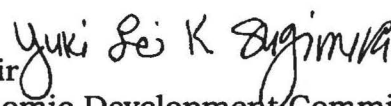


July 24, 2025

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MEMO TO: BFED-20(16) File

F R O M: Yuki Lei K. Sugimura, Chair 
Budget, Finance, and Economic Development Committee

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENTS RELATING
TO JOHNSON CONTROLS, INC. ENERGY PERFORMANCE
CONTRACT** (BFED-20(16))

The attached informational documents pertain to Item 20(16) on the Committee's agenda.

bfed:ltr:020(16)afile01:kes

Attachments

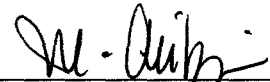
CONTRACT CERTIFICATION

I, **SCOTT K. TERUYA**, Director of Finance of the County of Maui, State of Hawaii,
do certify that there is available appropriation or balance of an appropriation over and above all
outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

<u>Appropriation</u> <u>Index</u>	<u>Title</u>	<u>Amount Required</u>
<u>903119B</u> ✓	<u>RENEWABLE ENERGY PROGRAMS (6132)</u> ✓	<u>\$150,000.00</u> ✓

CONTRACT NO. C 7619 ✓ JOHNSON CONTROLS, INC. ✓

Date: 4 day of MAY 2022
Time of Performance: 180 Calendar Days from NTP ✓



SCOTT K. TERUYA
Director of Finance



Investment Grade Audit (IGA) Contrast for ✓
Energy Savings Performance Contract with
Countywide Facilities for MYR
RFP #21-22/ESPC ✓
No, Federal funds are not being used.
ORDINANCE NO.5217 (FY2022)

FY 2022

jh

MAY 05 2022

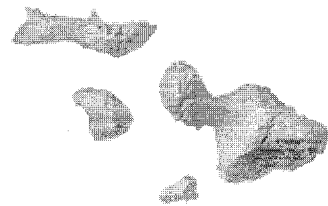
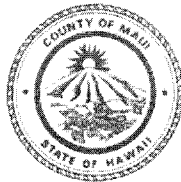




MICHAEL P. VICTORINO
Mayor

SCOTT K. TERUYA
Director

MAY-ANNE A. ALIBIN
Deputy Director



DEPARTMENT OF FINANCE
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

May 6, 2022

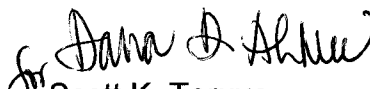
Johnson Controls, Inc.
550 Paiea Street
Honolulu, HI 96819

RE: CONTRACT FOR THE INVESTMENT GRADE AUDIT (IGA) CONTRACT FOR
ENERGY SAVING PERFORMANCE CONTRACT WITH COUNTYWIDE
FACILITIES FOR THE OFFICE OF THE MAYOR
RFP NO. 21-22/ESPC
CONTRACT NO. C7619

Dear Johnson Controls, Inc.:

Enclosed is a copy of the fully executed contract for your file. You will be receiving your official notice to proceed on the project from the Chief of Staff of the Office of the Mayor or his designated representative.

Sincerely,


Scott K. Teruya
Director of Finance

SKT:dda
Enclosure

xc: Office of the Mayor, Climate Change, Resiliency, and Sustainability

CONTRACT NO. C7619

CONTRACT FOR PROFESSIONAL SERVICES

Department: Office of the Mayor – Climate Change, Resiliency, and Sustainability

Project Title: Investment Grade Audit (IGA) Contract for Energy Saving Performance
Contract with Countywide Facilities

RFP No.: 21-22/ESPC

Certification Requested from County: \$150,000.00

This CONTRACT is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and JOHNSON CONTROLS, INC., a Hawaii corporation, whose mailing address is 550 Paiea Street, Honolulu, Hawaii 96819, hereinafter referred to as the "Contractor". County and Contractor shall hereinafter be referred to collectively as the "Parties".

Source of Funds. The source(s) and availability of the funds for this Contract shall be as set forth in the Contract Certification signed by the Director of Finance of the County of Maui on or before the effective date of this Contract. Contract Certification shall be on file in the office of the Director of Finance of the County of Maui.

RECITALS:

WHEREAS, the County desires to retain and engage the Contractor to provide the goods or services, or both, as those terms are defined in Section 103D-104, Hawaii Revised Statutes ("HRS"), as described in this Contract and its attachments, **Contract Documents**, and the Contractor desires to provide such goods or services, or both, for, and on behalf of, the County;

WHEREAS, this Contract is for professional services as defined in Section 103D-104, Hawaii Revised Statutes ("HRS"), and Section 3-122-1, Hawaii Administrative Rules ("HAR"); and

WHEREAS, the County desires to evaluate and identify for implementation energy efficiency retrofitting through an energy performance contract, as that term is defined in Section 36-41, HRS,

WHEREAS, pursuant to Section 46-1.5(4), HRS, the County is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the following mutual promises and agreements set forth, the Parties agree as follows:

1. Scope of Work. The Contractor shall, in a proper and satisfactory manner as determined by the County, provide all goods or services, or both, in accordance with County's Request for Proposals identified above, and any attachments thereto, and Contractor's Proposal

CONTRACT NO. C7619

dated December 17, 2021, and any attachments thereto (the "Proposal") (collectively, "Contract Documents"). Contract Documents are on file in the office of the Director of Finance of the County of Maui, and are incorporated herein by reference and hereby made a part of this Contract.

2. Time of Performance. The Contractor shall commence performance under this Contract upon issuance of the Notice to Proceed, and shall continue performance for a period of 180 calendar days therefrom, unless sooner completed, terminated, or extended in compliance with the terms of this Contract. Where the contract work is structured into phases or discrete work items, if the commencement of a phase or work item is triggered not by the completion of the prior phase or work item, but by some other event not under the control of the Contractor, the time between the completion of one phase or work item and the commencement of the next shall not count towards the time of performance within which the Contractor agreed to complete its performance under the Contract. The Contractor agrees to cooperate and coordinate with the County to accurately compute and document the time of performance.

To allow for timely completion of the Services, the County will provide Contractor, and consultants of the Contractor, with necessary access to electric/gas/water utility bills, as built-drawings, facility asset identification information, and physical site access for on-site evaluations. Contractor will provide the County with written Requests for Information and County will use all reasonable efforts to respond in a timely manner. The County and Contractor acknowledge that approximately 600 electrical utility accounts have been identified by the County and that while all utility accounts are to be analyzed by Contractor, due to the limited days for completion, specific facility analysis is not required for accounts that in aggregate constitute less than 1 percent of annual County consumption for each utility on each island unless required by another provision of this Contract.

This Contract may be extended up to an additional 60 calendar days, upon mutual agreement in writing. It is understood that to exercise any such extension option, the parties will execute an Amendment to the Contract.

3. Compensation and Payment Schedule. The County shall have no payment obligations at the time of the execution of this Contract but acknowledges that if the County and the Contractor execute an Energy Performance Contract, as defined by Section 36-41, HRS, ("EPC"), no payment shall be due for the services and costs incurred under this Contract. This Contract shall automatically terminate upon execution of an EPC by the County and the Contractor. The provisions for compensation for the services rendered and costs incurred under this Contract shall be incorporated into the EPC; provided such costs and expenses shall not exceed the contract amount as specified above. Notwithstanding the foregoing, costs in excess of this Contract amount for Investment Grade Audit services that, in the sole discretion of the County, are deemed reasonable and in accordance with the SPO Vendor List RFP-08-022-SW - Energy Savings Performance Contracting Services may, after review and written acceptance by the County, be included in the EPC, however, in no event shall this Contract amount exceed \$150,000.

Should the Contractor determine any time during the Investment Grade Audit that savings cannot be attained to meet the County's terms as set forth in this Contract, the Investment Grade Audit will be terminated by written notice of the Contractor to the County. In this event, this

CONTRACT NO. C7619

Contract shall be terminated and the County shall have no obligation to pay, in whole or in part, the amount specified. In this event, the County shall return to the Contractor all information and data generated by the Contractor under the audit.

Should the recommendations contained in the Investment Grade Audit meet or exceed the county's objectives and all contract requirements and the County, for any reason, does not proceed with the implementation phase, then the Contractor shall be compensated for services rendered and costs incurred under this Contract for a total amount not to exceed the amount of certification requested as set forth above, subject to appropriation, and inclusive of all taxes. In this event, the County will pay Contractor in accordance with the fee schedule set forth in the Contract Documents. Payments shall be made monthly in arrears, subject to the receipt of an original invoice by the Officer-in-Charge no later than on the fifth (5th) day of each month for services rendered during the previous calendar month. The original invoice shall specify the amount due, certify that services requested under this Contract have been performed by the Contractor according to the Contract, and also include any other information reasonably requested from time to time by the Officer in Charge, all in accordance with Section 17 of the General Conditions.

Contractor agrees that the recommendations included in the Investment Grade Audit will comply with Section 36-41, HRS, and the Contract Documents. If, in the sole discretion of the County, the Investment Grade Audit does not comply with Section 36-41, HRS, the County can (1) terminate this agreement without cost or penalty, or (2) renegotiate this Contract with the Contractor, or (3) begin negotiations with another party that can perform the same or similar services.

4. General Conditions. The Contractor shall comply with the General Conditions of this Contract (the "General Conditions"), which are attached hereto and are hereby made a part of this Contract.

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

6. *[This paragraph is intentionally left blank]*

7. Conflict. In the event of any conflict between or among this Contract and other documents that are attached hereto or incorporated herein by reference or both, the terms of this Contract shall control first, the County's General Conditions second, other documents prepared by the County third, and documents prepared or submitted, or both, by the Contractor last.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the County shall be sent to:

CONTRACT NO. C7619

Procurement Officer
Department of Finance
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Notice to the Contractor shall be sent to the Contractor's address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor is responsible for notifying the County in writing of any change of address.

9. Officer in Charge. The Chief of Staff, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor's performance and approving completed work/services with verification of same for Contractor's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for the Contractor from award to contract completion.

10. Contractor's Standards of Conduct. The undersigned Contractor declares:

a. Contractor is **not** a County Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest. "Employee" means any nominated, appointed, or elected officer or employee of the County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members"). "Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%);

b. Contractor has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned;

c. Contractor has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract;

d. Contractor has not been represented on matters related to this Contractor for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract; and

e. Contractor understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

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11. Counterparts and Electronic Signatures. This Contract 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.

IN WITNESS WHEREOF, the Parties execute this Contract by their signatures, on the dates below, to be effective as of the date of the last signature hereto.

[EXECUTION PAGES TO FOLLOW]

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONTRACT NO. C7619

CONTRACTOR EXECUTION PAGE

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

CONTRACTOR:

JOHNSON CONTROLS, INC.

By Russell Garcia
(Signature)

Russell Garcia
(Print Name)

Its Area General Manager Hawaii
(Title)

Date April 27, 2022

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CONTRACT NO. C7619

COUNTY EXECUTION PAGE

COUNTY OF MAUI:

By

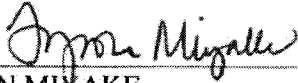


~~SCOTT K. TERPILIA~~ MAY-ANNE A. ALIBIN
Its ~~Director of Finance~~ Deputy Director

Date

MAY - 6 2022

APPROVAL RECOMMENDED:



TYSON MIYAKE
Chief of Staff

APPROVED AS TO FORM
AND LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
LF2022-0485
2022-04-11 C7619 Primary.docx

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COUNTY OF MAUI GENERAL CONDITIONS FOR PROFESSIONAL SERVICES CONTRACTS

1. **COORDINATION OF SERVICES BY THE COUNTY.** The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. **CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**

a. **SUSPENSION AND DEBARMENT.**

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by the County. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

4) The CONTRACTOR shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the term of this Contract, and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. **COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

1) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3) Withholding for unpaid wages and liquidated damages. County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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c. **FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS.** The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

d. **INDEPENDENT CONTRACTOR.** In the performance of services required under this Contract, the CONTRACTOR is an "independent CONTRACTOR," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the COUNTY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the COUNTY.

e. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY employees.

f. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

g. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

h. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, HRS and Paragraph 17 of these General Conditions.

i. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

j. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, Hawaii Administrative rules, ("HAR") that is current within six months of the date of issuance.

k. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. **NONDISCRIMINATION.** No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

CONTRACT NO. C7619

5. **CONFLICTS OF INTEREST.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.

6. **SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.**

a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

b. Recognition of a successor in interest. When in the best interests of the COUNTY, a successor in interest may be recognized in an assignment agreement in which the COUNTY, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- 1) The Assignee assumes all of the CONTRACTOR'S obligations;
- 2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the COUNTY; and
- 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR's name or novation hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance.

7. **INDEMNIFICATION AND DEFENSE.** Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Contract. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract for any reason.

8. **COST OF LITIGATION.** In case the COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay any cost and expense incurred by or imposed on the COUNTY, including attorneys' fees.

9. **LIQUIDATED DAMAGES.** When the CONTRACTOR is given notice of delay or nonperformance as specified in Paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other

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than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owed to the COUNTY shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the COUNTY, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the COUNTY under such payment or other settlement plan.

11. ADMINISTRATIVE, CONTRACTUAL, OR LEGAL REMEDIES. CONTRACTOR agrees to be bound by the administrative, contractual, or legal remedies set forth in these General Terms and Conditions, and HRS Section 103D-701, et seq., which govern CONTRACTOR's violation or breach of contract terms and appropriate sanctions and penalties.

12. SUSPENSION OF AGREEMENT. The COUNTY reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period of time not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

- 1) Cancel the stop performance order; or
- 2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or compensation, or both, and the Contract shall be modified in writing accordingly, if:

- 1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

- 2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of this Contract.

13. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if

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not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, the head of the purchasing agency may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." As used in this Paragraph the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this Paragraph, it is determined for any reason that the CONTRACTOR was not in default under this Paragraph, or that the delay was excusable under the provisions of Subparagraph d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.

f. Additional rights and remedies. Additional rights and remedies. The rights and remedies provided in this Paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. TERMINATION FOR CONVENIENCE BY THE COUNTY.

a. Termination for convenience. The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination the CONTRACTOR shall stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

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c. Right to goods and work product. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

- 1) Any completed goods or work product or both; and
- 2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR's best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY has breached the Contract by exercise of the termination for convenience provision

d. Compensation.

1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with (d)(3) below.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph (d)(2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

- (A) Contract prices for goods or services or both accepted under the Contract;
- (B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph (d)(3)(B);

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

- 1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

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(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee;

3) The notice required by Subparagraph a.1) of this Paragraph must describe as clearly as practicable, at the time, the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and

4) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

b. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any County officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

16. COST AND EXPENSE. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract

17. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds, and all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

d. Compensation retained.

1) Pursuant to §103-32.1(a), HRS, the County may retain a portion of the amount due under the contract to the CONTRACTOR to ensure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the amount due the CONTRACTOR and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Procurement Officer may continue to withhold as compensation retained sums not exceeding five

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percent (5%) of the amount due the CONTRACTOR; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the CONTRACTOR under the contract.

2) The County may enter into an agreement with the CONTRACTOR which will allow the CONTRACTOR to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn.

e. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section

18. **FEDERAL OR STATE FUNDS.** If this Contract is payable in whole or in part from federal or state of Hawaii ("State") funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal or State funds, the CONTRACTOR shall be paid only from such funds received from the federal or State government, and shall not be paid from any other funds. Failure of the County to receive anticipated federal or State funds shall not be considered a breach by the County or an excuse for nonperformance by the CONTRACTOR.

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

- 1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
- 2) Method of shipment or packing;
- 3) Place of delivery;
- 4) Description of services to be performed;
- 5) Time of performance (i.e. hours of the day, days of the week, etc.);
- 6) Place of performance of the services; or
- 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be **allowed** if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY'S approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

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h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

- 1) Changes in the work within the scope of the Contract; and
- 2) Changes in the time of performance of the Contract that do not alter the scope of the contract work.

b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable. The right of the CONTRACTOR to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract

2) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract

21. PRICE ADJUSTMENT.

a. Price adjustment. Any adjustment in the Contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of

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goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another agreement.

23. CHANGES IN COST REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

- 1) Description of performance;
- 2) Time of performance (i.e., hours of the day, days of the week, etc.);
- 3) Place of performance of services;
- 4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the COUNTY in accordance with the drawings, designs, or specifications;
- 5) Method of shipment or packing of supplies; or
- 6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver or completion schedule, or both; 2) amount of any fixed fee; and 3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

- 1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or
- 2) The following has occurred:
 - (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in section 103D-324, HRS; and
 - (B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a

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subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the CONTRACTOR shall be referred by the procurement officer to the CONTRACTOR's license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

- 1) Substantiation of the amounts requested;
- 2) A certification by the subcontractor, to the best of the subcontractor's knowledge and

belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. CONTRACTOR shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY AND USE OF COUNTY, STATE, OR FEDERAL SEAL, LOGO, AND FLAGS. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the County council members, or

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members or directors of any County board or commission, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

The CONTRACTOR shall not use federal, state, or County seal(s), logos, crests, or reproductions of flags or likenesses of any agency official without specific pre-approval in writing.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract and all such material shall be considered "works for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,000 or less, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. CONTRACTOR shall provide COUNTY not less than thirty (30) days' notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation policies. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. ACCESS TO AND AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective CONTRACTOR, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data.

b. Subcontracts, other than those related to a firm fixed-price Contract.

c. The following access to records requirements additionally apply to any Contract funded in whole or in part by the state or federal government:

1) The CONTRACTOR agrees to provide the County, State of Hawaii, Federal Emergency Management Agency or other federal agency, the Comptroller General of the United States, or any of their authorized

CONTRACT NO. C7619

representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3) The CONTRACTOR agrees to provide access to construction or other work sites pertaining to the work being completed under the contract.

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

b. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the County is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

34. RECORDS RETENTION.

a. Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the COUNTY.

b. The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the COUNTY, and any cost or pricing data, for at least three years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS, or returned to the County at the request of the County.

35. **ANTITRUST CLAIMS.** The COUNTY and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to the COUNTY any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the COUNTY under an escalation clause.

36. **PATENTED ARTICLES.** The CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, and 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 arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the COUNTY any such infringement or improper or unauthorized use, including, without limitation a. furnishing at no cost to the COUNTY a substitute article, process, or appliance acceptable to the COUNTY; b. paying royalties or other required payments to the patent holder; c. obtaining proper authorizations or releases from the patent holder; and d. furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

37. **POLLUTION CONTROL.** If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the COUNTY and all other appropriate state, county, or federal agencies as required by law. The CONTRACTOR shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the COUNTY determines that this Contract requires and adjustment of the time for performance, the Contract shall be modified in writing accordingly.

CONTRACT NO. C7619

CONTRACTOR further agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401-7671 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251-1387, and will report violations to the County, Federal Emergency Management Agency, and the regional office of the Environmental Protection Agency. The CONTRACTOR agrees to include these requirements in each subcontract.

38. RECOVERED AND RECYCLED MATERIALS. To the extent applicable to this contract, CONTRACTOR agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 requires CONTRACTOR to use only items, designated in guidelines of the Environmental Protection Agency at 40 C.F.R. part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.

a. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price.

b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

39. ENERGY EFFICIENCY. To the extent applicable to this Contract, CONTRACTOR agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State of Hawaii or County.

40. CONFIDENTIALITY OF PERSONAL INFORMATION.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- 1) Social security number;
- 2) Driver's license number or Hawaii identification card number; or
- 3) Account number, credit or debit card number, access code, or password that would permit

access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedure for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

1) All material given to or made available to the CONTRACTOR by the COUNTY by virtue of this Contract which is identified as personal information shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the COUNTY.

2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY in a prompt and complete manner any security breaches involving personal information.

5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this Paragraph.

6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

c. Security awareness training and confidentiality agreements.

1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

CONTRACT NO. C7619

- (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
- (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
- (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for cause. In addition to any other remedies provided for by this Contract, if the COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY may at its sole discretion:

- 1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- 2) Immediately terminate this Contract.

41. GOVERNING LAW. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.

42. COMPLIANCE WITH LAWS. This is an acknowledgement that state or federal financial assistance may be used to fund the contract only. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, regulations, executive orders, and agency policies, procedures, and directives, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

The state and federal government are not party to this contract and is not subject to any obligations or liabilities to the County, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

43. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES. In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

44. ELECTION-RELATED CONTRIBUTIONS BY COUNTY CONTRACTORS. CONTRACTOR acknowledges and shall comply with Section 11-355, HRS.

45. BYRD ANTI-LOBBYING AMENDMENT. If this contract is for an award of \$100,000 or more, CONTRACTOR shall file a written declaration with the County certifying that CONTRACTOR has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Included within the written declaration shall be the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of CONTRACTOR with respect to this contract. CONTRACTOR also agrees to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

46. EXCLUDED PARTIES LIST SYSTEM. Contractor understands and agrees that if Contractor is listed on the government-wide Excluded Parties List System in the System for Award Management at www.SAM.gov as suspended or debarred, or has been suspended or disbarred pursuant to Section 103D-702, HRS, Contractor cannot be awarded this contract.

47. FEDERAL EMERGENCY MANAGEMENT REQUIREMENTS. All contracts relying in whole or in part on Federal Emergency Management Agency Public Assistance Program shall comply with 2 C.F.R. §§200.318-200.326.

