

Resolution

No. 25-140

AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY AT KUALAPU‘U PARK AND COMMUNITY CENTER, MOLOKAI, TO HO‘ĀHU ENERGY COOPERATIVE MOLOKAI AND HO‘ĀHU CBRE 2 KUALAPU‘U LLC

WHEREAS, HO‘ĀHU ENERGY COOPERATIVE MOLOKAI, a Hawai‘i cooperative, together with its domestic limited liability company, HO‘ĀHU CBRE 2 KUALAPU‘U LLC—collectively referred to as “HECM”—seek to lease a portion of the Kualapu‘u Park and Community Center, Molokai, from the County of Maui for a nominal sum; and

WHEREAS, the real property HECM seeks to occupy is a 1.023-acre portion of a parcel identified for Real Property Tax purposes as Tax Map Key (2) 5-2-028:098, more particularly described and depicted in the Lease Agreement attached as Exhibit “1”; and

WHEREAS, under Section 3.36.090, Maui County Code, the Council may authorize the grant of a lease of County real property by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it authorizes a grant of a lease of County real property at Kualapu‘u Park and Community Center, Molokai, to Ho‘āhu Energy Cooperative Molokai and Ho‘āhu CBRE 2 Kualapu‘u LLC;
2. That, under Section 3.36.090, Maui County Code, HECM is granted the right to occupy a 1.023-acre portion of the parcel identified for Real Property Tax purposes as Tax Map Key (2) 5-2-028:098, in accordance with the terms and conditions of the proposed Lease, at an annual rent of \$1.00, starting upon execution of the Lease and expiring on September 18, 2043, unless terminated sooner, or extended with the approval of the Council;
3. That the term of the Lease shall be amended once without Council approval to coordinate the end date of the Lease with the end date of Lessee’s contract with Hawaiian Electric Company;

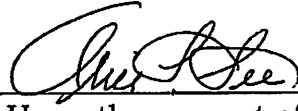
4. That the Mayor and Director of Finance are authorized to execute the proposed Lease Agreement attached as Exhibit "1"; and
5. That certified copies of this Resolution be transmitted to the Mayor; Director of Finance; Director of Parks and Recreation; and Lori Buchanan, Board President, Ho'āhu Energy Cooperative Molokai.

APPROVED AS TO FORM AND LEGALITY:



KRISTIE WRIGGLESWORTH
Deputy Corporation Counsel
County of Maui
2024-0407

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written over a horizontal line.

Upon the request of the Mayor.

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REGULAR SYSTEM

To: DEPARTMENT OF FINANCE
County of Maui
200 South High Street
Wailuku, Maui, Hawai'i 96793

HO'ĀHU ENERGY COOPERATIVE MOLOKAI
LEASE OF COUNTY PROPERTY

1

W I T N E S S E T H:

WHEREAS, on January 21, 2022, the County of Maui issued a letter to support a community-based renewable energy ("CBRE") project at the Kualapu'u Park and Community Center by serving as the host site; and

WHEREAS, in the support letter, the Maui County Energy Commissioner stated that a renewable energy project at this site would offer direct economic benefits to residents through lower utility bills and local job creation. The project would advance the State's goal of 100% renewable energy by 2045, enhance energy reliability in the Kualapu'u area, and potentially serve as a resilience hub for nearby residents; and

WHEREAS, Lessee entered into a long-term contract with Hawaiian Electric Company dated September 18, 2023; NOW, THEREFORE,

Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Leased Area. The leased area is 1.023 acres, containing the area identified as Tax Map Key (2)5-2-028:098 (por.), more particularly described in Exhibit "A", attached hereto and by reference incorporated herein, referred to as the "Property" or "Premises." The estimated yearly fair market rental value of the Property, effective March 13, 2025, is \$1,918.60, as determined by the Director of Finance.

B. Use of Property. Lessee shall use the Property only for the purpose of installing, operating, and maintaining solar carports and battery energy storage systems ("Project") as set forth in the grant application narrative attached hereto as Exhibit "B" and by reference incorporated herein. Lessee shall obtain Lessor's approval of the final location for siting the Project. The use of the Property for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Parks and Recreation ("Director").

