions, restrictions and uses applicable to the disposition of public lands as provided in Chapter 171, Hawaii Revised Statutes, provided that the Department may not sell or dispose of such land in fee simple...”

Section 10-4-1 of the Department’s Administrative Rules, as amended, states in part that... “The department may lease, license or otherwise deal with any available lands as may not be immediately needed for the purposes of the Act as provided by Section 204(a)(2) of the act and Chapter 171, HRS, upon such terms and conditions as to it may deem fair reasonable.”

Pursuant to §171-55, Hawaii Revised Statutes, as amended, a permit may be issued “...for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the board. A permit on a month-to-month basis may continue for a period not to exceed one year from the date of its issuance; provided that the board may allow the permit to continue on a month-to-month basis for additional one-year periods.”

Section 171-95, HRS, as amended, authorizes disposition to public utilities and renewable energy producers of public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the Board may determine. For the purposes of this section, “renewable energy producer” means “any producer or developer of electrical or thermal energy produced by wind, solar energy hydropower, geothermal resources, landfill gas, waste-to-energy; ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste...that sell all of the net power produced from the demised premises to an electric utility company regulated under Chapter 269....”

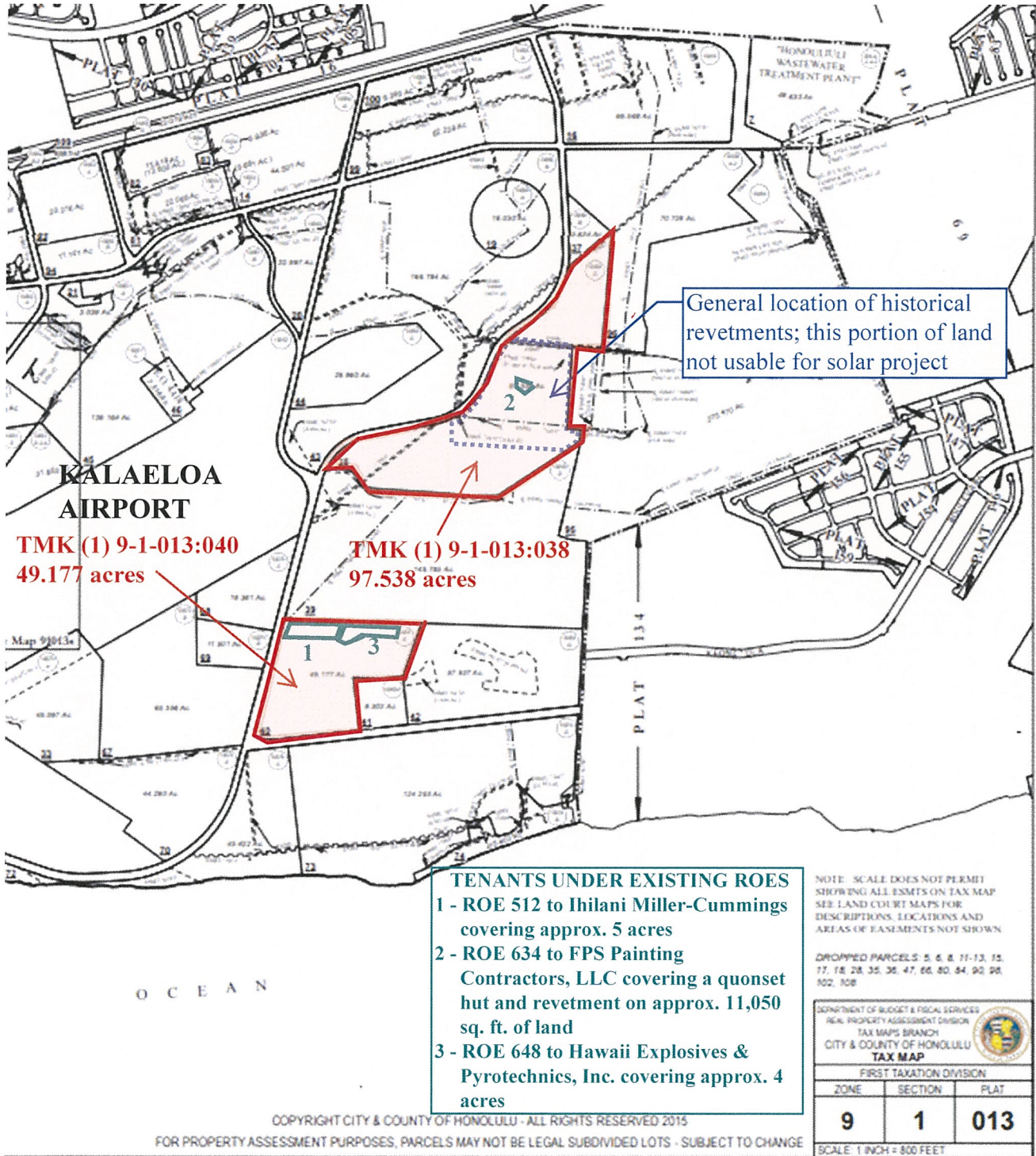
Section 171-95.3, HRS, authorizes the lease or renewal of a lease of public lands “to renewable energy producers, as defined in section 171-95, without public auction only pursuant to a public process that includes public notice under Section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process....”