CONTRACT NO. C7619

48. **DRAFTING.** No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.

49. **CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

50. **COUNTERPARTS.** This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.

51. **SEVERABILITY.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining Contract terms.

52. **WAIVER.** The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.

53. **ENTIRE AGREEMENT.** This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the COUNTY and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the COUNTY and the CONTRACTOR other than as set forth or as referred to herein.

[END OF GENERAL CONDITIONS FOR PROFESSIONAL SERVICES]

AMENDMENT TO CONTRACT CERTIFICATION

I, **SCOTT K. TERUYA**, Director of Finance of the County of Maui, State of Hawaii,
do certify that there is available appropriation or balance of an appropriation over and above all
outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

<u>Appropriation</u> <u>Index</u>	<u>Title</u>	<u>Amount Required</u>
903119B ✓✓	RENEWABLE ENERGY PROGRAMS (6132) ✓	\$0.00 ✓✓

C 7619 ✓ JOHNSON CONTROLS, INC.

Amendment No.

1 ✓

Dated:

Dated this

29 day of SEPTEMBER 2022

Extension of Contract

to: Additional 60 Calendar Days ✓

Original Amount	\$ 150,000.00
Prior Amends/CO	\$ 0.00
This Amendment	\$ 0.00
Total contract	<u>\$ 150,000.00</u>



SCOTT K. TERUYA
Director of Finance

fr

Time extension only

Investment Grade Audit (IGA) Contract for
Energy Savings Performance Contract with
Countywide Facilities for MYR ✓

RFP #21-22/ESPC

No, Federal funds not being used.

FY 2023

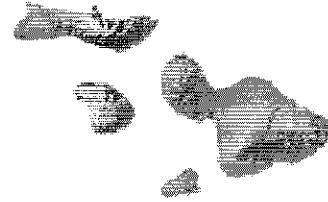
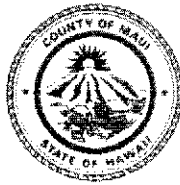
jh

1/24/22 jh 1504

MICHAEL P. VICTORINO
Mayor

SCOTT K. TERUYA
Director

MAY-ANNE A. ALIBIN
Deputy Director



DEPARTMENT OF FINANCE
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

September 29, 2022

Johnson Controls, Inc.
5757 North Green Bay Avenue
Milwaukee, WI 53201

RE: CONTRACT FOR INVESTMENT GRADE AUDIT (IGA) CONTRACT FOR
ENERGY SAVINGS PERFORMANCE CONTRACT WITH COUNTYWIDE
FACILITIES
RFP NO.: 21-22/ESPC
CONTRACT NO. C7619 – AMENDMENT NO. 1

Dear Johnson Controls, Inc.:

Transmitted is a copy of the fully executed contract amendment for your file.

Sincerely,


Scott K. Teruya
Director of Finance

SKT:csis
Enclosure

xc: Office of the Mayor

Energy Performance Contract Amendment to
Contract No. C7619 Between
County of Maui and Johnson Controls, Inc.
RFP 21-22 ESPC

This ENERGY PERFORMANCE CONTRACT AMENDMENT, dated September __th, 2022 to Investment Grade Audit Contract for Energy Savings Performance Contract, Contract No.C7619, is entered into by and between the COUNTY OF MAUI, a political subdivision existing under and by virtue of the laws of the State of Hawaii, with offices at Kalana O Maui, 200 South High Street, Wailuku, Hawaii 96793, ("County"), and JOHNSON CONTROLS, INC., whose principal place of business is 5757 North Green Bay Avenue, Milwaukee, Wisconsin 53201 ("Contractor").

WITNESSETH THAT:

WHEREAS, the County and the Contractor hereto have entered into an Investment Grade Audit Contract for Energy Savings Performance Contract, identified as Contract No. C7619, dated May 6, 2022 ("Agreement"), to provide investment grade auditing services and associated energy services contracting for County facilities;

WHEREAS, the County and Contractor desire to amend the Agreement to provide for the implementation of the energy performance services through entering into this energy performance contracting phase amendment ("Energy Performance Contract Amendment," "EPC Amendment" or "Amendment");

WHEREAS, in order to implement the EPC Amendment, the County and Contractor desire to incorporate Appendix A: Scope of Work into the Contract to add and initiate the services as defined in the Investment Grade Audit, Energy Feasibility Study Report for Energy Services Contracting for Maui County facilities, Solicitation Document No. RFP-21-22 ESPC ("IGA");

WHEREAS, in order to further implement the EPC Amendment, the County and Contractor desire to incorporate Appendix B: Term/Schedule of Work into the Agreement;

WHEREAS, in consideration of the EPC Amendment, the County and Contractor desire to incorporate Appendix C: Pricing/Certifications into the Agreement;

WHEREAS, in further consideration of the EPC Amendment, the County and Contractor desire to incorporate Appendix D: Financing Submittals into the Agreement;

WHEREAS, Section 19 Modification to Goods and Services Contracts of the General Terms and Conditions authorizes the County at any time to make modifications in the Agreement, as it deems necessary and advisable; and

WHEREAS, the Contractor is willing and able to perform the services under the amended conditions.

NOW, THEREFORE, the parties, in consideration of the mutual agreement set forth herein, agree to amend the AGREEMENT as follows:

I. MODIFICATION OF TERMS

A. APPENDIX A: SCOPE OF WORK

Add the attached Phase Investment Grade Audit, Energy Feasibility Study Report for Energy Services Contracting for Maui County facilities, Solicitation Document No. RFP – 21-22 ESPC (“IGA”).

The IGA includes the scope of installation work, performance guarantee, and maintenance and measurement and verification services.

Section 1 of the Agreement is further amended to the extent inconsistent with this Amended Appendix A.

B. APPENDIX B: TERM/SCHEDULE OF WORK

Add the attached Appendix B.

Appendix B provides installation work under the IGA will be complete by October 1, 2024 and for the provision of maintenance and measurement and verification services as described in Appendix A after implementation of the energy conservation measures and acceptance by the County.

Section 2 of the Agreement is further amended to the extent inconsistent with this Amended Appendix C.

C. APPENDIX C: PRICING/CERTIFICATIONS

Add the attached Amended Appendix C: Pricing / Certifications for the Implementation Work or “Work”. Contractor shall provide a Performance and Payment bond for the Implementation Work.

Section 3 of the Agreement is further amended to the extent inconsistent with this Amended Appendix C.

D. APPENDIX D: FINANCING SUBMITTALS

Add the attached Appendix D, Financing Submittals, Lease Schedule No. 5461 attached to the Master Lease No . 1474.

II. ALL OTHER TERMS

All terms and conditions of the Agreement, not inconsistent with the terms and conditions of this Amendment are herein incorporated and shall remain in full force and effect.

In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the Agreement, the provisions of this Amendment shall govern in all aspects.

By signing below, Contractor hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, HAR, and submitted pursuant to Section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment, is accurate, complete, and current as of the date of this Amendment. This certification includes the cost or pricing data supporting any advance agreement(s) between the Contractor and the County, which are part of the proposal.

IN WITNESS WHEREOF, the County and the Contractor have executed this Amendment by their duly authorized officers or agents on the day and year first above written.

COUNTY OF MAUI	JOHNSON CONTROLS, INC.
BY: 	BY: 
PRINTED NAME: SCOTT TERRY MAY-ANNE A. ALIBIN	PRINTED NAME: RUSSELL GARCIA
TITLE: DIRECTOR DEPARTMENT OF FINANCE DEPUTY DIRECTOR	TITLE: AREA GENERAL MANAGER
DATE: 9/29/22	DATE: 9/29/22

APPROVED AS TO FORM AND LEGALITY


~~KRISTINA C. TESHKE~~ Kristina C. Teshke
Deputy Corporation Counsel
County of Maui

APPROVAL RECOMMENDED BY



TYSON MIYAKE

Chief of Staff

County of Maui

STATE OF ~~HAWAII~~ Arizona

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Arizona)
) S.S.
COUNTY OF Maricopa

On this 29 day of September 2022 before me appeared
Russell Garcia, and N/A, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ and _____ of
_____ the

CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument
as the free act and deed of the CONTRACTOR.



(Notary Stamp or Seal)

[Signature]
(signature)
Edie Smith
(Print name)

Notary Public, State of Arizona

My commission expires: Feb 28 2026

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

_____ undated at time
Doc. Date: of notarization No. of Pages: _____ Jurisdiction: _____

Signature of Notary Date of Certificate

Printed Name of Notary

(Notary Stamp or Seal)

APPENDIX A: SCOPE OF WORK

Attached: Investment Grade Audit, Energy Feasibility Study Report for Energy Services Contracting for Maui County facilities, Solicitation Document No. RFP-21-22 ESPC

APPENDIX B: TERM/SCHEDULE OF WORK

I. PERFORMANCE OF SERVICES

Upon issuance of the Notice to Proceed, IGA implementation services shall be completed by October 1, 2024. The completion time may be extended in accordance with the General Terms and Conditions. IGA implementation services for Phase 2 is extended until November 30, 2022.

Maintenance work and Measurement and Verification Services described in Appendix A shall begin after the energy conservation measures have been implemented and accepted by the County and shall continue throughout the term this Agreement pursuant to the terms of the IGA.

APPENDIX C: PRICING/CERTIFICATIONS

- I. Customer shall make payments to JCI pursuant to this schedule.
- II. Work. The price to be paid by Customer for the Work shall be \$28,803,233.00. Payments (including payment for materials delivered to JCI and work performed on and off-site) shall be made to JCI as follows:

Month	% Draw	Payment
Oct-22	20%	\$5,760,646.60
Nov-22	12%	\$3,456,387.96
Dec-22	8%	\$2,304,258.64
Jan-23	5%	\$1,440,161.65
Feb-23	5%	\$1,440,161.65
Mar-23	8%	\$2,304,258.64
Apr-23	8%	\$2,304,258.64
May-23	2%	\$576,064.66
Jun-23	2%	\$576,064.66
Jul-23	2%	\$576,064.66
Aug-23	2%	\$576,064.66
Sep-23	2%	\$576,064.66
Oct-23	2%	\$576,064.66
Nov-23	2%	\$576,064.66
Dec-23	2%	\$576,064.66
Jan-24	2%	\$576,064.66
Feb-24	2%	\$576,064.66
Mar-24	2%	\$576,064.66
Apr-24	2%	\$576,064.66
May-24	2%	\$576,064.66
Jun-24	2%	\$576,064.66
Jul-24	2%	\$576,064.66
Aug-24	2%	\$576,064.66
Sep-24	2%	\$576,064.66
Total	100%	\$28,803,233.00

See Appendix A, ongoing M&V Services and JCI Maintenance Services scheduled to commence October 1, 2024. County may elect to cancel M&V Services or JCI Maintenance Services in any given year. County must do so in writing within 30 days of the annual renewal date, otherwise full service will continue for the remainder of the year and the Customer will be responsible for payment of the full year.

II. HAWAII PRODUCTS PREFERENCE

In accordance with HRS §103D-1002, the Hawaii products preference may be applicable to this solicitation.

Offerors offering a Hawaii Product shall specify the product and class of the product offered.

Offeror submitting a Hawaii Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-038, Certification for Hawaii Product Preference and submit to the Procurement Officer issuing the solicitation (IFB or RFP), and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e., 3 products should have 3 separate forms completed). Form SPO-038 is available on the SPO webpage at <http://hawaii.gov/spo>, click on 'Forms'.

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

Change in Availability of Hawaii product. In the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall notify the procurement officer in writing no later than five working days from when the offeror knows of the change and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

Refer to the General Instructions for additional information regarding the Hawaii product preference.

It is further understood by the bidder that in the event of any change that materially alters the bidder's ability to supply Hawaii Products the bidder shall immediately notify the Officer-in-Charge in writing and the parties shall enter the discussions for the purpose of revising the contract or terminating the contract for convenience.

III. CERTIFICATE OF ACCEPTANCE OF SOLICITATION REQUIREMENTS

It is understood and agreed that the undersigned acknowledges the following:

1. The Offeror has read this solicitation document including any addenda, in its entirety;
2. The Offeror understands and agrees to furnish, deliver, and perform the requirements of the solicitation in strict compliance with the solicitation document as amended, including any specifications, plans, and scope of work descriptions, without any exceptions, if awarded a contract;
3. The Offeror understands and agrees that no substitution or alternate brands may be furnished without the written approval of the COUNTY;
4. The Offeror understands that the ESCO shall resolve any noncompliance with the requirements of the awarded contract at the ESCO's own expense;
5. The Offeror will make all modifications or customizations to the brand and model being offered as necessary to meet all specifications, at no additional cost. Offeror guarantees that all modifications or customizations done to meet specifications shall not affect the quality or operation of the product; and
6. The Offeror understands that FAILURE TO MEET CONTRACT REQUIREMENTS WILL CONSTITUTE A BREACH OF CONTRACT THAT MAY RESULT IN SUSPENSION OR DEBARMENT, AND THE EXERCISE OF RIGHTS AND REMEDIES AS PROVIDED BY LAW. Contract requirements include any specifications, plans, and scope of work descriptions;

The undersigned is an authorized representative of the Offeror and can legally obligate the Offeror thereto.

Offeror: Johnson Controls, Inc
Signature: [Signature]
Print Name: Russell Garcia
Title: Area General Manager
Date: 9/29/22
Phone: 916-257-6863

IV. CERTIFICATION OF COMPLIANCE WITH HRS 396-18, SAFETY AND HEALTH PROGRAMS FOR CONTRACTOR BIDDING ON COUNTY JOBS

PROJECT NAME AND NUMBER:

RFP-21-22 ESPC

This is to certify that the undersigned will comply with the requirements of HRS 396-18, as follows:

- (A) Pursuant to HRS 396-18, all bids and proposals in excess of \$100,000 shall include a signed certification from the bidder that a written safety and health plan for the job will be available and implemented by the notice to proceed dates of the project. The written safety and health plan shall include:
- (1) A safety and health policy statement reflecting management commitment;
 - (2) A description of the safety and health responsibilities of all levels of management and supervisors on the job and a statement of accountability appropriate to each;
 - (3) The details of:
 - (a) The mechanism for employee involvement in job hazard analysis;
 - (b) Hazard identification, including periodic inspections and hazard correction and control;
 - (c) Accident and "near-miss" investigations; and
 - (d) Evaluation of employee training programs;
 - (4) A plan to encourage employees to report hazards to management as soon as possible and to require management to address these hazards promptly; and
 - (5) A certification by a senior corporate or Company manager that the plan is true and correct.
- (B) Failure to submit the required certification may be grounds for disqualification of the bid.
- (C) Failure to have available on site or failure to implement the written safety and health plan by the project's notice to proceed shall be considered willful noncompliance and be sufficient grounds to disqualify the award and terminate the contract.

Name of Offeror: Johnson Controls, Inc.

Signature and Title: [Signature] Area General Manager

Date: 9/29/22

APPENDIX D: FINANCING SUBMITTALS

Attached: Financing Submittals, Lease Schedule No. 1474 attached to the Master Lease No. 5461.

✓

AMENDMENT TO CONTRACT CERTIFICATION

Acting
I, **SCOTT K. TERUYA**, Director of Finance of the County of Maui, State of Hawaii,
do certify that there is available appropriation or balance of an appropriation over and above all
outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

Appropriation Index	Title	Amount Required
------------------------	-------	-----------------

903119B ✓	RENEWABLE ENERGY PROGRAMS (6132) ✓	\$0.00 ✓✓
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C 7619 ✓ JOHNSON CONTROLS, INC. ✓

Amendment No. 2 Dated:

Dated this 6 day of JANUARY 2023

Extension of Contract to: January 4, 2024 ✓

Original Amount	\$ 150,000.00
Prior Amends/CO	\$ 0.00
This Amendment	\$ 0.00
Total contract	<u>\$ 150,000.00</u> ✓

Acting

SCOTT K. TERUYA
Director of Finance

Time extension only

Investment Grade Audit (IGA) Contract for ✓
Energy Savings Performance Contract with
Countywide Facilities for MYR
RFP #21-22/ESPC
No, Federal funds not being used.

FY 2023

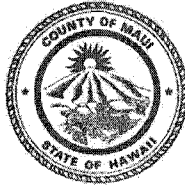
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JAN 06 2023

11989

RICHARD T. BISSEN, JR.
Mayor

KEKUHAUPIO R. AKANA
Acting Managing Director



SCOTT K. TERUYA
Acting Director

STEVE A. TESORO
Deputy Director

DEPARTMENT OF FINANCE
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

January 06, 2023

Johnson Controls, Inc.
550 Paiea Street
Honolulu, HI 96819

**RE: CONTRACT FOR INVESTMENT GRADE AUDIT (IGA) CONTRACT FOR
ENERGY SAVING PERFORMANCE CONTRACT WITH COUNTYWIDE
FACILITIES
RFP NO.: 21-22/ESPC
CONTRACT NO. C7619 – AMENDMENT NO. 2**

Dear Johnson Controls, Inc.:

Transmitted is a copy of the fully executed contract amendment for your file.

Sincerely,

A handwritten signature in black ink, appearing to be "S. Teruya", written over a horizontal line.

A small, handwritten mark in black ink, resembling a stylized letter 'L' or 'R'.

SCOTT K. TERUYA
Acting Director of Finance

SKT:csis
Enclosure

xc: Office of the Mayor – Climate Change, Resiliency, and Sustainability

**AMENDMENT 2 TO
CONTRACT NO. C7619**

Department: Office of the Mayor – Climate Change, Resiliency, and Sustainability

Project Title: Investment Grade Audit (IGA) Contract for Energy Saving Performance Contract with Countywide Facilities

RFP No.: 21-22/ESPC

Additional Certification Requested from County: \$0.00

This AMENDMENT NO. 2 TO CONTRACT is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the “County”, and JOHNSON CONTROLS, INC., a Hawaii corporation, whose mailing address is 550 Paiea Street, Honolulu, Hawaii 96819, hereinafter referred to as the “Contractor”. County and Contractor shall hereinafter be referred to collectively as the “Parties”.

Source of Funds. The source(s) and availability of the funds for this Contract shall be as set forth in the Contract Certification signed by the Director of Finance of the County of Maui on or before the effective date of this Contract. Contract Certification shall be on file in the office of the Director of Finance of the County of Maui.

R E C I T A L S:

WHEREAS, the County and the Contractor entered into the following Contract and Amendment(s), if any, with certified availability of funds in the amount and time of performance as indicated:

Contract/ Amend	Date	Additional Certified Amount	Total Certified Amount	Time of Performance	Renewal Option(s)
C7619	5/4/2022	Not applicable	\$150,000.00	180 calendar days from Notice to Proceed (5/9/2022)	60 additional calendar days
Amend 1	9/29/2022	\$0.00	\$150,000.00	Notice to Proceed through January 4, 2023	None

WHEREAS, the Contract and any Amendment(s) thereto listed above shall be hereinafter collectively referred to as the “Contract”;

WHEREAS, the Contract is on file with the Director of Finance;

WHEREAS, the Parties now desire to amend the Contract; and

NOW, THEREFORE, the Parties mutually agree to amend the Contract as follows:

1. Section 2, Time of Performance, is amended to read as follows:

**AMENDMENT 2 TO
CONTRACT NO. C7619**

2. Time of Performance. The Contractor shall commence performance under this Contract upon issuance of the Notice to Proceed, and shall continue performance through January 4, 2024, unless sooner completed, terminated, or extended in compliance with the terms of this Contract.

2. This Amendment 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.

The entire Contract, as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties execute this Amendment to Contract by their signatures on the dates below, to be effective as of the date of the last signature hereto.

[EXECUTION PAGES TO FOLLOW]

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**AMENDMENT 2 TO
CONTRACT NO. C7619**

CONTRACTOR EXECUTION PAGE

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

CONTRACTOR:

JOHNSON CONTROLS, INC.

By Scott Averitt
(Signature)

Scott Averitt
(Print Name)

Its Area General Manager
(Title)

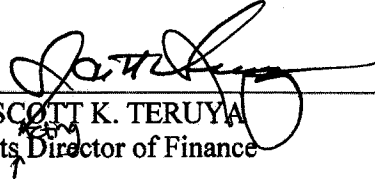
Date 12/28/2022 | 7:13 AM PST

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**AMENDMENT 2 TO
CONTRACT NO. C7619**

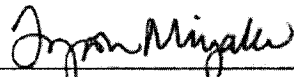
COUNTY EXECUTION PAGE

COUNTY OF MAUI:

By 
SCOTT K. TERUYA
Its Director of Finance

Date JAN 06 2023

APPROVAL RECOMMENDED:



TYSON MIYAKE
Chief of Staff

APPROVED AS TO FORM
AND LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
LF2022-0485
2022-12-08 C7619 AMD #2.docx

Solar Power Purchase Agreement No. 20221130

This Solar Power Purchase Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Purchaser:	COUNTY OF MAUI, a municipal corporation existing under by virtue of the laws of the State of Hawaii	Seller:	COM SOLAR LLC, a Hawaii Limited Liability Company
Name and Address	COUNTY OF MAUI 200 South High Street Kalana O Maui Bldg 9 th Fl Wailuku, Hawaii 96793	Name and Address	COM SOLAR LLC 1003 Bishop St., STE 2700 Honolulu, Hawaii 96813
Phone	808-270-7722	Phone	
Fax	None	Fax	None
E-mail	@.gov	E-mail	
Site Ownership	Schedule A to Exhibit 2 provides a list of Purchaser HECO account numbers and associated owned TMKs. Schedule B to Exhibit 2 provides a list of Purchaser Owned Tax Map Keys ("TMKs") and the adjacent TMKs owned by private parties. Prior to the Commencement of Installation of a System on a TMK owned by a private party, a land lease is required with the third party owner of such Site.	Site Ownership	A Hawaii limited liability company. Legal owner of the System for tax purposes and business purposes.
Tax Status	Municipal Corporation		Limited Liability Company
Project Name	CoM Solar + Storage		CoM Solar + Storage
Contractor	Johnson Controls, Inc 2065 Main St. Wailuku, HI 96793	Hawaii General Contractor License CT-2023	General A, General B, C-13 Electrical, C-15 Electrical Control Systems, C-52 HVAC Contractor, C-60 Solar Power Systems Contractor

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the Systems (defined below) and installed on the real property described or depicted in **Schedule A to Exhibit 2** or in **Schedule B of Exhibit 2** (each a "Site" and collectively, the "Sites"), including any buildings and other improvements on the Sites other than the Systems (the "Improvements").