C. Term. This Lease shall commence upon execution and expires on September 18, 2043, unless sooner terminated as provided herein, or extended with the approval of the County Council. This Lease shall supersede in its entirety any existing lease or right of entry.

D. Extension of Term. The term of this Lease shall be amended once, without County Council approval, to align the Lease end date with the Lessee's contract with Hawaiian Electric Company.

E. Rent. In consideration of the valuable partnership of the Parties to further the purpose of meeting the collective goal of the Project, the Lessee shall pay to the Lessor the nominal rental amount of ONE and no/100 DOLLAR (\$1.00) per annum, the receipt and sufficiency of which is hereby acknowledged.

F. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions ("Terms and Conditions") of this Lease are set forth in Exhibits "C" attached hereto and by

reference made a part hereof.

G. No Disturbance. Lessee acknowledges and confirms that the Property is part of a public park facility used by the general public. Lessee and anyone claiming under Lessee, shall limit their activities to the Property covered by this Lease, including ingress and egress to the Project, and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the rest of Kualapu'u Park and Community Center by Lessor and the general public. Lessee and anyone claiming under Lessee shall obey reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, employees, or agents with respect to same.

H. Key Control. If necessary, Lessee will be issued keys to access the Property and must surrender the keys upon demand by Lessor, or upon expiration of this Lease. Lessee shall maintain control of issued keys, and shall not lend, loan, or provide the keys to anyone for any reason other than in performance of the Project. Lessee shall not duplicate any keys issued by Lessor.

I. Permits Required. Lessee, at no cost or expense to Lessor, shall be responsible for obtaining any and all governmental permits, licenses, certifications, and approvals which may be necessary for performance of Project, prior to commencing work.

J. Permit for outside Premises. If Lessee desires to have temporary, exclusive use of portions of Kualapu'u Park and Community Center, outside of the Property, Lessor shall apply for

a use permit with the Department of Parks and Recreation ("Department").

K. Reversion. Within 180 calendar days of the termination of this Lease, Lessee shall remove the Project and all its equipment from the Property.

L. Other Terms and Conditions. Any Special Conditions are attached hereto as Exhibit "D" and made a part of this Lease. In the event of any inconsistencies or conflict between the Terms and Conditions and the Special Conditions, the Special Conditions shall control. Any general, miscellaneous, or other terms, conditions, or provisions that are found in the application for this Grant of Lease or in any sub-contractor's proposals attached thereto shall be unenforceable against the County, unless the subject of such terms, conditions, or provisions is addressed in the County's Terms and Conditions, and such terms, conditions or provisions are consistent with the County's Terms and Conditions.

M. Grant requirements. Within three (3) weeks after the end of the fiscal year, Lessee shall transmit to the Department a report, using Exhibit "E", provided herewith, and shall also provide the following information, if applicable, for the quarter and for the fiscal year to date:

1. Program status summary;
2. Program data summary;
3. Summary of participant characteristics;
4. Changes in real property tax assessment for the real property;

5. Earnings from the grant of real property; and
6. Narrative report.

N. Review of Grant of Lease. The Director may, in its sole discretion, require a review to ensure compliance with the terms of this grant of Lease. Lessee shall, upon written request, provide Lessor full access to inspect or audit Lessee's records, report books, files and other financial documents and shall cooperate fully and assist the County in any such audit or inspection. Lessee shall also allow Lessor to physically inspect the Premises upon two days written notice.

O. Modifications. Any modifications or amendments to the Lease may be made upon mutual agreement of the Parties and by Maui County Council approval by Resolution.

P. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The parties agree that they may utilize and shall be bound by their electronic signatures, pursuant to Chapter 489E, Hawaii Revised Statutes

[EXECUTION PAGES TO FOLLOW]

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LESSOR:

COUNTY OF MAUI

By _____
RICHARD T. BISSEN, JR.
Its Mayor

By _____
MARCY MARTIN
Director of Finance

APPROVAL RECOMMENDED:

PATRICK S. MCCALL
Director of
Parks and Recreation
County of Maui

APPROVED AS TO FORM
AND LEGALITY:

KRISTIE M. WRIGGLESWORTH
Deputy Corporation Counsel
County of Maui
LF2024-0407
2025-05-29 HECM Lease of Kualapu'u Park

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I hereby represent and warrant that I have the legal right and authority to execute this Amendment on behalf of the Lessee.