#### RECOMMENDATION

Land Management Division recommends approval of the requested motion/action as stated.



EXHIBIT "A" to Submittal



**DHHL KALAELOA PARCELS**

EXHIBIT "B" to Submittal

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY NO. \_\_\_\_\_

This RIGHT-OF-ENTRY NO. \_\_\_\_\_ ("ROE") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707, ("PERMITTOR" or "DHHL"), and INNERGEX RENEWABLES USA LLC, a Delaware limited liability company, whose place of business is 4660 La Jolla Village Drive, Suite 680, San Diego, California 92128 ("PERMITTEE").

1. RIGHT OF ENTRY. PERMITTOR hereby grants to PERMITTEE and its employees, agents, representatives, contractors, and subcontractors (collectively, "Permittee's Representatives"), a revocable, non-exclusive right to enter upon the portion of that certain parcel of Hawaiian home lands, located at Kalaeloa, Island of O'ahu, identified by Tax Map Key No(s). (1) 9-1-013:038 and 9-1-013:040, totaling approximately 147 acres (the "Property"), delineated by the area outlined on the map attached hereto as Exhibit "A", and incorporated herein by reference, and all improvements or fixtures existing or permitted thereon (the "Premises") only for the Permitted Uses (defined below) and in connection with assessing the feasibility of developing a renewable energy project ("Project"), together with the right to use any existing roads, trails, or accesses as shown on Exhibit "A".
2. TERM. The initial term of this ROE shall be for two (2) years, commencing on the Effective Date and expiring on \_\_\_\_\_. PERMITTEE may extend the term of this ROE for up to three additional one-year periods (each an "extension") by providing PERMITTOR with prior written notice at least 180 days' prior to the expiration of the initial term or any subsequent extension. Notwithstanding the foregoing, this ROE shall automatically terminate upon the effective date of a general lease PERMITTOR may enter into with PERMITTEE (*see* Paragraph 13 below). PERMITTEE may in its sole and absolute discretion, immediately terminate this ROE upon at least 30 days' prior written notice thereof to PERMITTOR.
3. PERMITTED USE. The Premises (further defined below) shall be used only for due diligence activities and investigation related to the development of the Project, which may include only those classes of action exempt under Hawai'i Revised Statutes Chapter 343 (as provided under that *Comprehensive Exemption List for the State of Hawaii Department of Hawaiian Home Lands*, approved by the Environmental Council June 30, 2015, or as otherwise provided under Haw. Admin. R. § 11-200-8, as amended or recodified). Such uses may include, but are not limited to, conducting environmental studies, soil tests, and assessments and audits of solar resources, and the collection of solar, wind, precipitation, and similar data in connection with the Project.

EXHIBIT "B" to Submittal

4. FEE. During the term of this ROE, PERMITTEE shall pay PERMITTOR the following non-refundable, annual fees, paid in advance, for the periods and on the schedule below:

Period	Fee Amount	Payment Due By
Initial Term (Years 1 and 2)	\$40,000.00	Within 30 days of Effective Date
Initial Term (Year 2)	\$50,000.00	On or before the start of the second year of the initial term
Extension 1 (Year 3)	\$50,000.00	On or before the start of any extension
Extension 2 (Year 4)	\$50,000.00	
Extension 3 (Year 5)	\$50,000.00	