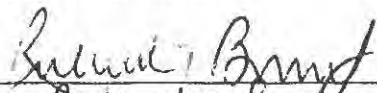
"System" and "Systems" shall mean each of the solar panel systems designed and installed pursuant to this Agreement at the Sites and more fully described in **Exhibit 2**. One or more Systems may be developed on a Site.

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Points and Sites
- Exhibit 3** General Terms and Conditions
- Exhibit 4** HECO Customer Authorization and Acknowledgement Form

Purchaser: COUNTY OF MAUI

Seller: COM SOLAR LLC

Signature: 
Printed Name: Richard T. Bissell, Jr.
Title: Mayor
Date: 1-27-2023

Signature: 
Printed Name: Gwen Kirk
Title: Manager
Date: 1/27/2023

APPROVAL RECOMMENDED:



LEO K. C. AIRES
Chief of Staff

APPROVED AS TO FORM AND LEGALITY



Acting Corporation Counsel
County of Maui
VICTORIA J. TAKAYESU

Exhibit 1

Pricing

1. **Initial Term:** The term of this Agreement shall commence on the Commercial Operation Date of the last System to be placed in service and shall expire on the date that is twenty (20) years after that Commercial Operation Date (the "**Initial Term**"), unless and until earlier terminated pursuant to this Agreement.
2. **Additional Terms:** As permitted by law and upon prior written notice to Seller at least one-hundred eighty (180) days prior to the expiration of the Initial Term, Purchaser shall have the option to extend the Initial Term of the Agreement for up to three (3) additional five (5) year terms (each an "**Additional Term**").
3. **Contract Price:**

Contract Year	Solar PV \$/kWh	Energy Storage \$/kW
1	\$0.198	\$22.33
2	\$0.204	\$23.00
3	\$0.210	\$23.69
4	\$0.216	\$24.40
5	\$0.222	\$25.13
6	\$0.229	\$25.88
7	\$0.236	\$26.66
8	\$0.243	\$27.46
9	\$0.250	\$28.28
10	\$0.258	\$29.13
11	\$0.266	\$30.00
12	\$0.274	\$30.90
13	\$0.282	\$31.83
14	\$0.290	\$32.78
15	\$0.299	\$33.76
16	\$0.308	\$34.77
17	\$0.317	\$35.81
18	\$0.327	\$36.88
19	\$0.337	\$37.99
20	\$0.347	\$39.13

The first Contract Year shall commence on the Commercial Operation Date of the last System to be placed in service, and each subsequent Contract Year shall commence on the anniversary of such Commercial Operation Date. Interim billing shall occur for Systems that generate power prior to the Commercial Operation Date of the last System to be placed in service. However, interim billing will not be subject to annual escalation in price. Upon the Commercial Operation Date of the last System to be placed in service, the Initial Term will commence.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. A payment or performance bond is _____ is not X being issued to Purchaser under this Agreement.
 - b. Statutory prevailing wage rates (e.g., Davis-Bacon) do _____ do not X apply.
 - c. All prices in this Agreement are calculated based on an upfront rebate of \$0. _____

- d. The Contract Price is inclusive of Seller's Taxes (as defined in Section 3(d) of Exhibit 3) at the rates in effect as of the Effective Date.

5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following (unless required to meet the minimum code compliance):

Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including: client or utility service, switchgear, transformers, substations, poles, breakers, reclosers, and disconnects).

- a. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
- b. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting).
- c. Removal of existing lighting, light poles, or concrete light post bases.
- d. Roof membrane maintenance or reroofing work.
- e. Structural upgrades to the Improvements, including ADA upgrades.
- f. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
- g. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser's energy use, the Site and the Improvements, including building plans and specifications.

6. Termination Payment Schedule (Exhibit 3, Section 11(b)):

Contract Year	Termination Value: \$ per wattDC per Site
1	\$6.96
2	\$6.88
3	\$6.72
4	\$6.61
5	\$6.55
6	\$6.01
7	\$5.46
8	\$5.35
9	\$4.97
10	\$4.59
11	\$4.20
12	\$3.77
13	\$3.39
14	\$2.95
15	\$2.57
16	\$2.13
17	\$1.75
18	\$1.31
19	\$0.87
20	\$0.55

Exhibit 2

System Description, Delivery Point and Sites

1. System Locations: County of Maui, comprising the islands of Lanai, Maui, Molokai.
2. Entire System Size (DC kW): up to 41,000 kW-DC.
3. Entire System Description (Expected Structure, Etc.): up to 41,000 kW-DC of rooftop, carport and ground mount solar PV with up to 15,000 kW-DC of energy storage capacity.
4. **Delivery Points and Sites:** Schedule A to this Exhibit 2 and Schedule B to this Exhibit 2 contains a list of HECO meters and/or TMKs that may be utilized to site solar projects. Prior to construction, one or more drawings or images will be provided depicting:
 - a. Each Site, including the Improvements on such Site (as applicable);
 - b. Proposed System(s) location on Purchaser owned TMKs or adjacent TMKs owned by a private party and leased by Seller for purposes of installing solar and/or storage to provide energy to Purchaser HECO meter(s);
 - c. Delivery points for electricity generated by the System(s) on each Site (each a “**Delivery Point**” and collectively, the “**Delivery Points**”);
 - d. Access points needed for Seller to install and service the System(s) (building, access, electrical room, stairs etc.);
 - e. Construction assumptions (if any); and
 - f. Single Line & Three-Line drawings for Interconnection Applications.

Schedule A

The Sites listed below include HECO account numbers and the associated Campus Name or Department, Address and Estimated Solar PV sizing based on historical usage. Final sizing will be per stamped engineering drawings.

Some of the Sites below may have more than one HECO Account meter onsite. The proposed System(s) location at each Site is either the building rooftop, ground mount, or a suitable location for a solar canopy. For all System types, the Delivery Point(s) for electricity generated by the System(s) shall be at the AC output of the combined solar PV inverters, prior to interconnection into any transformers or other load centers. Access points for the Seller to service the Systems will be Site specific, and in alignment with any electric utility company requirements for Systems access. The construction of the solar PV systems assumes that the Seller apply for County of Maui Permits, as required.

HECO Acct #	Campus - Name, Location or Department	Service Address	Svc City	Est Solar PV Max Size kWdc
202010280560	Waihee - Pump	WAIHEE RD DWS	WAILUKU	3.914
202010610394	Kahului WWTP	AMALA RD	KAHULUI	3.080
202011411305	Environmental Management - Pumping	H PHILANI HWY	LAHAINA	2.379
201010198723	Department of Water Supply	HALIIMAILE RD	MAKAWAO	1.898
202012265122	Environmental Management - Pumping	WELAKAHAO ST COM-WW	KIHEI	1.823
202010793349	Street Lights	CENTRAL MAUI	WAILUKU	1.576
201014406429	Kehalani Community	KEHALANI MAUKA PKWY	WAILUKU	1.386
202010920140	Kalana O Maui Building	200 S HIGH ST	WAILUKU	1.367
202010284802	Police Dept - Kahului Tank SCADA	KAHULUI TANK SCADA	WAILUKU	1.351
202010894881	Mokuhau - Pump 501, 503	MOKUHIAU RD CUST	WAILUKU	1.310
201011374828	Napili Rd - Pump	NAPILI RD PUMP	LAHAINA	1.119
202010808337	Kupaa Well	KAHEKILI HWY	WAILUKU	1.023
202010840538	DWS Kaupakalua - Well	KAUPAKALUA RD WELL	HAIKU	888
202014118279	Lower Kula Boosters - E7 - 71B	OLINDA RD E7-71B	MAKAWAO	886
202011329390	DWS IAO Well	IAO WELL	WAILUKU	852
202013557261	North Waihee - 1 & 2	KAHEKILI HWY	WAILUKU	688
202013905403	Environmental Management - Pumping	S KIHEI RD SPS	KIHEI	666
201011367236	Department of Finance - Police Department	2201 PHILANI HWY	KIHEI	649
202014123600	Kualapuu Deepwell	KUALAPUU DEEP-WEL	KUALAPUU	589
201011534256	Maui Meadows - Pump 17	KILOHANA DR #17 PUMP	KIHEI	550
202010280149	Waihee Well - Pump - 514, 515	KAHEKILI HY CANE RD	WAILUKU	485
201013217744	Kehalani Community	KEHALANI MAUKA PKWY	WAILUKU	434
202011428135	Waiale - Pump - 581, 582	WAIALE DR	WAILUKU	424
202011882976	Honokahu Well	HONOKAHU WELL B CL-09	LAHAINA	409
202014359501	North Waihee Boosters - 1, 2, 3, 4	KAHEKILI HWY	WAILUKU	388
202010357558	Waikapu - Well	WAIKAPU WELL	WAILUKU	356
202010337121	Kanoa - Well 2	KAHEKILI HWY KANOA	WAILUKU	340
202013938149	Water Treatment Plant - Lahainaluna	LAHAINALUNA RD	LAHAINA	302
202010336610	Kanoa - Well 1	KAHEKILI HWY KANOA	WAILUKU	297
201012918466	Kuikahi - Pump 31	KUIKAHI DR PMP 31	WAILUKU	275
202010316950	Eluene Pl - Pumping Station	ELUENE PL	WAILUKU	274
202014107009	Haiku Well	KOKOMO RD E58	HAIKU	262
202011047075	Dept of Parks and Rec	KAAHUMANU AV MEM GYM AVE	WAILUKU	257
202014328845	Olinda Water Treatment Plant	3000 OLINDA RD	MAKAWAO	254

201013821933	Department of Water Supply	KULA KAI 541, 542 #2	KULA	245
202010792598	Kula Ag - Pump Station	OMAOPIO RD DITCH	KULA	238
202011207273	Street Lights	LOWALU	LAHAINA	230
201010700767	Department of Water Supply - REF NAPILI B, 570	NAPILI RD B	LAHAINA	230
202013685112	Lahaina Aquatic Center	SHAW ST	LAHAINA	221
201013648377	Department of Water Supply	HARRY FIELDS 543, 544	KULA	219
202010986158	Kepaniwai Well and Pump	IAO RD	WAILUKU	209
202010927723	Kula Ag - Pump Station	PULEHU RD 2	KULA	207
202010633701	Environmental Management - Pumping	HALAWAI DR	LAHAINA	206
202010358739	Diamond Resort Boosters	DIAMOND RESORT BOOSTERS	KIHEI	205
201013648914	Department of Water Supply	497 OLD HALEAKALA HWY	KULA	198
202010673145	Maui Lani Prkwy - Well 7	MAUI LANI PARKWAY WELL-7	WAILUKU	187
202013349750	Street Lights	STREET LIGHTING	KAUNAKAKAI	186
202011349562	Maui Mall	MAUI MALL A13	KAHULUI	181
202010314849	Malu Ulu Olele - Pump - 533, 534	OLINDA RD	MAKAWAO	180
202013978665	Kula Water Treatment Plant	KAHAKAPAO RD	MAKAWAO	178
202010316000	Pookela Well - Pump - 531, 532	OLINDA RD	MAKAWAO	178
201013783984	Department of Water Supply	3445 HOOKIPA PL	KIHEI	173
202010472845	Olinda - Pump 535, 536	OLINDA RD	MAKAWAO	160
202011114040	Lahaina - Sewer Pump Station 2	2010 H PIILANI HWY 2	LAHAINA	158
202011783208	Sewer Pump Station - 10 - Grand Wailea	3850 WAILEA ALANUI DR GWSPS10	KIHEI	150
202011110857	Lahaina Civic Center	1762 H PIILANI HWY	LAHAINA	146
202010430876	Kahului Baseyard	PALAPALA DR	KAHULUI	141
202013566155	Old Court House Building	150 S HIGH ST	WAILUKU	141
202010672709	Maui Lani Prkwy - Well 6	MAUI LANI PARKWAY WELL-6	WAILUKU	140
202011247196	Napili-HNKKW Sewer - NA-01	LOWER HONOAPIILANI RD NA01	LAHAINA	140
202013304615	Environmental Management	WASTE WATER TRTMENT PLNT CL-09	KAUNAKAKAI	134
202013956133	Lahaina - Sewer Pump Station 3	H PIILANI HWY E23	LAHAINA	133
202013943453	Pool	LIPOA ST POOL	KIHEI	131
202013877297	Mitchell Pauole Center	MITCHELL PAUOLE CENTER	KAUNAKAKAI	129
202010609388	Fire Station	ALANUI KA IMI IKE ST	KAUNAKAKAI	120
202011414325	Waipuna Well - Pump - 559, 560	LAHAINALUNA RD	LAHAINA	114
202011271725	Forensic Facility - The Milllyard	1831 WILI PA LOOP	WAILUKU	113
202013021789	Waiehu Golf Course	WAIEHU BEACH RD	WAILUKU	111
202011293695	Country Club - Pump 566, 567	HANA HWY ELEC	PAIA	106
202010364059	Pookela Well - E12	OLINDA RD E12	MAKAWAO	105
201013563857	Dept of Parks and Rec - Office	S KAM AV (OFF)	KAHULUI	102
202014198909	Pukalani Park Pool	PUKALANI ST POOL	PUKALANI	99
202013905288	Department of Finance - Claims Div Office	KANALOA AVE CENTRAL	KAHULUI	97
202011154178	Lanai Police Station	855 FRASER AVE	LANAI CITY	92
202010682369	Fire Station	300 KILOHANA DR	KIHEI	92
202011414366	Kanaha - Well 1	4300 LAHAINALUNA RD	LAHAINA	89
202011060128	Napili-HNKKW Sewer - NA-02	H PIILANI HWY NA-02	LAHAINA	89

202010634527	Pulehu - Flare	PULEHU RD FLARE	PUUNENE	84
202010681668	Kahalui - Sewer Pump Station	58 HANA HWY	KAHULUI	81
202013943461	Kokua Pool	UHU ST POOL	KAHULUI	81
202014358008	Pool	LIPOA ST POOL	KIHEI	80
202011119353	Hamoia - Pump 597	HANA HAMOA PMP HWY E66A	HANA	78
202014331336	Department of Finance - Claims Div Office	KANALOA AVE	KAHULUI	76
202011453315	Sewer Pump Station - 8	2995 S KIHEI RD SP8	KIHEI	74
202011089333	Police Station	1762 H PIILANI HWY	LAHAINA	74
202011232172	Maui Memorial Center	KANALOA BSBALL AVE	WAILUKU	73
202011399310	Sewer Pump Station - 7	2385 S KIHEI RD SPS7	KIHEI	72
202010034371	NASKA B Y	KEOLANI PL	KAHULUI	71
202014953170	Ualapue Well	UALAPUE WELL	KAUNAKAKAI	69
202010432872	Wailuku Gym & Pool	2026 PAKAHI ST	WAILUKU	68
202013551223	Waiehu Golf Course	WAIEHU GOLF COURSE	WAILUKU	67
202011145804	Street Lights	AKAHI ST	LANAI CITY	66
202011523521	Sewer Pump Station - 4	S KIHEI RD SPS4	KIHEI	64
202010866475	Hana Community Complex	UAKEA RD	HANA	64
202011045608	Dept of Public Works - Office	41 KAAHUMANU AVE	WAILUKU	63
202010673632	Maui Lani Prkwy - Well 5	MAUI LANI PARKWAY WELL-5	WAILUKU	63
201012688903	Kekaa - Pump	KEKAA DR PUMP	LAHAINA	62
201015216470	Department of Water Supply	0000 W ALU RD	WAILUKU	60
202011089655	Police Station	1762 H PIILANI HWY A	LAHAINA	59
202013656428	Kawela Pump	KAWELA PUMP CL-09	KAUNAKAKAI	56
202011838325	Napili-HNWK Sewer - NA-04	H PIILANI HWY NA-04	LAHAINA	53
202010762724	Department of Public Works	628 WHARF ST	LAHAINA	52
202014036281	Little League Park	REGIONAL PARK CL-09	KAUNAKAKAI	52
202013879871	Pool	SWIM POOL POLE1-1	KAUNAKAKAI	50
202010278978	Real Property Tax Division	70 E KAAHUMANU AVE A18	KAHULUI	50
202011231687	Maui Memorial Center	KANALOA AV FTBALL ST AVE	WAILUKU	49
202011381615	Fire Department	313 MANEA PL WHSE	WAILUKU	48
202011881457	Napili Water Treatment Plant	NAPILI RD	LAHAINA	47
202010082115	Kehalani Mid-Level Boosters	KEHALANI MIDLEVEL BOOSTERS	WAILUKU	47
202012265460	Sewer Pump Station - 5	S KIHEI RD SPS-5	KIHEI	47
202011111269	Fire Station	1762 H PIILANI HWY	LAHAINA	46
202011088699	Police Dept - Ulupalakua Radio Site	PUU MAHOE HILL	KULA	46
201012198606	Department of Water Supply.	KAHAKAPAO RD WTP	MAKAWAO	45
201013914043	Department of Parks and Rec	1501 LILOA DR PARK	KIHEI	45
202012032910	Irrigation Pumps - Kalama	KIHEI RD E-144	KIHEI	45
202010662163	Environmental Management - Pumping	PUNA RD	PAIA	44
202014328498	Claims Division	KANALOA AVE	WAILUKU	42
202011306554	Sewer Pump Station - 3	S KIHEI RD SPS3	KIHEI	41
202011392851	Dept of Parks and Rec - Pool	145 KAULAWAHINE ST	KAHULUI	40
202010532150	Sewer Maintenance Building	58 HANA HWY	KAHULUI	39
202011410117	Napili-HNWK Sewer - NA-03	H PIILANI HWY NA-03	LAHAINA	39

202011339100	Dept of Public Works?	86 KAMEHAMEHA AVE	KAHULUI	37
202010433292	Kahului Fire Station	200 DAIRY RD	KAHULUI	36
202010160226	Waiehu Golf Course	HALEWAIU RD	WAILUKU	36
202011395748	Wailuku Fire Station	1972 KINIPOPO ST	WAILUKU	35
202011414424	Kahaha Well 2 - Pump 576	3500 LAHAINALUNA RD	LAHAINA	34
202011158294	Environmental Management - Landfill	PULEHU RD	PUUNENE	34
201013118710	Department of Water Supply	HANA HWY	HANA	33
202012094290	Napili Fire Station	HANAWAI ST	LAHAINA	32
202011099522	Park	MILL ST BASEBALL	LAHAINA	30
201011521642	Street Lights	MAUI LANI PARKWAY ST- LITE	WAILUKU	30
202010480707	Paukukalo Pump Station	608 KALAKAUA ST	WAILUKU	30
202010150730	KCC - Irrigation Well	ONEHEE ST	KAHULUI	30
201010531444	Lahaina Gateway Center	335 KEAWE ST B108	LAHAINA	29
202013055076	Pukalani Community Center	PUKALANI ST	PUKALANI	29
202010152744	Malu Ulu Olele Pump Station 5	FRONT ST	LAHAINA	29
202012039774	Fire Station	S KIHEI RD FIRE	KIHEI	28
202010258699	Kaa Pump Station	ALAHAO ST	KAHULUI	28
202010566703	Omaopio Tank & Booster - Pump - 580	OLD HALEAKALA HWY	PUKALANI	28
202011111541	Fire Station	HANA HWY	PAIA	27
202010402537	Papohaku Park	LOWER MAIN ST	WAILUKU	26
202011165364	Park	LILLOA DR SOFTBALL	KIHEI	26
202011045152	Maui War Memorial Stadium	KAAHUMANU AVE	WAILUKU	25
202013492972	Fire Station	KULA HWY	KULA	25
202010068924	Central Wailukui Heights - Pump #3	LII WAY PMP#3	WAILUKU	25
202011236298	Makawao Fire Station	MAKAWAO AVE	PUKALANI	25
202011111749	Lahaina Civic Center	1762 H PIILANI HWY	LAHAINA	23
202012389237	Dept of Finance?	131 S KIHEI RD	KIHEI	23
202011339290	Dept of Public Works?	86 KAMEHAMEHA AVE	KAHULUI	23
202010662940	Hana Civic Center	HANA HWY	HANA	22
202013339595	Park	KALAMA PKWY RINK	KIHEI	21
201011548975	Dept of Parks and Rec	211 KANALOA AVE	WAILUKU	21
202012386498	Environmental Management - Pumping	S KIHEI RD KIHEI-2	KIHEI	21
202013706314	Police Dept - Puu O Hoku Radio Station	PUU O HOKU CL-09	KAUNAKAKAI	21
202010428227	Dept of Finance - Office	1840 H PIILANI HWY	LAHAINA	20
202013781945	Fire Station	HOOLEHUA FIRE STATION CL-09	HOOLEHUA	20
202013812286	Hana Fire Station	HANA HWY	HANA	20
202010402818	Wailuku Community Center	395 WAENA ST WKU	WAILUKU	19
202010431064	Lanai Gym	LANAI AVE	LANAI CITY	19
202010343210	Keanae Well and Pump	WAILUA RD	HAIKU	18
202013875325	Molokai Community Center	MOLOKAI COMMUNITY CENTER CL-09	KAUNAKAKAI	18
202012039618	Lahaina Sewer Treatment Plant	H PIILANI HWY KAPALUA	LAHAINA	18
202010021105	Lanai Senior Center	309 SEVENTH ST	LANAI CITY	18
202014132494	Police Station	HANA AIRPORT SITE	HANA	18
202010842492	Environmental Management - Sewer	AKAKUU ST SEWER	WAILUKU	17