LESSEE:

HO'ĀHU ENERGY COOPERATIVE
MOLOKAI

By _____
(Signature)

(Print Name)

Its _____
(Title)

HO'ĀHU CBRE 2 KUALAPU'U LLC

By _____
(Signature)

(Print Name)

Its _____
(Title)

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STATE OF HAWAI'I)
) SS.
 COUNTY OF MAUI)

On this _____ day of _____, 2025, before me personally appeared RICHARD T. BISSEN, JR., to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawai'i, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said RICHARD T. BISSEN, JR. acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]

 Notary Public, State of Hawai'i

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 2025, before me appeared MARCY MARTIN, to me personally known, who being by me duly sworn, did say that she is the Director of Finance of the County of Maui, a political subdivision of the State of Hawai'i, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARCY MARTIN acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]

Notary Public, State of Hawai'i

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

[Signature]

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 2025, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]

Notary Public, State of _____

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

[Signature]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 2025, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]

Notary Public, State of _____
Print Name: _____
My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

[Notary Seal]	
Notary Signature: _____	
Date: _____	

EXHIBIT "A"

Project Site

Kualapu'u Park and Community Center TMK 520280980000



● Point of Interconnection

□ Carport solar array

□ Battery Energy Storage System

EXHIBIT "B"

Grant Application

Narrative Application – Ho‘āhu Energy Cooperative Molokai
County of Maui Grants of Real Property

1. Provide a description of the nature and purpose of the agency requesting the lease or license-to-occupy, including:

Ho‘āhu Energy Cooperative Molokai (Ho‘āhu) is a community-led cooperative with 501(c)(12) non-profit status. Ho‘āhu’s mission is to produce community-owned, affordable, renewable energy for the benefit of our members, the community, and environment.

Ho‘āhu serves all Molokai residents, with an emphasis on providing opportunities to those individuals and families who most need support to make ends meet. Ho‘āhu intends to provide community solar subscriptions to up to around 1,500 households through it’s first two projects. Ho‘āhu also is deploying 15 small solar and battery storage projects to low-income families living off-grid. Additionally, Ho‘āhu provides workforce training in energy topics. To date, Ho‘āhu has graduated 30 students and plans to train an additional 20-30 next year.

Ho‘āhu has secured funding from the County, State, and Federal governments in addition to private funding. Community solar financing is coming from a combination of a federal grant, loans from American Savings Bank, People’s Solar Energy Fund, Enlightened Energy, and potential future lenders such as Inclusive Prosperity Capital and Hawaii Green Infrastructure Authority. Workforce development programs have been funded through a combination of grants from the County of Maui and Good Jobs Hawai‘i. The off-grid solar program will be funded through a combination of grants from the Honnold Foundation and Sandia National Lab.

Ho‘āhu is governed by it’s board, which is composed of grassroots community leaders. Ho‘āhu workforce development and other operations are managed by a Project Coordinator, who reports to the board. Ho‘āhu’s two interns report to the Project Coordinator. Ho‘āhu’s community solar and off-grid solar projects are managed by a company contracted by Ho‘āhu, Shake Energy Collaborative.

2. Please explain the intended usage of the facility (or site) for which the lease/license-to-occupy is being requested.

Ho‘āhu intends to install a photovoltaic solar array on top of carport structures over the existing parking lot along with a battery energy storage system stored in a 20 ft shipping container. After the initial surveys and construction activities, the equipment will produce electricity that is exported to the grid within only minimal activity onsite for periodic operations and maintenance.

The project will provide clean electricity for the benefit of approximately 150 households through Hawaiian Electric’s Community-Based Renewable Energy (CBRE) program. This means that approximately 150 homes will subscribe to the project and receive a credit on their bill. We expect those subscribers to save approximately 15% to 15% off their electricity bill as a result of subscribing.