5. CONSTRUCTION AND MAINTENANCE. During the term of this ROE, PERMITTEE shall keep the Premises in good and orderly condition consistent with good industry practice but in no case less than reasonable practice. PERMITTEE shall not make or allow any waste, spoil, nuisance, or unlawful, improper or offensive use of the Premises. PERMITTEE and Permittee Representatives shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or federal rule, regulation, or authority applicable to the Premises.
6. RIGHT TO ENTER. PERMITTOR, the State of Hawaii, and the employees, agents, and representatives thereof (collectively, "Permittor Representatives") may access and inspect the Premises at all reasonable times during normal business hours to determine whether the covenants herein are being fully observed and performed and for the performance of any public or official duties, upon at least 48-hours prior notice, except in case of emergency. In the exercise of such rights, PERMITTOR and Permittor Representatives shall not unreasonably interfere with PERMITTEE's use of the Premises.
7. BREACH. It is expressly agreed that the PERMITTOR may terminate this ROE following written notice to the PERMITTEE of its failure to comply with the specified term(s) of the ROE and the failure of the PERMITTEE to cure its breach within thirty (30) days of receipt of the notice of breach; provided that if such breach, by its nature, is curable, but is not reasonable curable within thirty (30) days, Permittor shall provide Permittee a reasonable time to cure such breach so long as Permittee has commenced to cure the breach within the initial 30-day period and diligently prosecutes the same to completion. If PERMITTOR, in its discretion, determines that PERMITTEE has abandoned the Premises, PERMITTOR shall immediately terminate this ROE and thereupon take immediate possession of the Premises without prejudice to any additional remedy or right of action PERMITTOR may have under the law.
8. NO TRANSFER, MORTGAGE, OR SUBLEASE. This ROE is personal to Permittee and non-transferrable. PERMITTEE may not assign, sublease, sublicense, transfer, mortgage, pledge, or devise any of its rights or interests under this ROE, except to another wholly-

## EXHIBIT "B" to Submittal

owned subsidiary of PERMITTEE and only with PERMITTOR's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

9. TERMINATION/ABANDONMENT. Upon cancellation, termination, or expiration of this ROE (except if this ROE is terminated pursuant to Paragraph 13 below), Permittee, at its sole cost and expense, shall have sixty (60) days after such cancellation, termination, or expiration to remove from the Premises all of Permittee's improvements. All interests granted by this ROE and any permitted improvement constructed by PERMITTEE on the Premises, and which PERMITTOR expressly accepts, shall revert to, and become the property of PERMITTOR. In the event operations cease for reasons beyond PERMITTEE's control, such as fire or other casualty that renders the facilities unusable, PERMITTEE shall have a reasonable period of time in which to resume operations.
10. INSURANCE. PERMITTEE shall, at its own expense, effect, maintain and keep in force throughout the term of this ROE, the following minimum insurance coverages, or as the parties may otherwise agree:
  - A. Comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, including property damage, personal injury and advertising injury; (b) \$100,000.00 for fire damages to the Premises for any one fire; \$10,000.00 in medical expenses for any one person, and an aggregate limit of \$2,000,000.00 per policy year.
  - B. Workers Compensation Insurance to include Employer's Liability. Such coverage shall apply to all of its employees.
  - C. Automobile Insurance, covering all owned, non-owned and hired automobiles in the following amounts: Bodily Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence; Property Damage: \$1,000,000.00 per accident; or a combined single limit of \$1,000,000.00

Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the Chairman, Hawaiian Homes Commission; (b) name the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, as an additional insured; (c) provide that the DEPARTMENT OF HAWAIIAN HOME LANDS shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PERMITTEE or Permittee Representatives in connection with PERMITTEE'S use or occupancy of the Premises.

PERMITTEE shall insure during the term of this ROE all buildings now existing and hereafter built or located on the Premises, improvements and grounds, and all roadways and sidewalks on or adjacent to the Premises in the control or use of the PERMITTEE. The insurance shall cover loss or damage by fire and other hazards, casualties and contingencies, including vandalism and malicious mischief. The insurance shall be for the full insurable value of such improvements.

## EXHIBIT "B" to Submittal

PERMITTEE shall furnish to PERMITTOR upon the execution of this Permit, certificates showing such insurance policy or policies to be in favor of PERMITTOR and to be in force and shall furnish like certificates upon each renewal thereof. In the event of loss, damage or destruction, PERMITTOR shall retain from the proceeds of the policies such amounts deemed by it to be necessary to cover the loss, damage or destruction of or to the improvements and the balance of such proceeds, if any, shall be delivered to PERMITTEE. Failure of PERMITTEE to provide and keep in force such insurance shall be regarded as material default under this ROE. PERMITTOR shall be entitled to exercise any or all of the remedies provided in this ROE for default of PERMITTEE.