202011300847	Ainakea Park	ALAMOANA ST 4	LAHAINA	17
202013874856	Department of Water Supply	MAHINAHINA RD W	LAHAINA	17
202011298462	Skill Village - Pump - 595, 596	BALDWIN AVE	PAIA	17
202011095405	Wailuku Country Estates - Booster 3	WKU CTRY EST #3 BOOSTER	WAILUKU	16
202014133518	Police Station	KEANAE	HANA	16
202013714466	Kamiloloa Booster	KAHINANI PL PUMP	KAUNAKAKAI	16
202010438010	Spreck Pump Station	LAULEA PL	PAIA	16
202010984203	Kaunoa Senior Center	HANA HWY	PAIA	16
202010738021	Wakea - Sewer Pump Station	WAKEA AVE	KAHULUI	16
202010063370	Wailuku Tennis Center	WELLS ST TENNIS CRT ST	WAILUKU	16
202010872440	Kalae - Well 1	KAPALUA PL WELL-1	LAHAINA	16
202010561100	Haleakala Acres - Pumps 547, 548	OLD HALEAKALA HWY	KULA	16
202010129445	Kahului Community Center	UHU ST ST	KAHULUI	15
201013090836	Street Lights	MAUI LANI/KAM AVE S/L	KAHULUI	15
202013304904	Environmental Management	SEWER TREATMENT STATION CL-09	KAUNAKAKAI	15
202010432419	Wailuku Gym & Pool	2026 PAKAHI ST	WAILUKU	15
202011030071	Environmental Management - Pumping	1827 KAOHU ST	WAILUKU	15
202010403170	Papohaku - Well Pump	LOWER MAIN ST PUMP-PAR	WAILUKU	15
202013682143	Department of Public Works	MLOA HWY	KAUNAKAKAI	15
201014619849	Hale Mahaolu Ewalu Senior Housing	65 OHIA KU ST COMM CTR	PUKALANI	15
202010068205	Wells Park & Tennis Court	1967 WELLS ST	WAILUKU	15
202010151050	Kahului Community Center Park	ONEHEE AVE	KAHULUI	14
202010130005	Kahului Community Center	275 UHU ST	KAHULUI	14
202010435180	Kula Community Center	KULA HWY E2-103	KULA	13
202010212027	Leisure Estate - Sewer Pump Station	AKAKE ST	WAILUKU	13
202011746015	Environmental Management	WAILEA RD COM-WWP2	KIHEI	13
202010734038	"Flako" Gym and Paia Park	BALDWIN AVE E57	PAIA	13
202011481183	Lanai WWTP	LANAI CITY	LANAI CITY	12
202010311811	Lahaina Recreation Center	SHAW ST	LAHAINA	12
202011087683	Waiehu Golf Course - Clubhouse	2220 KAHEKILI HWY	WAILUKU	12
202011115096	Environmental Management	2020 H PILANI HWY KA-02	LAHAINA	12
202013272572	Environmental Management - Landfill	KAMEHAMEHA V HWY	HOOLEHUA	12
202011035286	Lahaina Park	245 SHAW ST	LAHAINA	12
202013554854	Eddie Tam Memorial Center	HALE KIPA RD RESTRM	MAKAWAO	12
202011657931	Sewer Pump Station - 16	4850 MAKENA ALANUI RD SP16	KIHEI	12
202013185717	Koali Boosters	HANA HWY KOALI	HANA	12
202011746338	Park	WAILEA RD WLK WY	KIHEI	12
202011041961	Dept of Parks and Rec	544 IAO RD	WAILUKU	12
202013157880	Park	S KIHEI RD COMFORT	KIHEI	11
202010794222	Police Station	31 KEANINI DR POLICE	HANA	11
202011348218	Kahului Community Center Park	ONEHEE AVE TENNIS	KAHULUI	11
202011307339	Street Lights	PRISON E9 ST	LAHAINA	11
202013786670	Department of Public Works	MLOA HWY	KAUNAKAKAI	11
202011555192	Environmental Management	NOHEA KAI ST KA-01	LAHAINA	11

202010527739	Makawao Park	MAKAWAO AVE 3	MAKAWAO	11
202011205038	Haiku Community Center	1008 HANA HWY	HAIKU	11
202010100925	Park	LOWER KULA RD	KULA	11
202010242875	Park	MAIHA ST PARK	LAHAINA	11
202013946332	Lahaina Baseball Complex	H PIILANI HWY BASEBALL	LAHAINA	10
202010682898	Department of Finance - Office	788 PAUOA ST	LAHAINA	10
202013275757	Kalae - Booster	KALAE BOOSTER	KUALAPUU	10
201014675460	Department of Finance - Office	2154 KAOHU ST A	WAILUKU	10
202012060762	Naplili-HNKW Sewer - NA-05	H PIILANI HWY NA-05	LAHAINA	10
202014298295	Fire Station	PUKOO FIRE STATION CL-09	KAUNAKAKAI	10
201012194795	Environmental Management - Landfill	PULEHU RD	PUUNENE	10
202010839050	Wailuku Mini Park	70 N MARKET ST	WAILUKU	10
202011165661	Park	LILLOA DR SOCCER	KIHEI	9
202010894394	Hana Garage	1510 UAKEA ST	HANA	9
201014259315	Dept of Parks and Rec	4655 KAMEHAMEHA AVE SWBD #3	KAHULUI	9
201012569772	Kahakuloa Radio Site	KAHAKULOA RADIO SITE	WAILUKU	9
201013118728	Department of Water Supply	HANA HWY	HANA	9
202013403698	Waiehu Terrace Park	ALIHILANI ST	WAILUKU	9
202011112879	Pukalani Community Center	252 HANA HWY	PAIA	9
202011017383	Street Lights	125 L LUNA RD	LAHAINA	9
202011393313	Kahului Pool	145 KAULAWAHINE ST	KAHULUI	9
202014141826	Molokai Baseyard	MAKAENA PL	KAUNAKAKAI	8
201013213545	Department of Finance	2050 MAIN ST 2B	WAILUKU	8
202010245464	Office economic dev - Maui Mall	MAUI MALL B9	KAHULUI	8
202010628438	Street Lights	HANA HWY	HANA	8
202011233808	Makawao Memorial Park	MAKAWAO AVE	PUKALANI	8
202013561370	Police Station	POLICE COTT A	KAUNAKAKAI	8
202011232628	Maui Memorial Center	KANALOA AV ZOO AVE	WAILUKU	8
201011689316	Street Lights	KAH IND PARK PH. 1B (18) S/L	KAHULUI	8
201013563816	Dept of Parks and Rec	4655 KAMEHAMEHA AVE SW BRD1	KAHULUI	8
202010111823	Haiku Community Center	1008 HANA HWY	HAIKU	8
202010988113	Hana - Pump 3	HANA HWY PMP-3	PAIA	7
202014063012	Kualapuu Community Center	LAMAII PL	KUALAPUU	7
202014168522	Eddie Tam Memorial Center	1075 MAKAWAO AVE	MAKAWAO	7
202013873775	Lahaina - Public Works Baseyard	3310 LOWER HONOAPIILANI RD	LAHAINA	7
202010657023	DHHL - Kula - Pump Station 2	KULA HWY PUMP	KULA	7
201013563824	Dept of Parks and Rec	4655 KAMEHAMEHA AVE SW BRD2	KAHULUI	7
202010037911	Lahaina - Sewer Pump Station 6	360 FRONT ST	LAHAINA	7
202010127563	Armory Park	519 FRONT ST	LAHAINA	7
202010739409	Hana Ball Park	HANA HWY	HANA	6
202010988501	Hana - Sewer Pump Station - 4	HANA HWY PMP-4	PAIA	6
202010987685	Hana - Pump 2	HANA HWY PMP-2	PAIA	6
202012033462	Kalama Park	S KIHEI RD TENNIS	KIHEI	6
202010249755	Street Lights	HANA HWY LITES	PAIA	6

202011360171	Fire Station	FRASER AVE	LANAI CITY	6
202010255588	Street Lights	FRONT E9 ST	LAHAINA	6
202010063792	Wailuku Tennis Center	WELLS ST	WAILUKU	6
201011521618	Street Lights	LAA ST,MAA ST,PAA ST STLITE	WAILUKU	6
201013521301	Kahului Park	5795 HINA AVE	KAHULUI	6
202011055235	Street Lights	LAH BUSINESS PKWY ST- LITES	LAHAINA	6
202014064879	One Alii Park	ONE ALII PARK	KAUNAKAKAI	5
202010437574	Pakele Street - Pump Station	PAKELE ST PUMP STN PL	WAILUKU	5
202010925727	Police Station	1625 UAKEA ST	HANA	5
202010987396	Environmental Management	HANA HWY KUAU	PAIA	5
202011011220	Paia Basketball Court	HANA HWY	PAIA	5
202010282103	Department of Public Works	251 NAPUA ST	WAILUKU	5
201012524140	Department of Public Works	LILLOA DR	KIHEI	5
201012223677	Wells Street Professional Center	2145 WELLS ST 103	WAILUKU	5
201010581134	Department of Water Supply	00-00 LAHAINALUNA RD	LAHAINA	5
202011304633	Baseyard - Garage St	KAOHU ST	WAILUKU	5
202013562071	Police Station	POLICE COTTAGE B	KAUNAKAKAI	5
202014291639	Kanaha Beach	KANAHU BCH PKWY LIFE- GUA	KAHULUI	5
202011334515	Makawao Veterans Cemetery	76 BALDWIN AVE CEMETERY	MAKAWAO	5
202011731355	Dept of Parks and Rec	2594 S KIHEI RD	KIHEI	5
202012037612	Park Lighting	KALAMA PKWY LITES	KIHEI	5
202013936820	Dept of Parks and Rec	WAIPONO LN RESTROOM	WAILUKU	5
202013469772	Kuhao Business Center	KAUNAKAKAI-KUHAO BUS CTR CL-09	KAUNAKAKAI	5
202011801000	Park	KENOLIO RD COMFORT	KIHEI	4
201014978716	Moore Center	2 KAMOI PL UNIT-3	KAUNAKAKAI	4
202014035028	Parking Lot	KAIKU PL PRK-LITE	KIHEI	4
201014249688	Dept of Parks and Rec	WHARF ST 23	LAHAINA	4
201014619856	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A102	PUKALANI	4
202010327353	Police Station	29 KEANINI DR POLICE-C	HANA	4
202013240736	Kilohana Community Center	KILOHANA COMMUNIT	KAUNAKAKAI	4
202010010363	Dept of Parks and Rec	KUUPAOA & OHIA KU ST	KULA	4
202011490010	Makena - Parking	MAKENA RD PKLITE	KIHEI	4
202010701573	Haliimaile Park and Tennis	75 MAKOMAKO ST	MAKAWAO	4
202011087568	Hanakaoo Beach Park	H PIILANI HWY	LAHAINA	4
202011170851	Off Street Parking - Lights	200 VINEYARD ST	WAILUKU	4
202010341545	Street Lights	870 FRONT ST	LAHAINA	4
202011882687	Honukahu Well	NAPILI RD A	LAHAINA	4
201014620953	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E104	PUKALANI	4
202012389864	Kihei School	KIHEI SCHOOL E-10	KIHEI	4
202010097709	Dept of Finance	2145 WELLS ST 104	WAILUKU	4
202010271718	Street Lights	LAH BUSINESS PARK PH2 ST-LITE	LAHAINA	4
202011303585	Baseyard - Garage St	KAOHU ST	WAILUKU	4
202011313642	Kaunoa Senior Center	401 ALAKAPA PL	PAIA	4

20101222992	Environmental Management	PUALEI DR	LAHAINA	4
201012064857	Kamaole Beach Park I	S KIHAI RD PARK	KIHAI	4
202011140896	Waikapu	WAIKO RD PARK RD	WAILUKU	4
201014686327	Street Lights	WAIKALE RD S/L	WAILUKU	4
202010811513	Park	LILLOA DR OFF	KIHAI	4
202011305226	Baseyard - Garage St	KAOHU ST CM GARAGE ST	WAILUKU	4
202010406454	Lanai Gym	411 EIGHTH ST	LANAI CITY	3
202010496174	Hamakuapoko Well 2 & Boosters	HAMAKUAPOKO WELL-2	HAIKU	3
201014621324	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F205	PUKALANI	3
202011205491	Haiku Community Center	HANA BALL PARK HWY	HAIKU	3
202011278340	Street Lights	PAPELEKANE ST	LAHAINA	3
201014621134	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F103	PUKALANI	3
202011147016	Police Station	518 AKAHI ST	LANAI CITY	3
202010373738	Makawao Baseyard	1285 MAKAWAO AVE	MAKAWAO	3
201012918458	Pump	WAIKALE DR PUMP	WAILUKU	3
202011170232	Street Lights	493 S KAMEHAMEHA AVE	KAHULUI	3
202012038008	Honolua	H PIILANI HWY	LAHAINA	3
202010731836	Street Lights	670 MOLOKAI AKAU ST	KAHULUI	3
202011731892	Kamaole Beach Park III	S KIHAI RD KAMA3	KIHAI	3
202010709329	Ukumehame Firing Range	H PIILANI HWY FIRING	LAHAINA	3
202013339421	Dept of Parks and Rec	HOOKIPA PARK RESTRM	PAIA	3
202012417533	Waipoina	S KIHAI RD	KIHAI	3
201014620979	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E202	PUKALANI	3
201014620961	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E102	PUKALANI	3
202013718103	Little League Park	LITTLE LEAGUE PARK CL-09	KAUNAKAKAI	3
201014620078	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B105	PUKALANI	3
201014620284	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B205	PUKALANI	3
202010630335	Dept of Parks and Rec	280 SHAW ST	LAHAINA	3
201014620904	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D203	PUKALANI	3
202011094531	Claims Division	UAKEA RD	HANA	3
201014619864	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A103	PUKALANI	3
202013935947	Department of Parks and Rec	APAU PL	MAKAWAO	3
201014620896	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D202	PUKALANI	3
202010348979	Street Lights	229 S LEHUA ST	KAHULUI	3
202013059953	Carpenter Shop	1827 KAOHU ST	WAILUKU	3
202011095694	Wailuku Country Estates - Booster 2	WKU CTRY EST #2 BOOSTERS	WAILUKU	3
202011428044	Makawao Basketball Court	MAKAWAO AVE BB-CRT	PUKALANI	3
202010230540	Park	1827 KAOHU ST	WAILUKU	2
202010151308	Malu Ulu Olele Park	558 FRONT ST	LAHAINA	2
201014620599	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C103	PUKALANI	2
201014620243	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B203	PUKALANI	2
202011481290	Baseyard - Lanai	LANAI CITY	LANAI CITY	2
201014620862	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C204	PUKALANI	2
201015107885	Dept of Parks and Rec	3535 KEHALANI PARKWAY	WAILUKU	2
202010432013	Waiahoa Gym	3590 KULA HWY GYM	KULA	2

202011308535	Street Lights	366 NIIHAU ST	KAHULUI	2
201014621209	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F105	PUKALANI	2
202010739730	Hana Tennis Court - Lighting	HAUOLI ST	HANA	2
201014621720	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A204	PUKALANI	2
201014620300	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C101	PUKALANI	2
201014620524	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A202	PUKALANI	2
202010827618	Hana Bay Beach Park	1632 KEAWA PL	HANA	2
202010836593	Dept of Parks and Rec	KALAMA PKWY SKATE	KIHIEI	2
201014619880	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A201	PUKALANI	2
202014125472	Park	11 PIILANI HWY COMFORT	LAHAINA	2
202013903960	Kaunakaka Park	KAUNAKAKAI BALL-PAR	KAUNAKAKAI	2
201014620011	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B102	PUKALANI	2
201014620839	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C202	PUKALANI	2
202010662502	Baldwin Park	HANA HWY	PAIA	2
201014620565	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D103	PUKALANI	2
201011520578	Dept of Public Works	WAIALE RD & KUIKAI DR	WAILUKU	2
202010984831	Senior Citizen MP	HANA HWY	PAIA	2
201014620847	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C203	PUKALANI	2
202010259093	Traffic Signal - Lono Ave	LONO AVE	KAHULUI	2
201014620516	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C102	PUKALANI	2
202010925156	Wailuku Elementary School	355 S HIGH ST	WAILUKU	2
201014620276	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B204	PUKALANI	2
201014620532	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A203	PUKALANI	2
201014621167	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F202	PUKALANI	2
201014620987	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E203	PUKALANI	2
202011011477	Pukalani Community Center	PUKALANI ST	PUKALANI	2
201013127828	Department of Water Supply	0000 S ALU RD	WAILUKU	2
201014741239	Department of Public Works	HOOKELE ST/PAKAULA ST TRF SIG	KAHULUI	2
202010720888	Moore Center	2 KAMOI PL UNIT-4	KAUNAKAKAI	2
201014620946	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E103	PUKALANI	2
202010480483	Department of Public Works	KAMEHAMEHA AVE/HINA AVE	KAHULUI	2
201014301810	Department of Parks and Rec	MAUI LANI PKWY	KAHULUI	2
201016011797	County Auditor - Office	2145 WELLS ST 303	WAILUKU	2
201014621183	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F203	PUKALANI	2
202013557246	Dept of Finance	NINTH ST	LANAI CITY	2
202013728573	Lanai Community Complex	FRASER AVE TENNIS	LANAI CITY	2
202012626596	Kamaole Beach Park II	S KIHIEI RD KAMA2	KIHIEI	2
202013051398	Traffic Signal - S Kihei Rd & Alamaha	WAKEA & ALAMAHIA	KAHULUI	2
202013554771	Eddie Tam Memorial Center	HALE KIPA RD F6-49	MAKAWAO	2
201014621126	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F102	PUKALANI	2
201014620607	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C104	PUKALANI	2
201014620037	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B103	PUKALANI	2
202010098087	Dept of Parks and Rec	KUULA ST	KAHULUI	2
201014620557	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D102	PUKALANI	2
201014741247	Dept of Public Works	HOOKELE ST TRF SIG	KAHULUI	2

202011307602	Street Lights	PRISON ST	LAHAINA	2
201014621142	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F104	PUKALANI	2
202010011098	Dept of Finance	KUUPAOA & OHIA KU ST	KULA	2
202014193561	Traffic Signal	WAKEA/ONEHEE RD INTERSEC	KAHULUI	2
201014620094	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B106	PUKALANI	2
202010049775	Traffic Signal	HOOHANA ST/KAMEHAMEHA AVE TRAF	KAHULUI	2
202010879478	Traffic Signal - Liloa & Lipoa St	LIL OA DR/LIPOA ST TRAF	KIHEI	2
202010898106	Traffic Signal - Onchee & Papa Ave	ONEHEE & PAPA AVE	KAHULUI	2
201014619872	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A104	PUKALANI	2
202010399667	Traffic Signal - Lower Main & Hookahi St	L MAIN/HOOKAHII ST	WAILUKU	2
201014620821	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C201	PUKALANI	2
201011791575	Dept of Public Works	KAM AV & KANE ST	KAHULUI	2
201014621191	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F204	PUKALANI	2
202010659722	Traffic Signal - Piikea Ave	PIIKEA AVE	KIHEI	2
201014619823	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A101	PUKALANI	2
202014060075	Traffic Signal	LOWER MAIN ST TRF-SIG	WAILUKU	2
202010999235	Hamakuapoko Well I & Boosters	HOLOMUA RD HPKO	HAIKU	2
202010202275	Traffic Signal	WAKEA/HOOHANA ST TRF- SIG	KAHULUI	1
202011171164	Parking Lot	LUAKINI ST PRK-LT	LAHAINA	1
201014790921	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST HM	PUKALANI	1
201014619898	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B101	PUKALANI	1
201014620581	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D104	PUKALANI	1
202010745612	Traffic Signal - S Kihei Rd & Welakahao Rd	S KIHEI/WELAKAHAO RD TRAF-SIG	KIHEI	1
202010876086	Dept of Public Works	3855 WAILEA ALANUI DR	KIHEI	1
201014620045	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B104	PUKALANI	1
202013945763	Traffic Signal	LONO & HINA AVE	KAHULUI	1
202013592664	Kualapuu Park	KUALAPUU PARK CL-09	KUALAPUU	1
202010791863	Traffic Signal - Lono & Wakea Ave	LONO/WAKEA AVE	KAHULUI	1
202014136016	Traffic Signal	ALAMAHA ST/KAM AVE TRAFF	KAHULUI	1
201014620995	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E204	PUKALANI	1
202011751700	Traffic Signal	S KIHEI RD E125	KIHEI	1
202011200534	Lahaina Recreation Center	MILL ST	LAHAINA	1
202011832203	Traffic Signal - S Kihei Rd &	S KIHEI RD	KIHEI	1
202010873505	Traffic Signal	S KIHEI RD/KE ALI ALANUI RD	KIHEI	1
201014620938	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E201	PUKALANI	1
202013901006	Tennis Court	TENNIS COURT LITES CL-09	KAUNAKAKAI	1
202014310546	Mahinahina Baseyard	MAHINAHINA	LAHAINA	1
202011275437	Traffic Signal - Lahina Shopping Center	PAPALAU/WAINEE ST	LAHAINA	1
202013219847	Piilani Firing Range	HI PIILANI HWY FIRING	LAHAINA	1
202011212059	Dept of Finance	140 MAUNALO A RD	MAUNALO A	1
201014620912	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D204	PUKALANI	1
202010998526	Traffic Signal	WAKEA/KEA ST TRF-SIG	KAHULUI	1
201011062365	Traffic Signal	WAKI/AHINA AVE TRF SIG	KAHULUI	1