This project, along with Ho‘āhu’s other project at Pālā‘au, will serve a total of approximately 1,500 households island-wide. Ho‘āhu aims to benefit low-to-moderate income subscribers. Households must be grid-tied and must not have rooftop solar in order to be eligible. Small

business, non-profits and government facilities may also be able to subscribe pending availability. Ho‘āhu has had previous discussions with the County of Maui about how the County could serve as a subscriber for an excess subscription, which would benefit all subscribers as well as the county.

After construction, no weekly activity is expected at the site. There will be periodic maintenance on an as-needed basis – likely annual or less frequent – for possible panel cleaning and potential repairs. After around 10 years of operation, the battery modules may require replacement or upkeep by a small team lasting for less than 1 week.

3. Ho‘āhu does not have any community solar projects currently in operation so this site would serve as the first site, along with the Pālā‘au site, for this new and impactful project.

4. Describe the management plan for the facility/site. Who and how will daily management of the facility/site be handled?

Attached is the operations and maintenance plan for the solar facility, prepared by one of Ho‘āhu’s contractors, Mana Pacific Inc. The solar and battery facility will be monitored remotely and the installation contractor will be responsible for repairs and maintenance in the first several years of the project. To reach Ho‘āhu’s goal of hiring more locally, the contractor will start to train Ho‘āhu workforce development graduates to do the repair and maintenance tasks so that Molokai residents will do that work going forward.

5. What would the impact be on the services/activities to be conducted at/through the facility/site IF a lease/license to occupy is not granted?

The project would not be built and the 150 households would not receive the benefit of the solar power produced.

6. Construction Budget

Permitting	\$172,200
Engineering	\$48,000
Interconnection Studies	\$150,000
PV & Inverters	\$210,600
Battery Storage	\$872,600
Carport Structure	\$314,000
Installation labor	\$1,035,000
Interconnection Facility	\$26,300
Development Services	\$140,800
Contingency	\$76,400
Financing Fees	\$99,700
Total	\$3,145,600

Sources of financing

This project will be financed collectively with the Pālā'au project that collectively are expected to cost approximately \$21M. The expected sources of funding include:

- \$3M congressionally directed spending grant through the Department of Energy
- \$9M loan from American Savings Bank
- \$9M loan from Inclusive Prosperity Capital

The design includes a 250 kW AC (325 kW AC) PV array mounted on carport structures over the existing parking lot, paired with a 250 kW AC (1MWh) BESS. The selected battery technology is Lithium Iron Phosphate (LFP). The Facility will consist of approximately 680 high efficiency solar photovoltaic modules mounted on fixed-tilt carport structures and eight 33.3 kW AC inverters. See attached preliminary site plan.



Lori Buchanan (Nov 16, 2023 08:59 HST)

Lori Buchanan, Board President

11/15/23

EXHIBIT "C"

RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

In consideration of the foregoing grant of lease/license to the Lessee/Licensee, the Lessee/Licensee herein agrees to the following reservations, covenants, terms and conditions. In the event any of the following conflict with any reservation, covenant, term, or condition contained in the BODY of the lease/license, the reservation, covenant, term, or condition contained in said BODY shall prevail. All references to the lease, the lessee, or the lessor shall include and be deemed to refer to the license, licensee or the licensor, where applicable.

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever including strip mining. "Minerals" as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver bauxite, bauxitic clay, dispore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and without limitation thereon all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the Premises and not for sale to others.

B. All surface and ground water appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the State of Hawaii of the rights reserved in this paragraph, just compensation shall be paid to Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. This Lease shall be subject to the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOWS:

1. Payment of Rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid in legal tender of the United States of America.

2. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

3. Utility Services. Lessee shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone, and other services or utilities used by Lessee on the Premises during the term of the Lease unless otherwise expressly agreed in writing by Lessor.

4. No Residential Use. Lessee, its agents, employees, and invitees, shall not use the Premises as temporary or permanent residence. Lessee shall not permit or allow any person to live on the Premises.