The procuring of such required insurance coverages shall not be construed to limit PERMITTEE'S obligation to indemnify PERMITOR under this ROE, nor limit, restrict, release, or relieve PERMITTEE of any liability arising under this ROE.

PERMITTEE'S insurance shall be primary. Any insurance maintained by PERMITTOR and/or the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by PERMITTEE.

11. HAZARDOUS MATERIAL. PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials used by PERMITTEE on the Premises. PERMITTEE shall not store or use such materials on the Premises in any manner not sanctioned by law, the highest standards prevailing in the industry for the storage and use of such materials, or which may reasonably be expected to result in liability under any applicable environmental law; nor shall PERMITTEE allow PERMITTEE'S employees or agents to do so, or to bring or allow PERMITTEE'S employees or agents to bring onto the Premises any such materials. Before using any hazardous materials on the Premises, PERMITTEE shall provide PERMITTOR written notice identifying such materials. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by PERMITTEE, then PERMITTEE shall be responsible for the costs thereof. In addition, PERMITTEE shall execute affidavits, representations and the like from time to time at PERMITTOR'S request concerning PERMITTEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PERMITTEE.

PERMITTEE agrees to indemnify, defend, and hold harmless PERMITTOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands therefore, directly arising out of, or resulting from, any use or release of hazardous materials on the Premises or adjacent property by PERMITTEE or PERMITTEE'S agents, and occurring while PERMITTEE is in possession of the Premises. PERMITTEE'S liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. These covenants shall survive the expiration or earlier termination of this ROE.

## EXHIBIT "B" to Submittal

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment. Prior to the termination of this ROE (except where termination is due to the issuance and execution of the General Lease), PERMITTEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health and PERMITTOR; provided however, that this provision shall not be applicable if the ROE is terminated pursuant to Paragraph 13, below.

12. DEFENSE AND INDEMNITY. PERMITTEE shall, defend, indemnify and hold harmless PERMITTOR, its officers, and employees, from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, directly arising out of or resulting from personal injury or death of persons and property damage to the extent arising from the acts or omissions of PERMITTEE and/or PERMITTEE'S officers, employees, agents, or contractors and occurring during or in connection with the exercise of this ROE. PERMITTEE'S liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.
  
13. GENERAL LEASE AND PROJECT EASEMENTS; CONDITIONS. PERMITTOR may lease to PERMITTEE or any party that has properly assumed the terms and conditions of this ROE pursuant to Paragraph 8 above, the Premises or a portion of the Premises upon such terms and conditions of a general lease, which shall be substantially on the terms attached as Exhibit "B" (the "General Lease"), and provided that PERMITTOR determines, in its sole discretion, that: (a) PERMITTEE is not in default under this ROE; and (b) PERMITTEE has satisfied (or PERMITTOR has expressly waived in writing) all of the conditions below or which PERMITTOR may require. PERMITTOR may also license or grant easements to PERMITTEE, concurrently with the execution of the General Lease, for access, utilities and electrical transmission lines over, under, or through PERMITTOR'S lands as reasonably necessary for and in connection with PERMITTEE'S development, construction, and operation of the Project (the "Project Easements"), upon such terms and conditions as the parties shall mutually agree. Upon the effective date of any such General Lease, this ROE shall automatically terminate.
  - A. PERMITTEE shall submit a written request to PERMITTOR for the issuance of a general lease ("Request for General Lease") no less than ninety (90) days prior to

## EXHIBIT "B" to Submittal

the expiration of this ROE, with a non-refundable payment of ONE HUNDRED THOUSAND and 00/100 DOLLARS (\$100,000.00) (the "Option Fee").