202010018176	Hookipa Park	HOOKIPA PARK LIFEGUARD	PAIA	1
202010217281	Keokea Park	218 KULA HWY	KULA	1
201014621159	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F201	PUKALANI	1
202010506584	Traffic Signal	MAKAWAO & HALEAKALA SIGNL	PUKALANI	1
202010240226	Pump - DHIHL, Kula Kai - Booster	MANO DR DHIHL-PMP	KULA	1
202011368968	Street Lights	180 DICKENSON ST	LAHAINA	1
201014620292	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B206	PUKALANI	1
202011206200	Kahakuloa School	3508 KAHEKILI HWY	WAILUKU	1
202010991828	Traffic Signal - Keala Pl	KEALA PL TRF-LITE	KIHEI	1
202011299544	Lahaina Park	LAUNIUPOKO PARK- RESTROOM	LAHAINA	1
202014000923	Papohaku Beach Park	PAPOHAKU BEACH PARK	MAUNALOHA	1
202014255055	Civic Center Boosters	CIVIC CENTER BOOSTER	LAHAINA	1
202011057389	Dept of Public Works	KAMEHAMEHA AVE/PAPA AVE	KAHULUI	1
202011525120	Wailea Parking Lights	KILOHANA DR	KIHEI	1
201014620920	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E101	PUKALANI	1
202013698594	Kaunoha Senior Center	ALAKAPA PL	PAIA	1
202013462967	Traffic Signal	WAKEA/KAM AVE TRF-SIG	KAHULUI	1
202013873742	Honokowai Booster Pump	LOWER HONOAPIHLANI RD BSTR-1	LAHAINA	1
202011427640	Makawao Tennis Court	1602 MAKAWAO AVE	MAKAWAO	1
201014620235	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B202	PUKALANI	1
202013598430	Ukumehame Firing Range	11 PIHLANI HWY FIRING	LAHAINA	1
202014198347	Wailea Tank - Booster	WAILEA TANK BOOSTERS	KIHEI	1
202011057611	Traffic Signal - Lower Main & Mill St	L MAIN/MILL ST TRAFFIC	WAILUKU	1
202011396266	Wailuku Fire Station	1972 KINIPOPO ST	WAILUKU	1
202010659698	Traffic Signal - C Road & Piilani Hwy	C RD/PIHLANI HWY TRF-LITE	KIHEI	1
202011042357	Iao Water Treatment Plant	IAO VALLEY RD E90	WAILUKU	1
201014620870	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D201	PUKALANI	1
201014620540	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D101	PUKALANI	1
201014790491	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST HM	PUKALANI	1
202010982900	Traffic Signal	PUKALANI ST TRF-SIG	PUKALANI	1
202010303032	Traffic Signal	KAHULUI TANK SCADA	WAILUKU	1
202010909879	Dept of Parks and Rec	75 MAKOMAKO ST	MAKAWAO	1
201014621340	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F106	PUKALANI	1
202013402138	Mokuhanu Park	NENEA ST	WAILUKU	1
202010977405	Dept of Public Works	N MARKET ST	WAILUKU	1
201014620102	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B201	PUKALANI	1
201014621316	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F206	PUKALANI	1
201014790509	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST HM	PUKALANI	1
202010434886	Kule Extention B	3690 LOWER KULA RD	KULA	1
202010983403	Pukalani Community Center	PUKALANI ST	PUKALANI	1
201014621118	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F101	PUKALANI	1
202010430173	Kahului Bobby Sox Field	LONO BALL PARK AVE	KAHULUI	1
201015746997	Tank Farm - Pulehu Rd	8100 PULEHU RD TANK FARM	PUUNENE	1
202013841335	Kalama Park	S KIHEI RD	KIHEI	1

201014790483	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST HM	PUKALANI	1
202014328936	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	1
201013563832	Dept of Parks and Rec	KAM AVE	KAIHULUI	1
201014790913	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST HM	PUKALANI	1
202010276303	Kaunoa Senior Center	401 ALAKAPA PL E3	PAIA	1
202011088624	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	1
202010185785	4th Marine Division Memorial Park	KOKOMO RD	HAIKU	1
202010214288	Wakiu Well - Pump - 559, 560	HANA HWY	HANA	1
201015522638	Puuohala Basketball Court	1660 PUUOHALA RD PARK	WAILUKU	0
201014790475	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST HM	PUKALANI	0
202011096148	Claims Division	MILL ST	LAHAINA	0
202011149293	Police Station	548 AKAHI ST	LANAI CITY	0
202013901709	Court	MPC COURT-YA	KAUNAKAKAI	0
202011247733	Lahaina Civic Center	H PIILANI HWY	LAHAINA	0
202014299822	Dept of Finance	KULA HWY	KULA	0
202013216538	Reservoir	WAIKAMOI RD KAHIA-RSV	MAKAWAO	0
202011525955	Kilohana	KILOHANA DR E1-12	KIHEI	0
202010431536	Lanai Community Complex	46 FRASER AVE	LANAI CITY	0
202013218294	Kilohana Park	KILOHANA BASKETBA	KAUNAKAKAI	0
202010979872	Dept of Finance	S MARKET ST	WAILUKU	0
202014035721	Nahiku SCADA System	L NAHIKU RD E1-6	HANA	0
202010764415	Dept of Public Works	BALDWIN AVE PKLOT	PAIA	0
201014380087	Dept of Parks and Rec	22 E WAIKO RD BASKETBALL	WAILUKU	0
202010928291	Kula Ag - Pump Station	PULEHU RD 3	KULA	0
202011100049	Dept of Public Works	PIKEA AVE/LILOA DR	KIHEI	0
202011087980	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	0
202013931847	Makawao Public Parking Lot	MAKAWAO AVE PRK-LITE	PUKALANI	0
202013718400	Little League Park	K KAI LITTLE LEAGUE PRESS-BO	KAUNAKAKAI	0
202010116624	Kaunoa Senior Center	401 ALAKAPA PL	PAIA	0
202010826883	Hana Beach Pavilion	1628 KEAWA PL	HANA	0
201014982361	Haleakala Hwy Pump	0 HALEAKALA HWY PUMP	KULA	0
202011088327	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	0
202013276573	Kalae - Water Tank	KALAE WATER-TN	KUALAPUU	0
202010242941	Lipoa St - Reservoir	LIPOA ST RESERVOI	KIHEI	0
201011193327	Dept of Finance	201 KANALO AVE	WAILUKU	0
202014350120	Park	WELLS ST PARK	WAILUKU	0
202011946995	Alaeloa Tank	ALAELOA TANK	LAHAINA	0
202011946599	Napili Water Treatment Plant	H PIILANI HWY	LAHAINA	0
202011214287	Dept of Finance	1295 MAKAWAO AVE SHOP	MAKAWAO	0
202011480714	Wailea Parking Lights	S KIHEI RD	KIHEI	0
201010296311	Department of Water Supply	ULUANUI RD	KAUNAKAKAI	0
202010656843	Pump - DEHL #1 - 3000 Kula	KULA HWY 3000	KULA	0
202014217121	Maalaea Valve	HAUOLI ST	WAILUKU	0
202010141804	Dept of Finance	LAE ST	PAIA	0
202011164623	Department of Water Supply	HWN HOMES #4	KULA	0

202010656892	Pump - DHIHL #3 - 5000 Kula	KULA HWY 2355	KULA	0
202010150318	Onehee	E5 ONEHEE ST ST	KAHULUI	0
202011427566	Wailuki Heights - Tank 29	KUIKAHI DR HTS-4	WAILUKU	0
202010005900	Ukumehame Firing Range	UKUMEHAME FIRING RANGE	LAHAINA	0
202013374436	Kamaole Storage Tank	PILANI HWY	KIHEI	0
201012705160	Dept of Parks and Rec	OLOMEA ST/MAKAI PARK	WAILUKU	0
202013559655	Waiehu Golf Course	2220 KAHEKILU HWY	WAILUKU	0
202011030691	Onehee	7 ONEHEE ST	KAHULUI	0
202010005280	Old Wailuku Heights Tank	EKOA PL E1A-8	WAILUKU	0
202010815068		MO OLU ST IRRIG	WAILUKU	0
202010730796	Upper Paia - Concrete Tank	BALDWIN AVE	PAIA	0
201015937083		2231 HALEWAIU ST	WAILUKU	0
201015937117		2221 HALEWAIU ST	WAILUKU	0
202010866020	Ainakea Park	AINAKEA RD	LAHAINA	0
202013309945	Civil Defense Siren	MLOA HWY 1ST-STRE	MAUNALOA	0
201016146593	Kaahumanu Park Lighting & Carnival Meter	KAAHUMANU AVE SOCCER	WAILUKU	0
202010593368	Haliimaile Tennis Court	HALIIMAILE RD E41	MAKAWAO	0
202011046580	Kaahumanu Park Lighting & Carnival Meter	KAAHUMANU AVE SOCCER	WAILUKU	0

Schedule B

The schedule below contains identified Purchaser owned TMKs and the adjacent TMKs owned by private parties. The Parties agree and acknowledge that prior to the Commencement of Installation of a System on an adjacent TMK land owner's Site listed in this **Schedule B to Exhibit 2**, a land lease (the "**Land Lease**") is required with the land owner of such Site. The Land Lease shall be in form and substance satisfactory to the Purchaser. The Parties agree that any Land Lease entered into with a third party owner of a Site shall provide that the Purchaser shall (i) have no monetary obligations under the Land Lease; except as set forth in item (v) below; (ii) no affirmative or negative covenants and/or obligations under the Land Lease; (iii) no liability to any party or person under the Land Lease; (iv) no obligation of indemnification under the Land Lease; and (v) pay no greater than the sum of \$1.00 per year under any Land Lease, which sum is subject to the non-appropriation clause set forth in Section 17.d. of this Agreement and Section 36-41, Hawai'i Revised Statutes. The Parties further agree that any Land Lease shall provide that if a System or a Site subject to such Land Lease is terminated pursuant to this Agreement, including but not limited to Sections 2.d., 2.e. and 5.g. of this Agreement, or the terms of the Land Lease, the Purchaser shall be released from any and all obligations or responsibilities related to such Land Lease without any further action by the Purchaser. Seller agrees that it shall be responsible for any and all necessary title searches, licenses, permits, approvals and entitlements related to a Land Lease and installation and maintenance of the System thereon. A draft of any Land Lease shall be provided to Purchaser for review and approval no later than thirty (30) business days prior to the target date of execution.

[Schedule follows on next page]

County Owned TMK	Owner Name	Adjacent TMK	Adjacent TMK Owner	Acreage
220240100000	COUNTY OF MAUI	220020840000	HALEAKALA RANCH COMPANY	2,175
220240110000	COUNTY OF MAUI	220020840000	HALEAKALA RANCH COMPANY	2,175
220240260000	COUNTY OF MAUI, BOARD OF WATER SUPPLY	220020840000	HALEAKALA RANCH COMPANY	2,175
220020700000	COUNTY OF MAUI	220020010003	HALEAKALA RANCH COMPANY	2,504
220020740000	BOARD OF WATER SUPPLY	220020010012	HALEAKALA RANCH COMPANY	2,504
220020510000	COM/BD OF WATER SUPPLY	220020010013	HALEAKALA RANCH COMPANY	2,504
230070330000	BOARD OF WATER SUPPLY COUNTY OF MAUI	230070370000	HALEAKALA RANCH COMPANY	11
230050250000	BOARD OF WATER SUPPLY	230050040000	HALEAKALA RANCH COMPANY	9,908
230060060000	COUNTY OF MAUI	230050040000	HALEAKALA RANCH COMPANY	9,908
230060060000	COUNTY OF MAUI	230060010000	HALEAKALA RANCH COMPANY	1,383
230040330000	COUNTY OF MAUI	230040130000	HALEAKALA RANCH COMPANY	643
230040320000	COUNTY OF MAUI	230040130000	HALEAKALA RANCH COMPANY	643
230040340000	COUNTY OF MAUI	230040160000	HALEAKALA RANCH COMPANY	752
230040200000	COUNTY OF MAUI	230040160000	HALEAKALA RANCH COMPANY	752
440020290000	COUNTY OF MAUI	440020390000	PIONEER MILL COMPANY, LLC and KAA NAPALI LAND MANAGEMENT CORP	108
220020750000	COUNTY OF MAUI	220020690000	MONSANTO TECHNOLOGY LLC	310
210080570000	COUNTY OF MAUI Fee Owner	210080010000	ULUPALAKUA RANCH INC Fee Owner	2,564
210081390000	BOARD OF WATER SUPPLY-COM	210081400000	WAILEA GOLF LLC Fee Owner	374
210080960000	COUNTY OF MAUI	210080560000	HONUA'ULA PARTNERS LLC Fee Owner	567
340368880000	Owner not listed on records	330180020000	HORCAJO, ROBERT TRUST and HORCAJO, TAMARA TRUST	37
330020240000	COUNTY OF MAUI	330180020000	HORCAJO, ROBERT TRUST and HORCAJO, TAMARA TRUST	37
320140010000	BOARD OF WATER SUPPLY	320140010000	Wailuku Water Company LLC (sharing ownership of land with BWS)	5,306
350011070000	COUNTY OF MAUI	350010010000	LEDERMAN BROTHERS and HAWAIIAN GROWTH VENTURES LLC	268
350010210000	COUNTY OF MAUI	350010010000	LEDERMAN BROTHERS and HAWAIIAN GROWTH VENTURES LLC	268
350131400000	COUNTY OF MAUI	350010010000	LEDERMAN BROTHERS and HAWAIIAN GROWTH VENTURES LLC	268
350010910000	COUNTY OF MAUI	350011000000	KEHALANI COMMUNITY ASSOCIATION	5
250040060000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040800000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040140000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040530000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040540000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040750000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040810000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040050000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
460180190000	County of Maui and State of Hawaii	460180030000	BISHOP B P TR EST	1,137

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Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to and limited by the Purchaser Restrictions (hereinafter defined), Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by each System or Systems installed at each Site during the Term (as defined in Section 2.a. below). Electricity generated by each System or Systems installed at each Site shall be delivered to Purchaser at the Delivery Point related to such System and Site. Title to and risk of loss for the electricity generated by the System(s) installed at each Site passes to Purchaser from Seller at the System's respective Delivery Point. Purchaser may purchase electricity for any Site from other sources to the extent Purchaser's electricity consumption requirements at such Site exceed the output of the System(s) installed on such Site.
2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date (as defined on the cover page hereto). The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 5) of the last System to be placed in service and continues for the duration of the Initial Term (as defined in **Exhibit 1**) and any Additional Term (as defined in **Exhibit 1**), unless earlier terminated as provided for in this Agreement (collectively, the "Term").
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement as set forth in **Exhibit 1** at a Contract Price to be agreed.
 - c. **Termination Due to Contract Price Adjustments or Lack of Site Viability.** If, at any time after the Effective Date and prior to the Commencement of Installation (as defined in Section 5) of a System at a Site, Seller determines that the installation of such System at such Site will not be technically or economically viable for any reason, and Seller provides written notice to Purchaser that a Site is not viable for installation of a System (i.e. a new roof is required) and the Parties have attempted to negotiate in good faith a Contract Price adjustment without reaching agreement thirty (30) days following written notice from Seller, either Party may terminate a particular System and/or Site by providing ten (10) days' prior written notice to the other Party. Neither Party shall be liable for any damages in connection with a termination pursuant to this Section 2.c. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation of a System on a Site has not occurred 60 months after the Effective Date, this Agreement is terminated as to such Site and System unless Purchaser notifies the Seller that Purchaser waives the requirement as to such System and Site. Seller will be given a day for day extension for any System and Site that is delayed due to action or inaction of Purchaser (i.e. Approval of Engineering Drawings, Site Access). Purchaser shall not be liable for any damages in connection with a termination pursuant to this Section 2.d.
 - e. **Termination at Purchaser's Discretion.** If, at any time after the Effective Date and prior to March 31, 2023, Purchaser determines that the installation of such System at such Site will not be viable for any reason, Purchaser shall have the right to terminate such System at such Site by providing written notice to the Seller by March 31, 2023. Purchaser shall not be liable for any damages in connection with a termination pursuant to this Section 2.e.
 - f. **Amendments and Clarifications.** Purchaser represents that to the best of its knowledge, it is authorized and empowered under applicable laws, ordinances, rules, regulations, and codes to enter into this Agreement; this Agreement is a legal, valid and binding obligation; Purchaser has complied with all public bidding and procurement rules and laws applicable to this Agreement; Purchaser has made the necessary determinations and taken all necessary action to obtain all necessary consents, approvals and authorizations to enter into this Agreement; and Purchaser and Seller acknowledge that, to further ensure that this recital is true and correct, each party will use its best efforts to incorporate any necessary additional amendments and clarifications to this Agreement prior to March 31, 2023.
3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by each System and delivered to the Delivery Points at the \$/kWh rate shown in **Exhibit 1** (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meters (as defined in Section 10). Subject to and limited by the Purchaser Restrictions, additional costs for items differing from the assumptions in **Exhibit 1**, Item 4 are Purchaser's responsibility.

responsibility.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electricity produced by the System(s) at each Site and delivered to the related Delivery Point(s), (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Within 30 days after receipt of an invoice, Purchaser may provide written notice to Seller of any alleged error therein. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (as published by the St. Louis Federal Reserve on the date of the invoice) but not to exceed the maximum rate permitted by law. If Seller notifies Purchaser in writing within thirty (30) days of receipt of Purchaser's notice of alleged error that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone, conference call or otherwise, within ten (10) days of Seller's response for the purpose of attempting to resolve the dispute. All payments shall be made in U.S. dollars. If any payment adjustment is made in favor of Purchaser, the amount payable to Purchaser pursuant to its then current invoice shall be credited in an amount equal to such adjustment. If any such adjustment is in favor of Seller, Seller will add the amount of such adjustment to Purchaser's invoice for the next monthly period.
- d. **Taxes.**
 - i. **Purchaser's Taxes.** Purchaser is responsible for any general excise tax in connection with the Purchaser's purchase of electricity pursuant to this Agreement.
 - ii. **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement and (2) payment of all taxes or fees involved in constructing the Systems, including the payment of all taxes assessed on the generation, sale, delivery or consumption of electricity produced by each System and the interconnection of each System to the utility's electricity distribution system.

4. **RECs and Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the RECs (defined below) and Incentives (defined below). Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs and Incentives. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to Purchaser, Purchaser shall immediately pay or deliver such items or amounts to Seller.

"Governmental Authority" means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"Incentives" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"REC" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development, construction and installation of the System, subject to Section 2.c., Section 11 and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "Approval"):

- i any zoning, land use and building permits required for Seller to construct, install and operate the Systems; and
- ii. any agreements and approvals from the utility necessary in order to interconnect each System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

- c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of all Systems on all Sites within twenty-four (24) months after the Effective Date. "**Commencement of Installation**" means the date that Seller or its installation contractor has begun physical installation of a System on a Site.

- d. **Force Majeure.**

i. Force Majeure Event. If either Party is unable to timely perform any of its obligations (other than payment obligations or as a result of a Budget Non-Appropriation Event) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of a System on a Site to deliver electricity to the related Delivery Point, the Term as it relates to such System and Site will be extended day for day for each day delivery is suspended due to the Force Majeure Event, as permitted by law.

ii. Extended Force Majeure. If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement as to the Site(s) affected without either Party having further liability under this Agreement with respect to the Site(s) affected except: (a) liabilities accrued prior to termination of such Site(s), (b) Seller shall remove the System(s) from such Site(s) as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement as to the Site(s) affected) and (b) if Purchaser elects to terminate the Agreement in accordance with this Section 5.d., Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System(s) or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement as to the Site(s) affected so long as Seller continues to diligently pursue such actions.

iii. "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.