5. Indemnification. Lessee shall indemnify and save Lessor harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arise from the construction of Lessee's improvements, from the failure of Lessee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms, and conditions of this Lease, or from any act or negligence or omission to act of Lessee, its agents, contractors, servants, employees, concessionaires, or licensees in or about the demised Premises or in any connection with this Lease. In case any action or proceeding be brought against Lessor (in addition to Lessee) by reason of any such claim, Lessee agrees to pay the reasonable costs and expenses thereof, counsel fees, and any judgments or settlement of claim secured against Lessee by reason of such action or proceeding unless Lessor is found to be grossly negligent or guilty of willful misconduct. Lessor shall indemnify and save Lessee harmless against and from any and all liabilities, suits, claims, damages, judgments, losses, costs and expense, including reasonable attorneys' fees and costs, arising as a result of the negligent acts or omissions of Lessor or its employees, agents, or contractors in on or about the Premises, or Lessor's failure to perform its Lease obligations. The obligations under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Costs of Litigation. In case Lessor, without any fault on its part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorneys' fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorneys' fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms, and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rent, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

7. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against the Lessor regarding the aforementioned risks. All inventory, property, vehicles, approved improvements, and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

8. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

9. Mortgage. Lessee may not mortgage or create a security interest in the demised premises or any portion thereof.

10. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten days after written request by Lessor. Lessee shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorneys' fees.

11. Rules and Regulations. Lessor excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Lessee's use of the Premises, which rules and regulations shall be binding upon Lessee upon notice thereof to

Lessee. For enforcement of such rules and regulations, if any, Lessor shall have all remedies in this Agreement and any other remedies allowed by law.

12. Alterations and Improvements. Lessee shall make no alterations to any structure on the Premises or construct any building or make any other improvements on the Premises without the prior written approval of the Director. Alterations or improvements on the Premises approved by the Director made by and paid for by Lessee, with the exception of fixtures which cannot be removed without damage to the Premises, shall, unless otherwise provided by written agreement between the Parties, be the property of Lessee.

13. Fixed Improvements. Lessee shall not at any time during the term construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind or description except with the prior written approval of Lessor and upon those conditions the Lessor may impose, including any adjustment of rent, unless otherwise provided in this Lease. All improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of this Lease shall be, and at all times remain, the property of the Lessor.

14. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.

15. Sanitation. Lessee shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition.

16. Waste and Unlawful, Improper or Offensive Use of Premises. Lessee shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the Director, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees growing on the Premises at the commencement of this Lease, as well as any trees that are growing on the Premises for the duration of this Lease.

Lessee shall not allow the Premises to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

17. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state, and local laws, ordinances, regulations, and standards relating to the use, analysis, production, storage, sale, disposal, or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating, or polluting materials which are

now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall: (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified, or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

18. Rights of Way and Easements. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities, and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, including without limitation, the right to enter to construct, reconstruct, operate, and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that in any such event, any improvements made by Lessee which were damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry. Lessor further reserves the right to authorize public access over, across, under and through the Premises.

19. Access to Information. Lessee shall provide Lessor with access to Lessee's books, records, assets, facilities, and all other information relative to the use of the Premises, as deemed necessary in the judgment of Lessor.

20. Liability Insurance, Required Coverage. Lessee agrees to maintain, on a primary basis, at all times during the term of this

Lease, the following insurance coverage with the minimum limits and coverages as specified as follows. The coverage(s) shall be placed with an insurance carrier authorized to do business in the State of Hawaii with an A M Best rating of A-VII or higher:

A. Commercial General Liability. Lessee shall procure and maintain commercial general liability coverage written on an occurrence basis covering the liability of the Lessee for all operation on the Premises. Defense cost shall be outside the limits and will not erode the limits of liability. Lessee shall name the Lessor as an Additional Insured under the policy and shall also provide a waiver of subrogation in favor of the Lessor. The commercial general liability policy shall include the following coverages:

- 1) Premises Operations
- 2) Independent Contractors
- 3) Blanket Contractual Liability
- 4) Broad Form Property Damage including Loss of Use
- 5) Personal & Advertising Injury
- 6) Employees named as Additional Insured
- 7) Severability of Interest
- 8) Fire Legal Liability