- B. All applicable requirements of Hawaii Revised Statutes Chapter 171 have been met, and specifically pursuant to Hawaii Revised Statutes Section 171-95.3 for renewable energy producers.
- C. PERMITTOR's beneficiary consultation process for PERMITTEE has been completed, and all commitments, promises, or benefits required for the beneficiaries have either been agreed to in writing by Permittee or otherwise waived by Permittor.
- D. PERMITTEE provides PERMITTOR written assurance from a utility company to purchase the energy that will be generated from the Project.
- E. All requirements of Hawaii Revised Statutes Chapter 343 have been met, including but not limited to, the preparation, at PERMITTEE's sole expense, of an environmental assessment and/or environmental impact statement, and the issuance of a Finding of No Significant Impact or an acceptance of final environmental impact statement, as the case may be. All mitigation measures prescribed pursuant to Chapter 343, if any, shall be included as material terms of the General Lease.
- F. PERMITTOR shall have approved a site plan depicting the locations within the Premises of any facilities, roads, and other infrastructure and improvements required for the Project.
- G. PERMITTEE shall prepare a metes and bounds description and survey of the portions of the Premises to be demised under the General Lease or granted under any easements, prepared by a professional land surveyor licensed in the State of Hawaii.
- H. PERMITTEE shall submit the following documents to PERMITTOR:
  - i. A certified copy of PERMITTEE's articles or certificate of organization (or similar instrument) certified by the jurisdiction where PERMITTEE is organized.
  - ii. A certificate of good standing (or similar instrument) issued by the jurisdictions under which Permittee is organized, which certificate is dated no more than 6 months before the effective date of the General Lease.
  - iii. A copy of resolution, certificate, or similar instrument evidencing PERMITTEE's authority to exercise its option under this section certified by the officer, manager, controlling member(s), or agent of PERMITTEE authorized to make such certification.

## EXHIBIT "B" to Submittal

- iv. Evidence reasonably acceptable to PERMITTOR of PERMITTEE's or the Guarantor's financial ability to develop, operate, and maintain the Project, and to make rent payments as required under the General Lease. The "Guarantor" shall mean any person or entity guaranteeing the obligations of PERMITTEE under the General Lease.

### 14. SPECIAL CONDITIONS.

- A. PERMITTEE understands and acknowledges that the Property or Premises may be licensed or leased to other third-parties. PERMITTEE and Permittee's Representatives shall not interfere with, obstruct, or otherwise disturb such third-party users from using the Property or the Premises. PERMITTEE and Permittee's Representative shall provide at least five (5) days' notice to PERMITTOR and any third-party users to reasonably coordinate Permittee's or Permittee's Representatives' use of the Premises. PERMITTOR shall cooperate with Permittee and Permittee's Representatives in coordinating activities on or uses of the Property or Premises.
- B. PERMITTEE understands and acknowledges that the Property contains "historic property" as defined under and subject to HRS Chapter 6E and its implementing regulations. Permittee and Permittee's Representatives shall not take, destroy, alter, interfere with, or use any historic property.
- C. Every six months during the term of this ROE, PERMITTEE shall deliver a progress report to PERMITTOR. Such progress reports shall generally concern PERMITTEE'S progress in assessing the feasibility of the Project, including, but not limited to, information concerning:
  - Completed due diligence activities (e.g., environmental, biological, habitat, and archeological studies)
  - Conditions impacting or that may impact due diligence activities
  - Planned due diligence activities and identifiable community impactsPERMITTEE may deliver such progress reports in writing or by video or telephone conference at a time and place mutually acceptable to the parties.
- D. PERMITTEE shall keep and maintain the Premises and any and all equipment and personal property of PERMITTEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris, and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the Premises.
- E. PERMITTEE accepts the Premises as-is, where-is, with all faults. PERMITTEE understands and acknowledges that there may be no existing utility services to the Premises. PERMITTEE is solely responsible for obtaining and paying for any and all utility services required by PERMITTEE to use or make use of the Premises as contemplated under this ROE.





EXHIBIT "B" to Submittal

San Diego, CA 92128  
Attention: Eddie Park

With a copy to: Legal@innnergex.com

If to PERMITTOR: Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707  
Attention: Land Management Division

And a copy to: Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Attention: AG PSHH

- M. This ROE may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.
- N. This ROE is binding upon, and inures to the benefit of, the parties and their respective successors and permitted assigns.
- O. This ROE shall be construed in accordance with the laws of the State of Hawaii, without regard or application to its principles of conflicts of laws. PERMITTEE submits to the jurisdiction of the State of Hawaii. Any dispute arising under or in connection with this ROE shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawaii, and the parties respectively waive any right to a jury trial of any such disputes. PERMITTEE further irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return receipt requested, to the address(es) set forth above or as PERMITTEE shall furnish to PERMITTOR in writing.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE FOLLOWS]

EXHIBIT "B" to Submittal

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

\_\_\_\_\_  
APPROVED AS TO FORM:

By \_\_\_\_\_  
William J. Aila, Jr., Chairman  
Hawaiian Homes Commission

\_\_\_\_\_  
Deputy Attorney General  
State of Hawai`i

PERMITTOR

INNERGEX RENEWABLES USA LLC  
a Delaware limited liability company

By \_\_\_\_\_  
Name:  
Its:

PERMITTEE

EXHIBIT "B" to Submittal

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_ is the person who executed the foregoing instrument and acknowledged to me that \_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

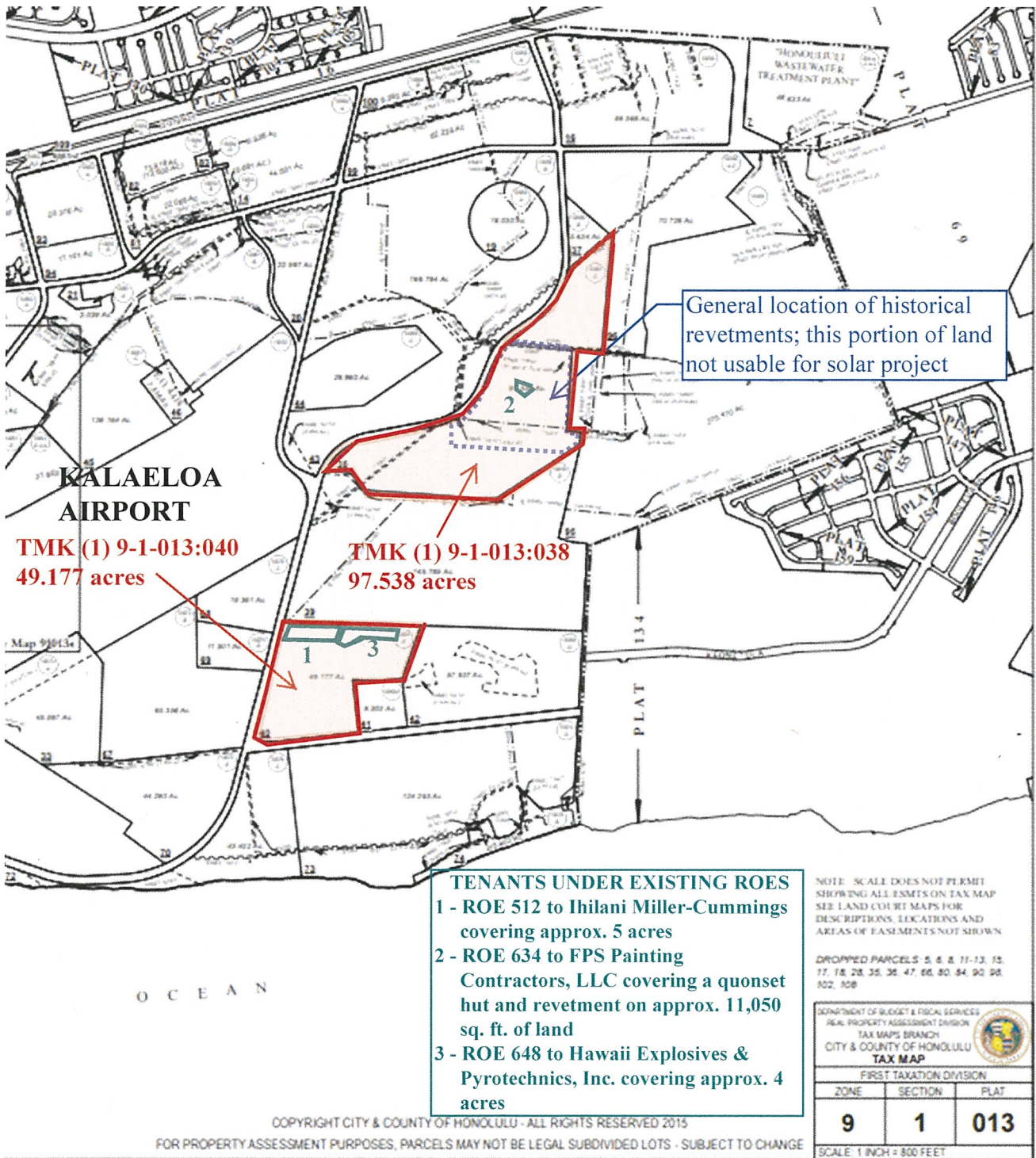
\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

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

My commission expires: \_\_\_\_\_



EXHIBIT "B" to Submittal



**DHHL KALAELOA PARCELS**

EXHIBIT "A"

EXHIBIT "B" to Submittal  
Term Sheet  
Innergex Renewables USA LLC  
Kalaeloa Solar Project

1. Parties

- (a) Lessor Department of Hawaiian Home Lands, an executive agency of the State of Hawaii.
- (b) Lessee Innergex Renewables USA LLC, a Delaware limited liability company, and its permitted successors and assigns.