- e. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation of a System or Systems on a Site due to a Force Majeure Event, the time for achievement of Commencement of Installation related to such System(s) and Site(s) affected by such Force Majeure Event will be automatically extended day for day for each day installation is suspended due to the Force Majeure Event, as permitted by law.

- f. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation for each System on each Site (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System on a Site is mechanically complete, capable of providing electricity to the related Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority

and utility. Seller shall provide Purchaser with documentation reasonably acceptable to Purchaser to evidence that a System is ready to begin Commercial Operation, which documentation shall include but shall not be limited to, all certificates of insurance required to be submitted under Section 13. Seller shall conduct testing of a System not less than three (3) days prior to the Commercial Operations Date. Purchaser shall have the right, but not the obligation, to be present at and observe the testing.

- g. **Target Commercial Operation Date.** The Parties agree that the Commercial Operation Date for a System shall occur on or prior to the Target Commercial Operation Date (as defined below). If the Commercial Operation Date for a System on a Site has not occurred prior to or on the Target Commercial Operation Date, this Agreement is terminated as to such Site and System. Purchaser shall not be liable for any damages in connection with a termination pursuant to this Section 5.g.

Notwithstanding the foregoing, if Seller reasonably anticipates that a System on a Site will not achieve Commercial Operation by the Target Commercial Operation Date for such System and Seller has used its best efforts to complete such System by the Target Commercial Operation Date, Seller may request from Purchaser an extension of the Target Commercial Operation Date for such System. Seller shall provide a written request to Purchaser not less than thirty (30) days but not more than sixty (60) days prior to the Target Commercial Operation Date for a System. Such request shall state (i) the System and Site the Seller is requesting an extension for; (ii) the original Target Commercial Operation Date for such System; (iii) the reason for the extension of the Target Commercial Operation Date, (iv) the proposed action necessary for the delay and (v) the expected new Target Commercial Operation Date for such System. Purchaser may, but shall have no obligation to, approve the establishment of a new Target Commercial Operation Date. The establishment of a new Target Commercial Operation Date shall be at the sole and absolute direction of Purchaser. If Purchaser does not approve the establishment of a new Target Commercial Operation Date, upon the original Target Commercial Operation Date for the System, this Agreement shall terminate as to such Site and System as set forth above.

Additionally, if the Seller is otherwise in compliance with the terms of this Agreement and has used its best efforts to obtain all agreements and approvals from the utility with respect to a System on a Site by such System's Target Commercial Operation Date but through no fault of Seller the local electric utility or permitting authority has delayed issuing such agreements and approvals, then the Target Commercial Operation Date for such System shall be extended provided however, Seller agrees to continue to use its best efforts to obtain the issuance of such agreements and approvals from the utility.

"Target Commercial Operation Date" shall mean with respect to a System a date not later than the lesser of (i) forty-eight (48) months from the date of Commencement of Installation of such System and (ii) eighty-four (84) months from the Effective Date.

Seller shall send a written notice to Purchaser when the last System has reached Commercial Operation. Such notice shall include a list of all Systems on all Sites and the date that each such System achieved Commercial Operation. Additionally such notice shall include a list of any Sites set forth in **Schedule A** to **Exhibit 2** and **Schedule B** to **Exhibit 2** for which a system was not installed.

6. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain each System, in each case in a good and workmanlike manner and in accordance with this Agreement, applicable law and prudent solar industry practices in the state in which the Sites are located. Each System shall comply with all applicable rules, regulation and local building codes.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of each System design for approval prior to Commencement of Installation of such System. Purchaser shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such thirty (30) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may abandon that particular System or terminate this Agreement with respect to such System and Site pursuant to Section 2.c. above. Seller shall seek approval from Purchaser for any variances to the approved construction plans and shall organize the procurement of all materials and equipment for the installation of each System.

Seller shall perform all work in connection with the furnishing, installation, testing and commissioning of the Systems at the Sites on a schedule approved by Purchaser and in a manner that minimizes inconvenience and interference with Purchaser's use of the Sites.

Seller shall be responsible for making arrangements to ensure that all solar modules and photovoltaic panels are offloaded individually to rooftops to minimize potential overloading and shall by or through retaining a licensed structural engineer, at Seller's sole cost, ensure that each System installation and means of attachment is sufficient to satisfy, as applicable, the wind design requirements as required by the local county building codes or the Site's actual wind design requirements, whichever is stricter.

Seller shall ensure all energy generated by each System conforms to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification and all related costs.

Energy provided pursuant to this Agreement shall be of a quality equal to or better than electrical energy produced by the local electric utility.

- c. **System Repair and Maintenance.** Seller, at its sole cost and expense, shall provide all spare parts, Systems operation, repair, monitoring and maintenance services and any initial training required for Purchaser staff for Seller-installed equipment for the Term of this Agreement, including the monitoring and maintenance of metering equipment. Seller may suspend delivery of electricity from a System at a Site to the related Delivery Point for the purpose of maintaining and repairing such System; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser, and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors. Seller shall commence repairs to a malfunction in a System and restore the supply of energy as soon as reasonably possible after notice or upon its own discovery of any malfunction in the operation of such System or interruption in the supply of energy from such System. If an emergency condition exists, Seller shall promptly dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. Emergency maintenance personnel representing the Seller shall be on site within 72 hours of the notification to assess the condition and shall commence corrective action as soon as reasonably practicable.

Seller shall be responsible to repair any leakage occurring from any System installation and for the cost of any damage related to such leakage(s), provided that Purchaser shall promptly notify Seller of any roof penetration or leakage of which it has actual knowledge and take action to mitigate such damage where reasonably practical.

- d. **Outages.** Purchaser shall be permitted two (2) twenty-four (24) consecutive hour days offline (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the Systems; provided, however, that Purchaser shall have notified Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year for a reason other than a Force Majeure Event or Budget Non-Appropriation Event, and for all unscheduled outages, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with this Agreement.

- e. **No Alteration of Sites.** Not less than thirty (30) days prior to making any alterations or repairs to a Site listed in **Schedule A to Exhibit 2** or any Purchaser owned TMK listed in **Schedule B to Exhibit 2** (except for emergency repairs) or any Improvement thereon which may adversely affect the operation and maintenance of a System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or improvement result in a permanent and material adverse economic impact on a System, Purchaser may request relocation of a System under Section 8 hereof. To the extent that temporary disconnection or removal of a System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of a System, at Purchaser's cost, subject to Sections 6.b. and 6.c. Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with this Agreement and all applicable laws, codes and permits.

7. Miscellaneous Rights and Obligations of the Parties.

- a. **Access Rights**¹. Purchaser hereby grants to Seller and to Seller's Agents (as defined below) and the utility (i) a non-

¹ This Agreement provides for access to the Sites set forth in **Schedule A to Exhibit B** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2** through a license and assumes that the Purchaser is the owner of the Sites set forth in **Schedule A to Exhibit B** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**. Prior to the Commencement of Installation of a System on a TMK owned by a

exclusive license running with each Site set forth in **Schedule A to Exhibit 2** or any Purchaser owned TMK listed in **Schedule B to Exhibit 2** (the "**Non-Exclusive License**") for access to, on, over, under and across such Site from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement related to such Site (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. Seller and Seller's Agents must comply with Purchaser's site safety and security requirements when on any Site set forth in **Schedule A to Exhibit 2** or any Purchaser owned TMK listed in **Schedule B to Exhibit 2** during the License Term. During the License Term, Purchaser shall preserve and protect Seller's rights under the Non-Exclusive License and Seller's access to such Site(s) and shall not interfere, or permit any third parties under Purchaser's control to interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Non-Exclusive License.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with a System's Insolation on the Sites listed in **Schedule A to Exhibit 2** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**, and shall ensure that vegetation on such Sites are regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of a System on the Sites listed in **Schedule A to Exhibit 2** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall at all times be responsible for the quality of the work performed by its contractors and subcontractors, remain liable for the negligence acts, errors or omissions of such contractors and subcontractors and shall continue to be responsible for performance of all obligations of Seller hereunder. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
 - i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Sites listed in **Schedule A to Exhibit 2** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**, (each a "**Lien**") on or with respect to the Systems. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to such Sites or the Improvements thereon, other than those Liens which Seller is permitted by law to place on the Sites due to non-payment by Purchaser of amounts due under this Agreement (other than as a result Budget Non-Appropriation Event). The foregoing sentence shall not limit Liens on the Systems related to a financing as set forth in Section 17.b. Seller shall also pay promptly before a fine or penalty may attach to a Site any taxes, charges, or fees of whatever type of any relevant Governmental Authority, relating to any work performed under this Agreement by Seller or Seller's Agents on a Site. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and subject to and limited by the Purchaser Restrictions (defined below), shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each Party has the right to contest any such Lien, so long as it provides, subject to and limited by the Purchaser Restrictions, a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.

"**Purchaser Restrictions**" means, with respect to any obligation imposed on the Purchaser pursuant to the terms of this Agreement, that Purchaser's responsibility to satisfy such obligation is limited by (1) applicable laws; (2) Section 15.b. (Purchaser's Requirements); (3) Section 17.e. (Termination for non-appropriation); and (4) the extent to which any actions required of Purchaser are applicable to Purchaser's performance hereunder and not inconsistent with this Agreement. Notwithstanding and superseding anything to the contrary contained in this Agreement (and any exhibits and appendices attached hereto), Seller acknowledges and agrees that any and all

private landowner listed in **Schedule B to Exhibit 2**, a land lease is required with such land owner. For third party owned TMKs, Seller will have access to such Site(s) through the Land Lease.

obligations, duties, responsibilities, and liabilities of Purchaser under this Agreement and Purchaser's liability for and/or performance of such obligations, duties, and responsibilities under this Agreement (including any that are intended to survive the expiration or termination of this Agreement) are expressly subject to and limited by the Purchaser Restrictions.

- ii. **Lien Indemnity.** The Seller shall indemnify the Purchaser from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against the Sites as a result of the Seller's breach of its obligations under Section 7.e.i.

8. **Relocation of System.**

If, during the Term, Purchaser ceases to conduct business operations at a Site listed in **Schedule A to Exhibit 2** and at any Purchaser owned TMK listed in **Schedule B to Exhibit 2** or vacates such Site, such Site has been destroyed (other than as a result of a Force Majeure Event); or the Purchaser is otherwise unable to continue to host System(s) on such Site or accept the electricity delivered by the System(s) on such Site for any other reason (other than a Default Event by Seller), Purchaser may propose in writing the relocation of the System(s), at Purchaser's cost, in lieu of termination of the Agreement by Seller with respect to such Site(s) affected for a Default Event by Purchaser. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of such System. If the Parties are unable to reach agreement on relocation of the System affected within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement with respect to the Site(s) affected pursuant to Section 11.b.ii.

9. **Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14.b, Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Site with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Site where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12.c.i shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal on the Sites listed in **Schedule A to Exhibit 2**. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, to remove the System to a public warehouse and restore the Site to its original condition (other than ordinary wear and tear) at Seller's cost.

10. **Measurement.**

- a. **Meter.** Each System's electricity output during the Term shall be measured by Seller's meter at each Site, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (each a "**Meter**" and collectively, the "**Meters**"). Seller shall install and maintain the Meters. Purchaser shall have access to the metered energy output data via the monitoring system installed and maintained by Seller as part of each System and upon Purchaser's request, Seller shall furnish a copy of all technical specifications and accuracy calibrations for each Meter.
- b. **Meter Calibration.** Seller shall test and calibrate the Meters in accordance with manufacturer's recommendations. Seller shall have each Meter tested at installation and then as necessary thereafter at Seller's expense by a certified, independent, third party approved by Purchaser. Purchaser shall be allowed to observe any Meter test and Seller shall provide notice of the testing to Purchaser at least ten (10) business days prior to the test date. Seller shall provide signed copies of the Meter test to Purchaser. In addition to the initial tests, the Seller shall test the Meters at any reasonable time upon the request of Purchaser. Purchaser shall reimburse Seller for the cost of the additional testes requested by Purchaser, unless such testing demonstrates that a Meter was operating outside of industry standard tolerance allowances or outside of standards defined by the State of Hawaii Public Utilities Commission for meter calibration and operation. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as a Meter. Purchaser shall have the right of access to all meters at reasonable times for the purpose of verifying readings and calibrations.
- c. **Meter Adjustments.** If testing of a Meter pursuant to this Section 10 indicates that such Meter is in error by more than two percent (2%) or if there is a discrepancy between the data from Purchaser's meter and the data from a Meter of greater than two percent (2%) over the course of a Contract Year, then Seller shall promptly repair or replace such Meter and reimburse Purchaser for the cost of any audit or testing (to the extent the same were paid by Purchaser).

Seller shall make a corresponding adjustment to the records of the amount of energy based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

11. Default, Remedies and Damages.

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**”, the other Party is the “**Non-Defaulting Party**” and each of the following is a “**Default Event**”:

i. failure of a Party to pay any amount due and payable under this Agreement (unless due to a Force Majeure Event or a Budget Non- Appropriation Event), other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);

ii. failure of a Party to perform any material obligation under this Agreement (unless due to a Force Majeure Event or a Budget Non- Appropriation Event) not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;

iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,

v. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the a Sites listed in **Schedule A to Exhibit 2** and any Purchaser owned TMK listed in **Schedule B to Exhibit 2** (unless due to a Force Majeure Event), unless (I) the Parties agree upon a relocation under Section 8 above, or (II) subject to and limited by the Purchaser Restrictions, Purchaser pays the applicable Termination Payment for such Site determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (I) permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.

b. **Remedies.**

i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Purchaser, including a Payment Default (not as a result of a Budget Non- Appropriation Event), Seller may suspend performance of its obligations under this Agreement related to such Site(s) affected until the earlier to occur of the date (a) that Purchaser cures the Default Event in full, or (b) of termination of this Agreement with respect to the Site(s) affected. Seller’s rights under this Section 11.b.i are in addition to any other remedies available to it under this Agreement, at law or in equity.

ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement with respect to the Site(s) affected, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 11.a.iv, the Non-Defaulting Party may terminate this Agreement with respect to the Site(s) affected immediately.

iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement with respect to the Site(s) affected pursuant to Section 11.b.ii, the Defaulting Party shall, subject to and limited by the Purchaser Restrictions, pay a termination payment to the Non-Defaulting Party determined as follows (the applicable “**Termination Payment**”):

(1) **Termination by Seller.** If Seller terminates this Agreement with respect to the Site(s) affected for a Default

Event by Purchaser, the applicable Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth as Item 6 of **Exhibit 1** with respect to such Site(s), and (ii) any other amounts previously accrued under this Agreement and then owned by Purchaser to Seller with respect to such Site(s).

- (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement with respect to a Site or Sites, the Termination Payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electricity from the utility over the Contract Price for the reasonably expected production of the System(s) at such Site(s) for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement with respect to such Site(s) and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11.b.iii.(2) cannot be less than zero.

iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement with respect to a Site prior to the expiration of the Term pursuant to Section 11.b.ii, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11.b.iii.(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement with respect to such Site and is not a penalty.

- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11.b.ii, then following such termination, Seller shall remove the equipment constituting the System(s) from such Site(s) affected in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System from such Site(s) affected following the occurrence of a Default Event by Purchaser pursuant to Section 11.a.i, unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.

i. **Reservation of Rights.** Except in the case of a termination under Section 11.b.ii and payment of a Termination Payment, if any, determined pursuant to Section 11.b.ii, nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation.** Regardless of whether this Agreement with respect to a Site is terminated for a Default Event, the Non- Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the applicable Termination Payment set forth in Section 6 of **Exhibit 1** with respect to such Site following a Default Event by Purchaser.

iii. **No Limitation on Payments.** Subject to and limited by the Purchaser Restrictions, nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

iv. **Effect of Termination.** Any termination of this Agreement with respect to a Site shall not relieve either Party from its obligations under this Agreement as to any other Site(s) not so terminated.

12. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

i. **Licenses.** (a) Purchaser has title to the Sites listed in **Schedule A of Exhibit 2** and any Purchaser owned TMKs listed in **Schedule B of Exhibit 2** such that Purchaser has the full right, power and authority to grant the Non-Exclusive License on such Sites in Section 7.a. and (b) such grant of the Non-Exclusive License to the Sites listed in **Schedule A of Exhibit 2** and any Purchaser owned TMKs listed in **Schedule B of Exhibit 2** does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or such Sites and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects such Sites.

ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.

iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Sites, (b) the Improvements on which the System(s) is to be installed, if applicable, (c) Purchaser's planned use of the Sites and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. **Limit on Use.** No portion of the electricity generated by a System shall be used to heat a swimming pool.

c. **Seller's Covenants and Warranties.**

i. If Seller penetrates the roof of any Improvement on which a System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.

ii. If Seller damages any other part of a Site or any Improvement (including roof damages not covered under Section 12.c.i above), Seller shall repair or reimburse Purchaser or land owner, as applicable, for such damage, as agreed by the Parties.

iii. Seller shall take all actions reasonably necessary to ensure that each system is capable of providing energy at a continuous rate at the designated capacity.

iv. Seller has obtained or will obtain all required consents and licenses from the owners of the Site(s) listed in **Schedule B of Exhibit 2** so that Seller may perform its obligations under this Agreement.

iv. Seller shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with a reasonable accuracy any item relevant to this Agreement. Purchaser shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12.a. AND 12.c. OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12.a. AND 12.c., NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

13. **Insurance.**

a. **Insurance Coverage.** Commencing on the Commercial Operations Date of the first System to be placed in service and through the end of the Term, the Seller shall maintain the following insurance, as applicable. Seller shall maintain or ensure the following is maintained (a) property insurance on each System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program. Seller shall ensure Purchaser, Purchaser's officers, employees, agents and representatives, and any person acting for or on their

behalf is named as additional insured under the commercial general liability insurance policy obtained by Seller as required hereunder. Seller may not commence performance of work or other services under this Agreement or the construction, installation, ownership, operation, maintenance or removal of a System until Seller purchases and provides to Purchaser evidence (such as insurance certificates) reasonably satisfactory to Purchaser that Seller has obtained all required insurance coverage; provided however that the failure of the Purchaser to obtain such satisfactory evidence from Seller before permitting Seller to commence performance under this Agreement shall not be deemed to be a waiver by Purchaser, to any extent, of any insurance requirements herein and Seller shall remain under a continuing obligation to obtain and maintain insurance coverage and to supply to Purchaser evidence of insurance coverage satisfactory to the Purchaser.

The failure of Seller to obtain or keep any insurance required hereunder in force shall constitute a material breach of this Agreement and in addition to any other remedies provided herein, the Purchaser reserves the right to stop the energy services until evidence of the requisite insurance coverage satisfactory to the Purchaser is provided to the Purchaser.

Seller shall timely renew the required insurance coverage as necessary to keep such coverage in effect for the period specified herein and shall supply Purchaser within thirty (30) days of any expiration or renewal dates for such insurance policies or upon binding or renewal insurance policies, with evidence of all required insurance coverage, including updated replacement certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all insurance coverage in the same manner, limits of protection and scope of coverage as was provided by the certificates of insurance, amendatory riders or endorsements originally supplied.

Upon the failure of Seller to provide and maintain insurance required herein, after ten (10) days prior written notice to comply from Purchaser, the Purchaser may, but shall not be required to, procure such insurance, at the sole cost and expense of Seller, and Seller agrees to immediately reimburse Purchaser for the cost thereof plus fifteen percent (15%) for administrative overhead. Any lapse in or failure by Seller to procure, maintain or keep in full force and effect such insurance coverage as is required under this Agreement, at any time during and throughout the Term of this Agreement, shall be a material breach of this Agreement by Seller.

Purchaser may, upon reasonable notice and reasonable grounds, request Seller to increase or change the form, type, coverage or coverage limits of the insurance required hereunder as a result of changes in the nature, size or other attributes of risks insured, changes in type, availability of cost of insurance, and similar factors, in which event Seller shall cooperate in good faith with such request and will obtain such requirement insurance unless Seller reasonably determines that it is commercially impractical to do so.

- b. **Policy Provisions.** Seller's insurance policies shall (i) contain a provision whereby the insurer agrees to give Purchaser at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the Purchaser. All insurance required to be furnished by Seller hereunder shall be pursuant to policies in form and substance reasonably satisfactory to Purchaser and issued by companies of sound and adequate financial responsibility who are authorized to do business in the state of Hawaii, all reasonably satisfactory to Purchaser.
- c. **Certificates.** Seller shall deliver to the Purchaser certificates of insurance evidencing the above required coverage. Purchaser's receipt, review or acceptance of such certificate shall in no way limit or relieve the Seller of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Seller shall pay its own insurance deductibles, except in the case of claims resulting from a breach of this Agreement, in which case, subject to and limited by the Purchaser's Restrictions, the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance.
- e. **Seller to Require Seller's Agents to Provide Requisite Insurance Coverage.** Seller shall require each of Seller's officers, directors, employees, managers, contractors, subcontractors, agents, representatives and any other person acting on behalf of Seller or under Seller's control ("**Seller's Agents**") performing any portion of Seller's obligations hereunder to carry insurance coverage sufficient to cover exposure to risk presented by such agent's services, including the minimum scope and limits of insurance specified in this Section 13, whether or not Seller would be obligated to cover the same insurance coverage hereunder if Seller were performing any such obligation directly, and Seller may at its option, provide the insurance coverage for any or all of Seller's Agents and, if so, the evidence of insurance shall so stipulate.
- f. **Obtaining Insurance Coverage Does not Limit Responsibility.** Seller understands and agrees that any insurance protection furnished by Seller or any of Seller's Agents hereunder shall in no way limit such person's liability hereunder or fulfill or fully satisfy such person's indemnity, defense, and hold harmless obligations under the provisions of this Agreement. Notwithstanding said policy or policies of insurance, Seller shall be obligated for the full and total amount of any damage, injury, loss, liability, penalty, or assessment caused by Seller and/or Seller's

Agents under or in connection with this Agreement. The submission of insurance documentation to and acceptance by Purchaser which does not meet the requirements herein shall not be considered a waiver of the obligations of Seller, or the rights of Purchaser, under the terms of this Agreement.