B. The following limits of liability are the required minimum limits that shall be maintained by the Lessee.

- 1) Bodily Injury and Property Damage
 - a) \$1,000,000 per Occurrence
 - b) \$2,000,000 Annual Aggregate
- 2) Personal & Advertising Injury
 - a) \$1,000,000 per Occurrence
 - b) \$2,000,000 Annual Aggregate
- 3) Fire Legal Liability
 - a) \$500,000

21. Property Insurance. Lessee shall procure and maintain during the term of this Lease a Broad Form All Risk Property policy covering all of the Lessee's leasehold improvements, fixtures, equipment, and business personal property on a Replacement Cost basis for the perils of fire, lightning, Named Storm (Hurricane), windstorm, theft, vandalism, malicious mischief, flood, and earthquake. The perils of flood and earthquake may be subject to a sub-limit. The sub-limit shall provide coverage for 25% of the replacement cost. Any deductibles which are greater than \$10,000 (except for percentage deductibles for the perils of Named Storm, Flood, and Earthquake) must be declared and approved by the County.

The County of Maui shall be named as a Loss Payee under the property policy for permanent fixtures and other equipment which are not removable by Lessee upon termination of this lease.

22. Certificate of Insurance. Upon execution of the Lease and prior to Lessee moving into the Premises, Lessee shall provide to the Lessor a Certificate of Insurance demonstrating the required insurance coverage and limits are in full force and effect. Lessee shall give immediate notice to the Lessor if the required coverage is cancelled or non-renewed by the insurance carrier.

23. Condemnation. If at any time during the term of this Lease any portion of the Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

24. Lessor's Lien. Lessor shall have a lien on all the buildings and improvements placed on the Premises by Lessee, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the Premises for all costs, attorney's fees, rent reserved, taxes, and assessments paid by Lessor on behalf of Lessee and for the payment of all money as provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts are paid.

25. Assignment. Lessee may, with prior written approval of the Director, assign the Lease for the remainder of the Lease term.

26. Sublease. Lessee may, with written approval of the Director, sublease the demised premises.

27. No Alcohol. At no time shall Lessee sell or give away or permit the selling or giving away of any alcoholic beverages, or

allow any alcoholic beverages to be consumed within or about the Premises.

28. Surrender of Premises. At the expiration, revocation, cancellation or termination of this Lease, Lessee shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment, and other personal property of Lessee from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Lessee.

29. Termination. If Lessee becomes bankrupt, dissolves, becomes inactive, or abandons the Premises for a period of four (4) consecutive months, or if this Lease and the Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms, and conditions, and such failure shall continue for a period of more than thirty days after delivery by Lessor of a written notice of such breach or default, by personal service, registered mail, or certified mail to Lessee at Lessee's last known address, all rights granted hereunder to Lessee shall cease and this Lease shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach or contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of Lessor, subject to any valid mortgages against the property.

30. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations, and National Guard participation.

31. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000).

32. Compliance with Laws. Lessee shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

33. Interpretation Under Hawaii Law. This Lease is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced, and governed under the laws of the State of Hawaii.

34. Gender. The use of any gender shall include all genders, and if there be more than one Lessee or Lessor, then all words used in the singular shall extend to and include the plural.

35. Paragraph Headings. The paragraph headings throughout this Lease are for the convenience of Lessor and Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

36. Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants, and conditions hereof.

37. Notices. All notices or demands that are required or may be given under this Lease by one party to another party, or that are required by law, shall be in writing and shall be deemed to have been validly given or served in the following manner: (a) by delivery to the intended addressee; or (b) by depositing the notice with a reputable private courier service for next business day delivery to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties; or (c) by depositing the notice with the United States Postal Service for delivery, postage prepaid, registered or certified mail, return receipt requested, to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties.

A notice shall be deemed received upon personal delivery to the designated address or three days after being deposited with a private courier service or with the United States Postal Service as described, supra. Rejection of or refusal to accept a notice or the inability to give notice because a notice of a change in address was not given as required by this Paragraph shall be deemed to be receipt of the notice sent when tendered as provided by this Paragraph.

If a party has designated an agent for service of process, notice to the agent shall conclusively be deemed service on the party. A party shall have the right from time to time to change its address for receipt of notice and to specify any other address within the United States of America by giving written notice of the change in address to the other party or parties at least fifteen days in advance. A notice of change of address is effective under this Lease only when actually received.