2. Premises; Uses

- (a) Demised Land A portion(s) of the approximately 147 acres of available lands in Kalaeloa, Oahu, identified by TMK (1) 9-1-013:038 and 9-1-013:040 (the "*Land*"), which will be defined during Lessee's due diligence.
- (b) Easements Lessor will grant Lessee easements for access, utilities, transmission lines and facilities reasonably necessary for the development, construction, operation, maintenance, and repair of the Project, in a form and substance mutually acceptable to the parties ("*Project Easements*").
- (c) Uses; Limits Lessee may use the Premises to install, maintain, and operate electricity-generating facilities consistent with the purposes described in the Final Environmental Assessment (for which a FONSI has been issued) or the Final Environmental Impact Statement (the "*Project*").

3. Term

- (a) Construction Term 2 years.
- (b) Operational Term 25 years from the commencement of commercial operations. Lessee may extend the Operational Term for up to three additional five-year periods, upon terms and conditions that the parties will mutually agree.

4. Lessor's Reserved Rights

- Lessor reserves all mineral, metallic, and water rights, and all historic and archeological remains. However, Lessee assumes all risks of any historic or archeological remains discovered on the Premises, including, but not limited to, the risk of delay.
- (a) Withdrawal Lessor may withdraw all or any portion of the Premises by providing Lessee no less than 5 years prior written notice. Lessor will pay Lessee just compensation in the manner or

EXHIBIT "B" to Submittal  
Term Sheet  
Innergex Renewables USA LLC  
Kalaeloa Solar Project

subject to the terms the parties may negotiate or as otherwise provided at law.

(b) Grant/Relocate Easements    Lessor reserves the right to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for utilities, services, and access.

5. Rent

- (a) Construction Term            Waived.
- (b) Operational Term            \$200,000/year with percentage annual increase.
- (c) Community Benefits Fees    The greater of \$35,000/year or 1% of gross revenues.
- (d) Commercial Operation Date Fee    \$150,000 within 10 days of the commencement of commercial operations.
- (e) Easement Fees                [Reserved]
- (f) Utilities, Taxes, Assessments    Paid by Lessee.
- (g) Site Preparation Credit        If Lessee incurs costs to remove, relocate, raze, or dispose of any fixtures, personal property, or improvements that exist on the Premises at the commencement of the Lease, and which Lessee has identified and confirmed with Lessor must be removed, relocated, razed, or disposed of ("*Existing Improvements*"), Lessor shall reimburse to Lessee the actual costs incurred to remove, relocate, raze or dispose of such Existing Improvements up to and not exceeding an amount to be mutually determined and agreed upon at a later date. Within 90 days of the commencement of commercial operation, Lessor will credit such amounts to Lessee.

6. Project Improvements

Lessee will not construct or install any improvement on the Premises costing more than \$50,000 without Lessor's prior approval, which approval will not be unreasonably withheld, conditioned, or delayed.

(a) Insurance                      The Lease shall include insurance provisions substantially the same as provided in the Right-of-Entry.

EXHIBIT "B"



EXHIBIT "B" to Submittal  
Term Sheet  
Innergex Renewables USA LLC  
Kalaelo Solar Project

- |                             |  |
|-----------------------------|--|
| (b) Hazardous Materials     | The Lease shall include hazardous material provisions substantially the same as provided in the Right-of-Entry.  |
| (c) Indemnity               | The Lease shall include indemnity provisions substantially the same as provided in the Right-of-Entry.   |
| (d) Assignment/Subletting   | Lessee may not assign or sublet all or any portion of the Premises, except with Lessor's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.  |
| 7. Assignment Consideration | [Reserved]   |
| (a) Surrender               | Upon expiration or termination of the Lease, Lessee will peaceably surrender to Lessor the Premises and any improvements thereon, except for those improvements Lessor may require Lessee to remove. Any improvements Lessee fails to remove may be removed by Lessor at Lessee's expense, and Lessee shall pay Lessor for all costs it incurs within 30 days of invoice from Lessor. Lessee will provide such financial security for any removal and restoration obligations in an amount and in form acceptable to Lessor and Lessee and set forth in the Lease. |
| 8. Miscellaneous            |  |
| 9. Lessor Reporting         | Within 90 days of the commencement of the Operational Term, and within a reasonable time after the completion of any future improvement permitted on the Premises, Lessee will provide Lessor with GIS/GPS shape files, survey information, and "as built" plans, detailing the locations of improvements constructed and of infrastructure existing on the Premises.  |
| (a) Beneficiary Reporting   | During the pre-construction and construction phases of the Project, Lessee will organize and hold progress meetings for Lessor's beneficiaries in Kapolei, Oahu, including detailing compliance with the EA/EIS for the Project during the first 3 years of the term of the Lease; and thereafter, upon Lessor's written request.  |
| (b) Guaranty                | Lessee's obligations under the Lease shall be guaranteed in the manner provided in the Lease, which may include,   |