14. **Ownership; Option to Purchase.**

a. **Ownership of System.**

i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the Systems, and all RECs and Incentives, and the Systems will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Sites or any Improvement on which the Systems are installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the Systems and all tax filings and reports shall be filed in a manner consistent with this Agreement. The Systems will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

ii. **Notice to Purchaser Lienholders.** Purchaser shall use commercially reasonable efforts to place all parties having a Lien on a Site or any Improvement on which a System is installed listed in **Schedule A of Exhibit 2** on notice of the ownership of such System and the legal status or classification of such System as personal property. If any mortgage or fixture filing against a Site listed in **Schedule A of Exhibit 2** could reasonably be construed as prospectively attaching to a System as a fixture of such Site, Purchaser shall provide a disclaimer or release from such lienholder.

iii. **Fixture Disclaimer.** If Purchaser is the fee owner of the Site, Purchaser consents to the filing of a disclaimer of a System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction where the Site are located. If Purchaser is not the fee owner, Seller shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.

b. **Option to Purchase.**

i. **Exercise of Option.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may elect to purchase all, but not less than all, Systems from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the Systems or the Termination Payment set forth in Section 6 of **Exhibit 1** applicable as of the date of the transfer of title to the Systems. Purchaser shall notify Seller of its intent to purchase the Systems at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.

ii. **Fair Market Value.** The "Fair Market Value" of the Systems shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the Systems, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the Systems. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Systems on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the Systems to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The Systems will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the Systems (other than as to title). Seller shall also provide Purchaser all Systems' operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the Systems upon Purchaser's reasonable request. Upon purchase of the Systems, Purchaser shall assume complete responsibility for the operation and maintenance of the Systems and liability for the performance of (and risk of loss for) the Systems, and, except for any Seller obligations that survive termination under Section 19.d., Seller will have no further liabilities or obligations hereunder for the Systems.

15. **Indemnification and Limitations of Liability.**

a. **Seller's Requirements.** Seller shall defend, indemnify and hold harmless the Purchaser, its affiliates and the

Purchaser's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 15.c. relating to the Seller's breach of any representation or warranty set forth in Section 12 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Seller or Seller's Agents in connection with this Agreement; provided, however, that nothing herein will require the Seller to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15.a. does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15.d.

- b. **Purchaser's Requirements.** Purchaser shall be responsible for damages or injury caused by its officers, employees and agents in the course of their employment to the extent that Purchaser's liability for such damage or injury has been determined by a court or otherwise agreed to by Purchaser, and Purchaser shall pay for such damages and injury to the extent permitted by law, including without limitation: (a) the Non-Appropriation clause set forth in Section 17.d., and (b) Section 36-41, Hawai'i Revised Statutes, setting forth requirements for "energy performance contracts" as defined therein. Any provision of this Agreement (including an Exhibits, Addenda or other attachments) providing for an obligation by Purchaser over and above the manner stated herein shall be null and void. In each instance in this Agreement where Purchaser is obligated to assume responsibility or liability of any type or nature for damages or injuries, including any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Section 15.b. Seller acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense or hold harmless obligation of the Purchaser. The provisions of this paragraph shall survive termination of this Agreement with respect to events occurring prior to such termination.
- c. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Seller written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Seller may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Seller and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Seller. The Seller shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Seller, assume the defense of any Claim if the Seller fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15.c. unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Seller has no liability under this Section 15.c. for any Claim for which such notice is not provided if the failure to give notice prejudices the Seller.
- d. **Environmental Indemnification.**
- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless Purchaser and all Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near any Site of any Hazardous Substance (as defined in Section 15.d.ii.) to the extent deposited, spilled or otherwise caused by Seller or any of Seller's Agents.
- ii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Sites generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare. (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- e. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15.c., neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising

out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit I** shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15.e.

- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement with respect to the Site(s) affected and remove the System and restore the Site(s) in accordance with Section 9 without either Party having further liability under this Agreement with respect to the Site(s) affected except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement or Seller's performance of this Agreement with respect to a Site, either illegal or impossible, then Seller may terminate this Agreement with respect to such Site(s) immediately upon notice to Purchaser and Seller shall remove the System(s) and restore the Site(s) so affected in accordance with Section 9 without either Party having further liability under this Agreement with respect to such Site(s) except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

17. **Assignment and Financing.**

a. **Assignment.**

i. **Restrictions on Assignment.** Subject to the remainder of this Section 17.a. this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the Systems.

ii. **Permitted Assignments.** Notwithstanding Section 17.a.i.:

1. Seller may, by providing prior notice to Purchaser and without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17.b.), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
2. Purchaser may, by providing prior notice to Seller, assign this Agreement:
 - a. to an affiliate of Purchaser or a purchaser of the Site; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's

creditworthiness; and

- b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.

iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. Financing. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the Systems. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
- c. Termination Requires Consent. Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.
- d. Termination for non-appropriation. Pursuant to Section 36-41(c)(5), HRS, the following two sentences are required to be included in this Agreement: "The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made" Due to the foregoing and certain constitutional limitations pertaining to multiple-year contracts, Purchaser and this Agreement are subject to a budget non-appropriation event if the applicable funding authority does not appropriate sufficient funding in any year covered by this Agreement to enable Purchaser to cover the continued procurement of energy and/or the performance of Purchaser's obligations under this Agreement (a "**Budget Non-Appropriation Event**"). To the extent Purchaser is (A) obligated to perform under this Agreement, (b) obligated to make any payments under this Agreement or (c) deemed liable under this Agreement, Purchaser's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amounts of money, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities.

This agreement will terminate in the event of a Budget Non-Appropriation Event without penalty. Upon termination Purchaser shall not be obligated to make any payment provided for in this Agreement beyond the then current Fiscal Year. Such termination shall not be considered or treated as a default under this Agreement or any other document. If this Agreement is terminated pursuant to this Section, the Purchaser agrees to surrender to the Seller the Systems, in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance, except for reasonable wear and tear, and to cease use of the Systems. Upon termination of this Agreement, the Seller may, at the end of the then-current Fiscal Year, remove any fixture, structure or sign added by the Seller, which may be removed without damaging the Improvements. Seller shall remove the Systems and restore the Sites in accordance with Section 9.

18. Confidentiality.

- a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18.a.
- b. Permitted Disclosures. Notwithstanding Section 18.a.:
 - i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers.

directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Subject to and limited by the Purchaser Restrictions, each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.

ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that subject to and limited by the Purchaser's Restrictions, the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the Systems and their use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Sites reflecting its association with the Systems.

19. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state where the Systems are located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in Wailuku, Hawaii. The arbitration shall be administered by Dispute Resolution, Inc. in accordance with its arbitration rules, and subject to and limited by the Purchaser's Restrictions, judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted prior to arbitration. Subject to and limited by the Purchaser's Restrictions, the prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement.

including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.

- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other person.
- m. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. **Laws and Regulations.** Seller shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights of way and all changes thereto, which in any manner affect this Agreement and all performance thereof.
- o. **Requisite Standards.** The Systems shall be installed with due care by qualified Seller's Agents and shall conform to applicable industry standards and practices, applicable law, and this Agreement. If Seller fails to meet any of the foregoing standards, Seller shall perform at its own cost, and without additional charge to Purchaser, the professional services necessary to correct errors and omissions, including any necessary replacement of the Systems, that are caused by Seller's failure to comply with the above standards so that the Systems are capable of energy services at a

Exhibit 4

HECO Customer Authorization and Acknowledgement Form



Hawaiian
Electric

CUSTOMER AUTHORIZATION & ACKNOWLEDGEMENT FORM

CUSTOMER-GENERATOR/PROPERTY OWNER*

Name: **County of Maui** Meter #: **See attached sites**

Agreement ID#: *(if available)* Phone #: **8082707845** TMK: **See attached sites**

Service Address: **See attached sites**

Authorized Contractor Company Name:

Johnson Controls, Inc.

GRANT OF AUTHORITY

I hereby appoint and authorize the contractor listed above to act on my behalf in all manners relating to my Distributed Energy Resources (DER) application, including but not limited to, the authority to (i) request, access and receive directly from Hawaiian Electric, on my behalf, all information and documentation relating to my proposed project, and (ii) make decisions and execute agreements, if required, regarding the proposed project.

This Grant of Authority shall remain in effect until Hawaiian Electric's receipt of written termination of such Grant of Authority by Customer, or Customer's resubmittal of an updated Grant of Authority.

I acknowledge that this authorization is granted for the sole purpose of my application, and for managing questions related to the system post-installation. Utility service outside of the PV system is not included, unless said information directly affects processing of my application. I understand that a new form must be submitted if I change my installing contractor.

I/We authorize submission of this Authorization in its original form assigned by me/us or by other means intended to preserve the original graphic and pictorial appearance of the signature(s), such as a photocopy or PDF scan. Such a copy or scan of my/our signature(s) shall be considered an "original" for purposes of this Authorization and Hawaiian Electric may rely upon such submission for all purposes expressed above.

Please read the additional acknowledgements on the following page and be sure to provide your signature.

Please upload this form online to your application record or send/mail it to the applicable address below:

O'ahu (MAIL OR EMAIL)		Maui County (MAIL OR EMAIL)	Hawai'i Island (MAIL OR EMAIL)
Customer Grid Supply (CGS)/ Customer Self Supply (CSS)	Standard Interconnection Agreement (SIA)	All Programs	All programs except Standard Interconnection Agreement (SIA)
Hawaiian Electric Distributed Energy Resources P.O. Box 2750, AT10-SE Honolulu, HI 96840	Hawaiian Electric Attn: SIA, AT10-SE P.O. Box 2750 Honolulu, HI 96840	Hawaiian Electric Renewable Projects P.O. Box 398 Kahului, HI 96733	Hawaiian Electric Renewable Projects P.O. Box 398 Kahului, HI 96733
connect@HawaiianElectric.com	SIAinfo@HawaiianElectric.com	connectmauicounty@HawaiianElectric.com	connecthawaiiisland@HawaiianElectric.com

AMENDMENT TO CONTRACT CERTIFICATION

I, **SCOTT K. TERUYA**, Director of Finance of the County of Maui, State of Hawaii,
do certify that there is available appropriation or balance of an appropriation over and above all
outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

<u>Appropriation</u> <u>Index</u>	<u>Title</u>	<u>Amount Required</u>
903119B ✓✓	RENEWABLE ENERGY PROGRAMS (6132) ✓	\$0.00 ✓

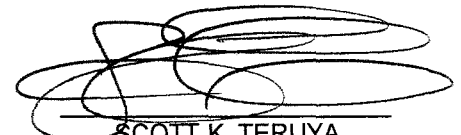
C 7619 ✓ JOHNSON CONTROLS, INC. ✓

Amendment No. 3 Dated:

Dated this 16 day of MAY 2023

Extension of Contract to: November 30, 2027 ✓

Original Amount	\$ 150,000.00
Prior Amends/CO	\$ 0.00
This Amendment	\$0.00
Total contract	<u>\$ 150,000.00</u> ✓


SCOTT K. TERUYA
Director of Finance

Time extension only

Investment Grade Audit (IGA) Contract for Energy Saving ✓

Performance Contract Countywide Facilities for MYR

RFP #21-22/ESPC

No, Federal funds not being used.

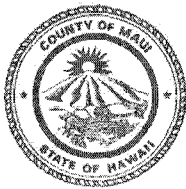
FY 2023

jh

5/16/23  1/15/24

RICHARD T. BISSEN, JR.
Mayor

KEKUHAUPIO R. AKANA
Managing Director



SCOTT K. TERUYA
Director

STEVE A. TESORO
Deputy Director

DEPARTMENT OF FINANCE
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

May 24, 2023

Johnson Controls, Inc.
5757 North Green Bay Avenue
Milwaukee, WI 53201

**RE: CONTRACT FOR INVESTMENT GRADE AUDIT (IGA) CONTRACT FOR
ENERGY SAVING PERFORMANCE CONTRACT WITH COUNTYWIDE
FACILITIES
RFP NO.: 21-22/ESPC
CONTRACT NO. C7619 – AMENDMENT NO. 3**

Dear Johnson Controls, Inc.:

Transmitted is a copy of the fully executed contract amendment for your file.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott K. Teruya", is written over a horizontal line.

W **SCOTT K. TERUYA**
Director of Finance

SKT:csis
Enclosure

xc: Office of the Mayor – Climate Change, Resiliency, and Sustainability

Energy Performance Contract Amendment No. 3 to
Contract No. C7619 Between
County of Maui and Johnson Controls, Inc.
RFP 21-22 ESPC

This ENERGY PERFORMANCE CONTRACT AMENDMENT No. 3, dated January 27, 2023 to Investment Grade Audit Contract for Energy Savings Performance Contract, Contract No. C7619 as further amended by the Energy Performance Contract Amendment dated September 29, 2022, is entered into by and between the COUNTY OF MAUI, a political subdivision existing under and by virtue of the laws of the State of Hawaii, with offices at Kalana O Maui, 200 South High Street, Wailuku, Hawaii 96793, ("County"), and JOHNSON CONTROLS, INC., whose principal place of business is 5757 North Green Bay Avenue, Milwaukee, Wisconsin 53201 ("Contractor").

WITNESSETH THAT:

WHEREAS, the County and the Contractor hereto have entered into an Investment Grade Audit Contract for Energy Savings Performance Contract, identified as Contract No. C7619, dated May 6, 2022 as amended by the Energy Performance Contract Amendment dated September 29, 2022 ("Agreement"), to provide investment grade auditing services and associated energy services contracting for County facilities;

WHEREAS, the County and Contractor desire to amend the Agreement to provide for the implementation of additional energy performance services through entering into this energy performance contracting phase amendment No. 3 ("Energy Performance Contract Amendment No. 3," "EPC Amendment No. 3" or "Amendment No. 3");

WHEREAS, in order to implement the EPC Amendment No. 3, the County and Contractor desire to incorporate Appendix A: Scope of Work into the Contract to initiate certain of the services as defined in the Investment Grade Audit Phase 2A Energy Services Contracting for Maui County facilities, Solicitation Document No. RFP-21-22 ESPC ("IGA Phase 2A");

WHEREAS, in order to further implement the EPC Amendment No. 3, the County and Contractor desire to incorporate Appendix B: Term/Schedule of Work into the Agreement;

WHEREAS, in consideration of the EPC Amendment No. 3, the County and Contractor desire to incorporate Appendix C: Pricing/Certifications into the Agreement.

WHEREAS, County represents that to the best of its knowledge, it is authorized and empowered under applicable laws, ordinances, rules, regulations, and codes to enter into this Agreement, including, Amendment No. 3; this Agreement is a legal, valid and binding obligation; County has complied with all public bidding and procurement rules and laws applicable to this Agreement; County has made the necessary determinations and taken all necessary action to obtain all necessary consents, approvals and authorizations to enter into this Agreement, including Amendment No. 3; and County and Contractor acknowledge that, to further ensure that this recital is true and correct, each party will use its best efforts to incorporate any necessary additional amendments and clarifications to this Agreement prior to March 31, 2023.

WHEREAS, in further consideration of the EPC Amendment No. 3, the County and Contractor desire to attach for reference Appendix D: Financing Submittals into the Agreement;

WHEREAS, Section 19 Modification to Goods and Services Contracts of the General Terms and Conditions authorizes the County at any time to make modifications in the Agreement, as it deems necessary and advisable; and

WHEREAS, the Contractor is willing and able to perform the services under the amended conditions.

NOW, THEREFORE, the parties, in consideration of the mutual agreement set forth herein, agree to amend the AGREEMENT as follows:

I. **RECITALS.** The recitals to this Agreement are incorporated into and shall constitute part of this Agreement.

II. **MODIFICATION OF TERMS**

A. **APPENDIX A: SCOPE OF WORK**

Add the attached Phase Investment Grade Audit Phase 2A Energy Feasibility Study Report for Energy Services Contracting for Maui County facilities, Solicitation Document No. RFP – 21-22 ESPC (“IGA Phase 2A”).

Section 1 of the Agreement is further amended to the extent inconsistent with this Amended Appendix A.

B. **APPENDIX B: TERM/SCHEDULE OF WORK**

Add the attached Appendix B.

Appendix B references certain development and construction work to be performed under the power purchase agreement (“PPA”) between County and PPA provider, anticipated to be complete by November 30, 2027, subject to the terms and conditions of the PPA, and for the provision of measurement and verification services by Contractor as described in Appendix A after implementation of the energy conservation measures and acceptance by the County.

Section 2 of the Agreement is further amended to the extent inconsistent with this Amended Appendix B.

C. **APPENDIX C: PRICING/CERTIFICATIONS**

Add the attached Amended Appendix C: Pricing / Certifications for the Implementation Work or “Work”.

Section 3 of the Agreement is further amended to the extent inconsistent with this Amended Appendix C.

D. **APPENDIX D: FINANCING SUBMITTALS**

Add the attached Appendix D, Financing Submittals, Power Purchase Agreement No. 20221130. The PPA is a separate and distinct contract from the Agreement and this Amendment No. 3, solely between County and the PPA provider. Any rights and obligations accruing under the PPA shall be the sole rights and obligations of the parties to the PPA and shall not devolve to Contractor.

III. ALL OTHER TERMS

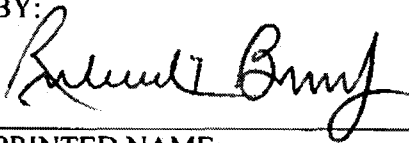
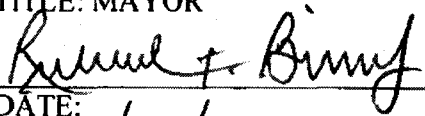
All terms and conditions of the Agreement, not inconsistent with the terms and conditions of this Amendment are herein incorporated and shall remain in full force and effect.

In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the Agreement, the provisions of this Amendment shall govern in all aspects.

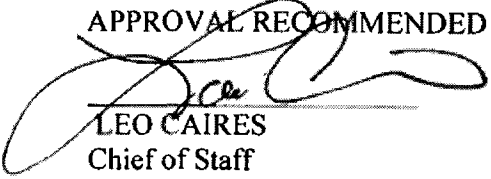
In entering into this Agreement, the parties acknowledge that they have relied solely upon the legal advice of their respective attorneys and each party represents and acknowledges that in executing this Amendment No. 3 they did not rely, and have not relied upon any representation or statement, whether oral or written, made by the other party or by that other Party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Amendment No. 2 and the Agreement.

By signing below, Contractor hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, HAR, and submitted pursuant to Section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment, is accurate, complete, and current as of the date of this Amendment. This certification includes the cost or pricing data supporting any advance agreement(s) between the Contractor and the County, which are part of the proposal.

IN WITNESS WHEREOF, the County and the Contractor have executed this Amendment by their duly authorized officers or agents on the day and year first above written.

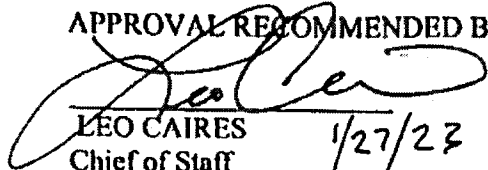
COUNTY OF MAUI	JOHNSON CONTROLS, INC.
BY: 	BY: 
PRINTED NAME: MAYOR RICHARD BISSEN	PRINTED NAME: WILLIAM P. AVIRETT
TITLE: MAYOR 	TITLE: AREA GENERAL MANAGER
DATE: 1/27/23	DATE: 1/27/23

APPROVAL RECOMMENDED BY:

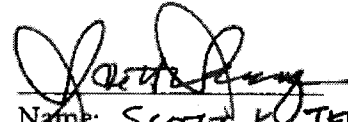


LEO CAIRES
Chief of Staff
County of Maui

APPROVAL RECOMMENDED BY:


LEO CAIRES
Chief of Staff
County of Maui

1/27/23


Name: SCOTT K. TERRY
Title: ACTING DIRECTOR OF FINANCE
Department of Finance
County of Maui

Date Signed: 2/1/23

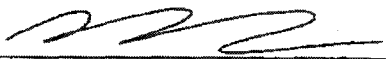
APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Corporation Counsel
County of Maui

dated
1/27/23

APPROVED AS TO FORM AND LEGALITY



Corporation Counsel
County of Maui

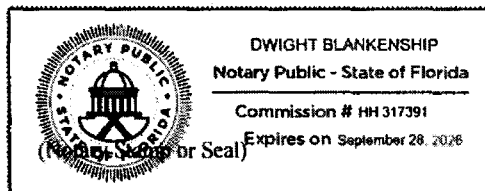
Dated 1/27/23

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Florida)
) S.S.
COUNTY OF Manatee)

On this 27th day of January, 2023, before me appeared
William P Avirett, and N/A, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
AREA GENERAL MANAGER and N/A of
JOHNSON CONTROLS, INC the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument
as the free act and deed of the CONTRACTOR.