To Owner: COUNTY OF MAUI
Kalana O Maui Building
200 South High Street
Wailuku, Maui, Hawaii 96793
Attn: Director, Parks and Recreation

To Lessee: Ho'āhu Energy Cooperative Molokai
2097 Akeu Way
Kualapuu, HI 96757
Attn: Lori Buchanan, President

38. Assistance of Legal Counsel. The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of this Lease, and have thoroughly discussed all aspects of this Lease with their respective counsel. The parties are voluntarily entering into this Lease and no party or its agents, representatives, or attorneys have made any representations concerning the terms or effects of this Lease other than those contained herein.

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END OF EXHIBIT "C"

EXHIBIT "D"

**SPECIAL CONDITIONS FOR GRANT OF LEASE
TO OCCUPY COUNTY REAL PROPERTY**

In the consideration of a grant of lease to occupy County real property, the Lessee shall:

1. Not discriminate either in the hiring of staff, use of volunteers, or delivery of client services on the basis of sex, sexual orientation, national origin, age, race, color, religion or handicap;

2. Comply with all provisions of the rules and regulations relating to Chapter 3.36 of the Maui County Code, as amended;

3. Provide written reports on forms specified by the Lessor to provide adequate monitoring of Lessee's use of the leased premises, to the Department of Parks and Recreation, as required by Chapter 3.36 of the Maui County Code, as amended;

4. Implement a system of accounting in conformance with generally accepted accounting practices in order to insure the effective administration of the grant. Such accounts shall be kept separate from other financial management accounts of the Lessee;

5. The County has the right to audit Lessee to determine compliance with the terms of the Lease. Lessee will cooperate fully and assist the County in such audit;

6. Comply with all terms and conditions as specified in the lease document;

7. In the event the Lessee fails to adhere to any of the conditions listed here, the County may terminate the lease;

8. For the purposes of this Lease, section 31 ADA Compliance of the Terms and Conditions is deleted in its entirety and replaced with the following:

31. Legal Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000). Lessee shall be responsible for complying with all applicable federal, state and county housing laws and regulations while constructing and managing the Project. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Lessee unless agreed upon in writing by the Lessor.

9. For the purposes of this Lease, the following sections are added to the Terms and Conditions:

39. Responsibility for Damage Claims. Lessee shall ensure that any contractor or contractors Lessee hires (the "Contractor") to perform any work on or within the Premises, including repairs, remediation or maintenance the "Work") shall indemnify Lessor against all loss of or damage to the Premises arising out of any act or omission of the Contractor. Lessee shall require the Contractor to defend, hold harmless, and indemnify the Lessor, its employees, officers, and agents against all losses, claims, suits, liability, and expense, including but not limited to attorneys' fees, arising out of injury to or death of persons (including employees or invitees of the Lessor, the Contractor or any subcontractor) or damage to property resulting from or in connection with performance of the Work. The Lessor may participate in the defense of any claim or suit without relieving the Contractor of any obligation hereunder. The purchase of liability insurance shall not relieve the Contractor of the obligations described herein. The Contractor agrees that it will not attempt to hold the Lessor and its officers, representatives, employees, or agents, liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these specifications or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the Work. The Contractor shall pay all just claims for materials, supplies, tools, labor, and other just claims against the Contractor or any subcontractor in connection with the Work. The Contractor shall defend, indemnify, and hold harmless Lessor and its officers, representatives, employees, or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Worker's Compensation Laws or any other law, by-law, ordinance, order or decree. Lessee shall provide to Lessor sufficient documentation, including certificates of insurance, evidencing compliance with this paragraph prior to commencement of any work.

40. Contractor Insurance. For all Contractor performed Work, Lessee shall ensure that Contractor shall, at Contractor's own cost and expense, at all times during the term hereof, effect and maintain with an insurance company or companies qualified to do business in the State of Hawaii and approved by Lessor, a policy or policies of Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance, with such reasonable minimum limits as shall be prescribed by Lessor from time to time, but initially with minimum limits of not less than \$1,000,000 combined single