EXHIBIT "B"

EXHIBIT "B" to Submittal  
Term Sheet  
Innergex Renewables USA LLC  
Kalaeloa Solar Project

without limitation, a corporate guaranty, a letter of credit, a cash security deposit, or bond.

(c) Tax Credits

Lessee will have the benefit of all tax credits associated with the Project. If any law changes so that Lessee becomes ineligible for such credits, Lessor and Lessee shall amend or replace the Lease to convert Lessee's interest in the Premises to a reasonable equivalent, at Lessee's sole cost and expense.

(d) No Limits on Trust  
Powers or Duties

The Lease shall not be construed to encumber or otherwise limit the duties or powers of the Hawaiian Homes Commission or the Department of Hawaiian Home Lands in exercise or fulfillment of its fiduciary duties, obligations, rights, or powers arising under the Hawaiian Homes Commission Act of 1920 or any law of the State of Hawaii.

**EXHIBIT "C" to Submittal**  
**GENERAL LEASING PROCESS AND SCHEDULE**

<b>ACTION/TASK</b>	<b>DEADLINES/ TIMEFRAME</b>
1. Issue Public Notice of solicitation; post solicitation Information Packet on DHHL's website	December 21, 2018
2. Solicitation questions due	January 4, 2019 at 2:00 pm HST
3. Post solicitation addendum on DHHL's website, compiling all solicitation questions and responses	January 8, 2019
4. Applications due	January 18, 2019 at 2:00 pm HST
5. Evaluate, score and rank applications	Two weeks after application deadline*
6. Issue application status letters; select applicants for negotiations on draft lease terms	Five days after selection of applicants*
7. Negotiate draft lease terms <ul style="list-style-type: none"> <li>• Upon agreement, staff prepares request for Hawaiian Homes Commission (HHC) approval to proceed with Beneficiary Consultation (BC) meetings for selected applicants</li> <li>• If agreement not reached, negotiations are terminated; DHHL begins negotiations with next-ranked applicant</li> </ul>	Upon selection of applicants* February 1-15, 2019
8. Issue selection status letters; selected applicants to proceed with leasing process; \$10,000 Right-of Entry permit deposit due	Upon completion of negotiations for acceptable lease terms* February 15, 2019
9. Provide solicitation status to HHC; request approval to conduct BC meetings	February 19-20, 2019 HHC Meeting
10. Mail notices to affected beneficiaries inviting participation in the BC meetings and attend the public hearings	One week after HHC Meeting* February 27, 2019
11. Conduct BC meetings	Two weeks following mail-out* March 13, 2019
12. Negotiate final lease terms, as necessary, to address beneficiary issues and concerns	Two weeks after BC meeting* March 27, 2019
13. BC comments due	30 days after BC meeting* April 13, 2019
14. Submit BC report to HHC for acceptance as official record of comments	April 15-16, 2019 HHC Meeting

EXHIBIT "C" to Submittal

ACTION/TASK	DEADLINES/ TIMEFRAME
15. Publish public hearings notice in newspapers	Three days after HHC meeting* April 19, 2019
16. HHC conducts two (2) public hearings followed by decision-making to issue Right-of-Entry permit with option for General Lease (ROE)	Two weeks after public hearing notice published* May 3, 2019
17. Issue approval letter to selected applicants confirming issuance of ROE	Four days after HHC approval* May 7, 2019
18. Issue ROE for execution; balance of ROE fees due, in advance, under initial two-year term	One week after approval letter issued* May 14, 2019
19. Permittee completes due diligence work, technical studies and secures Chapter 343, HRS compliance, and other conditions	Within ROE term: initial two years with three one-year options
20. Issue General Lease for execution	Upon payment of Option Fee and satisfaction of all conditions

*\*DHHL may extend or accelerate the timeframes shown at any time, at its sole discretion. Any dates shown following these timeframes are provided for reference purposes only and are subject to change.*