Notarized online using audio-video communication


(signature)
DWIGHT BLANKENSHIP
(Print name)
Notary Public, State of Florida
My commission expires: 09/28/2026

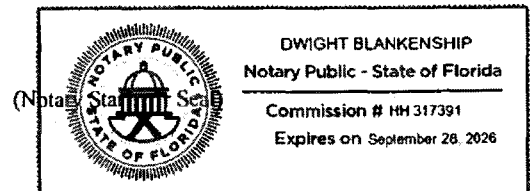
NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____
Contract between county of Maui and
JOHNSON CONTROLS, INC.

dated at time _____
Doc. Date of notarization _____ No. of Pages: 13 Jurisdiction: _____

Signature of Notary _____ Date of Certificate 01/27/2023

DWIGHT BLANKENSHIP
Printed Name of Notary



Notarized online using audio-video communication

APPENDIX A: SCOPE OF WORK

Attached: Investment Grade Audit Phase 2A Energy Feasibility Study Report for Energy Services Contracting for Maui County facilities, Solicitation Document No. RFP-21-22 ESPC

APPENDIX B: TERM/SCHEDULE OF WORK

I. PERFORMANCE OF SERVICES

Phase 2A IGA implementation services are anticipated to be completed by January 30th, 2027., subject to the terms and conditions of the PPA. The completion time may be extended in accordance with the PPA. IGA development services for potential additional phases is extended until January 30, 2024.

Measurement and Verification Services described in Appendix A shall begin after the energy conservation measures have been implemented and accepted by the County under the power purchase agreement and shall continue throughout the term this Agreement pursuant to the terms of the IGA Phase 2A.

APPENDIX C: PRICING/CERTIFICATIONS

- I. County shall make payments to pursuant to this schedule.
- II. The price to be paid by County for the solar generated electricity shall be per the Solar PPA payment terms.
- III. Measurement & Verification Services. See Appendix A, ongoing Measurement & Verification ("M&V") Services anticipated to commence November 30, 2027. County may elect to cancel M&V Services in any given year subject to the terms of Appendix A. County must do so in writing within 30 days of the annual renewal date, otherwise full service will continue for the remainder of the year and the Customer will be responsible for payment of the full year.

Year	Total
1	\$75,456
2	\$73,388
3	\$75,589
4	\$77,857
5	\$80,193
6	\$82,598
7	\$85,076
8	\$87,629
9	\$90,257
10	\$92,965
11	\$95,754
12	\$98,627
13	\$101,586
14	\$104,633
15	\$107,772
16	\$111,005
17	\$114,335
18	\$117,765
19	\$121,298
20	\$124,937

II. HAWAII PRODUCTS PREFERENCE

In accordance with HRS §103D-1002, the Hawaii products preference may be applicable to this solicitation.

Offerors offering a Hawaii Product shall specify the product and class of the product offered.

Offeror submitting a Hawaii Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-038, Certification for Hawaii Product Preference and submit to the Procurement Officer issuing the solicitation (IFB or RFP), and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e., 3 products should have 3 separate forms completed). Form SPO-038 is available on the SPO webpage at <http://hawaii.gov/spo>, click on 'Forms'.

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

Change in Availability of Hawaii product. In the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall notify the procurement officer in writing no later than five working days from when the offeror knows of the change and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

Refer to the General Instructions for additional information regarding the Hawaii product preference.

It is further understood by the bidder that in the event of any change that materially alters the bidder's ability to supply Hawaii Products the bidder shall immediately notify the Officer-in-Charge in writing and the parties shall enter the discussions for the purpose of revising the contract or terminating the contract for convenience.

III. CERTIFICATE OF ACCEPTANCE OF SOLICITATION REQUIREMENTS

It is understood and agreed that the undersigned acknowledges the following:

1. The Offeror has read this solicitation document including any addenda, in its entirety;
2. The Offeror understands and agrees to furnish, deliver, and perform the requirements of the solicitation in strict compliance with the solicitation document as amended, including any specifications, plans, and scope of work descriptions, without any exceptions, if awarded a contract;
3. The Offeror understands and agrees that no substitution or alternate brands may be furnished without the written approval of the COUNTY;
4. The Offeror understands that the ESCO shall resolve any noncompliance with the requirements of the awarded contract at the ESCO's own expense;
5. The Offeror will make all modifications or customizations to the brand and model being offered as necessary to meet all specifications, at no additional cost. Offeror guarantees that all modifications or customizations done to meet specifications shall not affect the quality or operation of the product; and
6. The Offeror understands that FAILURE TO MEET CONTRACT REQUIREMENTS WILL CONSTITUTE A BREACH OF CONTRACT THAT MAY RESULT IN SUSPENSION OR DEBARMENT, AND THE EXERCISE OF RIGHTS AND REMEDIES AS PROVIDED BY LAW. Contract requirements include any specifications, plans, and scope of work descriptions;

The undersigned is an authorized representative of the Offeror and can legally obligate the Offeror thereto.

Offeror: Johnson Controls

Signature: William P. Avirett

Print Name: William P. Avirett

Title: General Manager

Date: 1/27/23

Phone: 305-842-1885

IV. CERTIFICATION OF COMPLIANCE WITH HRS 396-18, SAFETY AND HEALTH PROGRAMS FOR CONTRACTOR BIDDING ON COUNTY JOBS

PROJECT NAME AND NUMBER:

RFP-21-22 ESPC

This is to certify that the undersigned will comply with the requirements of HRS 396-18, as follows:

- (A) Pursuant to HRS 396-18, all bids and proposals in excess of \$100,000 shall include a signed certification from the bidder that a written safety and health plan for the job will be available and implemented by the notice to proceed dates of the project. The written safety and health plan shall include:
- (1) A safety and health policy statement reflecting management commitment;
 - (2) A description of the safety and health responsibilities of all levels of management and supervisors on the job and a statement of accountability appropriate to each;
 - (3) The details of:
 - (a) The mechanism for employee involvement in job hazard analysis;
 - (b) Hazard identification, including periodic inspections and hazard correction and control;
 - (c) Accident and "near-miss" investigations; and
 - (d) Evaluation of employee training programs;
 - (4) A plan to encourage employees to report hazards to management as soon as possible and to require management to address these hazards promptly; and
 - (5) A certification by a senior corporate or Company manager that the plan is true and correct.
- (B) Failure to submit the required certification may be grounds for disqualification of the bid.
- (C) Failure to have available on site or failure to implement the written safety and health plan by the project's notice to proceed shall be considered willful noncompliance and be sufficient grounds to disqualify the award and terminate the contract.

Name of Offeror: William P. Avirett / Johnson Controls

William P. Avirett

Signature and Title:

General Manager

Date: 1/27/23

APPENDIX D: FINANCING SUBMITTALS

Attached: Financing Submittal, Solar PPA No. 20221130

Solar Power Purchase Agreement No. 20221130

This Solar Power Purchase Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser:	COUNTY OF MAUI, a municipal corporation existing under by virtue of the laws of the State of Hawaii	Seller:	COM SOLAR LLC, a Hawaii Limited Liability Company
Name and Address	COUNTY OF MAUI 200 South High Street Kalana O Maui Bldg 9 th Fl Wailuku, Hawaii 96793	Name and Address	COM SOLAR LLC 1003 Bishop St., STE 2700 Honolulu, Hawaii 96813
Phone	808-270-7722	Phone	
Fax	None	Fax	None
E-mail	@.gov	E-mail	
Site Ownership	Schedule A to Exhibit 2 provides a list of Purchaser HECO account numbers and associated owned TMKs. Schedule B to Exhibit 2 provides a list of Purchaser Owned Tax Map Keys ("TMKs") and the adjacent TMKs owned by private parties. Prior to the Commencement of Installation of a System on a TMK owned by a private party, a land lease is required with the third party owner of such Site.	Site Ownership	A Hawaii limited liability company. Legal owner of the System for tax purposes and business purposes.
Tax Status	Municipal Corporation		Limited Liability Company
Project Name	CoM Solar + Storage		CoM Solar + Storage
Contractor	Johnson Controls, Inc 2065 Main St. Wailuku, HI 96793	Hawaii General Contractor License CT-2023	General A, General B, C-13 Electrical, C-15 Electrical Control Systems, C-52 HVAC Contractor, C-60 Solar Power Systems Contractor

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the Systems (defined below) and installed on the real property described or depicted in **Schedule A to Exhibit 2** or in **Schedule B of Exhibit 2** (each a "Site" and collectively, the "Sites"), including any buildings and other improvements on the Sites other than the Systems (the "Improvements").

"System" and "Systems" shall mean each of the solar panel systems designed and installed pursuant to this Agreement at the Sites and more fully described in **Exhibit 2**. One or more Systems may be developed on a Site.

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	Pricing
Exhibit 2	System Description, Delivery Points and Sites
Exhibit 3	General Terms and Conditions
Exhibit 4	HECO Customer Authorization and Acknowledgement Form

Purchaser: COUNTY OF MAUI

Seller: COM SOLAR LLC

Signature: 
Printed Name: Richard T. Bisen, Jr.
Title: MAYOR
Date: 1-27-2023

Signature: 
Printed Name: Aaron Kook
Title: Manager
Date: 1/27/2023

APPROVAL RECOMMENDED:


LEO K. C. AIRES
Chief of Staff

1/27/23

APPROVED AS TO FORM AND LEGALITY


Acting Corporation Counsel
County of Maui
VICTORIA J. TAKAYESU

1/27/23

APPROVAL RECOMMENDED:

1/27/23

LEO K. C. AIRBS
Chief of Staff

APPROVED AS TO FORM AND LEGALITY

Acting Corporation Counsel
County of Maui
VICTORIA J. TAKAYESU

Name: SCOTT K. TERLITA
Title: Acting Director of Finance
Department of Finance
County of Maui

2/1/23

Exhibit 1

Pricing

1. **Initial Term:** The term of this Agreement shall commence on the Commercial Operation Date of the last System to be placed in service and shall expire on the date that is twenty (20) years after that Commercial Operation Date (the "**Initial Term**"), unless and until earlier terminated pursuant to this Agreement.
2. **Additional Terms:** As permitted by law and upon prior written notice to Seller at least one-hundred eighty (180) days prior to the expiration of the Initial Term, Purchaser shall have the option to extend the Initial Term of the Agreement for up to three (3) additional five (5) year terms (each an "**Additional Term**").
3. **Contract Price:**

Contract Year	Solar PV \$/kWh	Energy Storage \$/kW
1	\$0.198	\$22.33
2	\$0.204	\$23.00
3	\$0.210	\$23.69
4	\$0.216	\$24.40
5	\$0.222	\$25.13
6	\$0.229	\$25.88
7	\$0.236	\$26.66
8	\$0.243	\$27.46
9	\$0.250	\$28.28
10	\$0.258	\$29.13
11	\$0.266	\$30.00
12	\$0.274	\$30.90
13	\$0.282	\$31.83
14	\$0.290	\$32.78
15	\$0.299	\$33.76
16	\$0.308	\$34.77
17	\$0.317	\$35.81
18	\$0.327	\$36.88
19	\$0.337	\$37.99
20	\$0.347	\$39.13

The first Contract Year shall commence on the Commercial Operation Date of the last System to be placed in service, and each subsequent Contract Year shall commence on the anniversary of such Commercial Operation Date. Interim billing shall occur for Systems that generate power prior to the Commercial Operation Date of the last System to be placed in service. However, interim billing will not be subject to annual escalation in price. Upon the Commercial Operation Date of the last System to be placed in service, the Initial Term will commence.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. A payment or performance bond is _____ is not X being issued to Purchaser under this Agreement.
 - b. Statutory prevailing wage rates (e.g., Davis-Bacon) do _____ do not X apply.
 - c. All prices in this Agreement are calculated based on an upfront rebate of \$0. _____

- d. The Contract Price is inclusive of Seller's Taxes (as defined in Section 3(d) of Exhibit 3) at the rates in effect as of the Effective Date.

5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following (unless required to meet the minimum code compliance):

Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including: client or utility service, switchgear, transformers, substations, poles, breakers, reclosers, and disconnects).

- a. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
- b. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting).
- c. Removal of existing lighting, light poles, or concrete light post bases.
- d. Roof membrane maintenance or reroofing work.
- e. Structural upgrades to the Improvements, including ADA upgrades.
- f. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
- g. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser's energy use, the Site and the Improvements, including building plans and specifications.

6. **Termination Payment Schedule (Exhibit 3, Section 11(b)):**

Contract Year	Termination Value: \$ per wattDC per Site
1	\$6.96
2	\$6.88
3	\$6.72
4	\$6.61
5	\$6.55
6	\$6.01
7	\$5.46
8	\$5.35
9	\$4.97
10	\$4.59
11	\$4.20
12	\$3.77
13	\$3.39
14	\$2.95
15	\$2.57
16	\$2.13
17	\$1.75
18	\$1.31
19	\$0.87
20	\$0.55

Exhibit 2

System Description, Delivery Point and Sites

1. System Locations: County of Maui, comprising the islands of Lanai, Maui, Molokai.
2. Entire System Size (DC kW): up to 41,000 kW-DC.
3. Entire System Description (Expected Structure, Etc.): up to 41,000 kW-DC of rooftop, carport and ground mount solar PV with up to 15,000 kW-DC of energy storage capacity.
4. **Delivery Points and Sites:** Schedule A to this **Exhibit 2** and Schedule B to this **Exhibit 2** contains a list of HECO meters and/or TMKs that may be utilized to site solar projects. Prior to construction, one or more drawings or images will be provided depicting:
 - a. Each Site, including the Improvements on such Site (as applicable);
 - b. Proposed System(s) location on Purchaser owned TMKs or adjacent TMKs owned by a private party and leased by Seller for purposes of installing solar and/or storage to provide energy to Purchaser HECO meter(s);
 - c. Delivery points for electricity generated by the System(s) on each Site (each a "**Delivery Point**" and collectively, the "**Delivery Points**");
 - d. Access points needed for Seller to install and service the System(s) (building, access, electrical room, stairs etc.);
 - e. Construction assumptions (if any); and
 - f. Single Line & Three-Line drawings for Interconnection Applications.

Schedule A

The Sites listed below include HECO account numbers and the associated Campus Name or Department, Address and Estimated Solar PV sizing based on historical usage. Final sizing will be per stamped engineering drawings.

Some of the Sites below may have more than one HECO Account meter onsite. The proposed System(s) location at each Site is either the building rooftop, ground mount, or a suitable location for a solar canopy. For all System types, the Delivery Point(s) for electricity generated by the System(s) shall be at the AC output of the combined solar PV inverters, prior to interconnection into any transformers or other load centers. Access points for the Seller to service the Systems will be Site specific, and in alignment with any electric utility company requirements for Systems access. The construction of the solar PV systems assumes that the Seller apply for County of Maui Permits, as required.

HECO Acct #	Campus - Name, Location or Department	Service Address	Svc City	Est Solar PV Max Size kWdc
202010280560	Waihee - Pump	WAIHEE RD DWS	WAILUKU	3,914
202010610394	Kahului WWTP	AMALA RD	KAHULUI	3,080
202011411305	Environmental Management - Pumping	H PHILANI HWY	LAHAINA	2,379
201010198723	Department of Water Supply	HALIIMAILE RD	MAKAWAO	1,898
202012265122	Environmental Management - Pumping	WELAKAHAO ST COM-WW	KIHEI	1,823
202010793349	Street Lights	CENTRAL MAUI	WAILUKU	1,576
201014406429	Kehalani Community	KEHALANI MAUKA PKWY	WAILUKU	1,386
202010920140	Kalana O Maui Building	200 S HIGH ST	WAILUKU	1,367
202010284802	Police Dept - Kahului Tank SCADA	KAHULUI TANK SCADA	WAILUKU	1,351
202010894881	Mokuhaui - Pump 501, 503	MOKUHAUI RD CUST	WAILUKU	1,310
201011374828	Napili Rd - Pump	NAPILI RD PUMP	LAHAINA	1,119
202010808337	Kupaa Well	KAHEKILI HWY	WAILUKU	1,023
202010840538	DWS Kaupakalua - Well	KAUPAKALUA RD WELL	HAIKU	888
202014118279	Lower Kula Boosters - E7 - 71B	OLINDA RD E7-71B	MAKAWAO	886
202011329390	DWS IAO Well	IAO WELL	WAILUKU	852
202013557261	North Waihee - 1 & 2	KAHEKILI HWY	WAILUKU	688
202013905403	Environmental Management - Pumping	S KIHEI RD SPS	KIHEI	666
201011367236	Department of Finance - Police Department	2201 PHILANI HWY	KIHEI	649
202014123600	Kualapuu Deepwell	KUALAPUU DEEP-WEL	KUALAPUU	589
201011534256	Maui Meadows - Pump 17	KILOHANA DR #17 PUMP	KIHEI	550
202010280149	Waihee Well - Pump - 514, 515	KAHEKILI HY CANE RD	WAILUKU	485
201013217744	Kehalani Community	KEHALANI MAUKA PKWY	WAILUKU	434
202011428135	Waiale - Pump - 581, 582	WAIKALE DR	WAILUKU	424
202011882976	Honukahu Well	HONOKAHU WELL B CL-09	LAHAINA	409
202014359501	North Waihee Boosters - 1, 2, 3, 4	KAHEKILI HWY	WAILUKU	388
202010357558	Waikapu - Well	WAIKAPU WELL	WAILUKU	356
202010337121	Kanoa - Well 2	KAHEKILI HWY KANOA	WAILUKU	340
202013938149	Water Treatment Plant - Lahainaluna	LAHAINALUNA RD	LAHAINA	302
202010336610	Kanoa - Well 1	KAHEKILI HWY KANOA	WAILUKU	297
201012918466	Kuikahi - Pump 31	KUIKAHI DR PMP 31	WAILUKU	275
202010316950	Eluene Pl - Pumping Station	ELUENE PL	WAILUKU	274
202014107009	Haiku Well	KOKOMO RD E58	HAIKU	262
202011047075	Dept of Parks and Rec	KAHUMANU AV MEM GYM AVE	WAILUKU	257
202014328845	Olinda Water Treatment Plant	3000 OLINDA RD	MAKAWAO	254

201013821933	Department of Water Supply	KULA KAI 541, 542 #2	KULA	245
202010792598	Kula Ag - Pump Station	OMAOPIO RD DITCH	KULA	238
202011207273	Street Lights	LOWALU	LAHAINA	230
201010700767	Department of Water Supply - REF NAPILI B, 570	NAPILI RD B	LAHAINA	230
202013685112	Lahaina Aquatic Center	SHAW ST	LAHAINA	221
201013648377	Department of Water Supply	HARRY FIELDS 543, 544	KULA	219
202010986158	Kepaniwai Well and Pump	IAO RD	WAILUKU	209
202010927723	Kula Ag - Pump Station	PULEHU RD 2	KULA	207
202010633701	Environmental Management - Pumping	HALAWAI DR	LAHAINA	206
202010358739	Diamond Resort Boosters	DIAMOND RESORT BOOSTERS	KIHEI	205
201013648914	Department of Water Supply	497 OLD HALEAKALA HWY	KULA	198
202010673145	Maui Lani Prkwy - Well 7	MAUI LANI PARKWAY WELL-7	WAILUKU	187
202013349750	Street Lights	STREET LIGHTING	KAUNAKAKAI	186
202011349562	Maui Mall	MAUI MALL A13	KAHULUI	181
202010314849	Malu Ulu Olele - Pump - 533, 534	OLINDA RD	MAKAWAO	180
202013978665	Kula Water Treatment Plant	KAHAKAPAO RD	MAKAWAO	178
202010316000	Pookela Well - Pump - 531, 532	OLINDA RD	MAKAWAO	178
201013783984	Department of Water Supply	3445 HOOKIPA PL	KIHEI	173
202010472845	Olinda - Pump 535, 536	OLINDA RD	MAKAWAO	160
202011114040	Lahaina - Sewer Pump Station 2	2010 H PIILANI HWY 2	LAHAINA	158
202011783208	Sewer Pump Station - 10 - Grand Wailea	3850 WAILEA ALANUI DR GWSPS10	KIHEI	150
202011110857	Lahaina Civic Center	1762 H PIILANI HWY	LAHAINA	146
202010430876	Kahului Bascyard	PALAPALA DR	KAHULUI	141
202013566155	Old Court House Building	150 S HIGH ST	WAILUKU	141
202010672709	Maui Lani Prkwy - Well 6	MAUI LANI PARKWAY WELL-6	WAILUKU	140
202011247196	Napili-HNKW Sewer - NA-01	LOWER HONOAPIILANI RD NA01	LAHAINA	140
202013304615	Environmental Management	WASTE WATER TRTMNT PLNT CL-09	KAUNAKAKAI	134
202013956133	Lahaina - Sewer Pump Station 3	H PIILANI HWY E23	LAHAINA	133
202013943453	Pool	LIPOA ST POOL	KIHEI	131
202013877297	Mitchell Pauole Center	MITCHELL PAUOLE CENTER	KAUNAKAKAI	129
202010609388	Fire Station	ALANUI KA IMI IKE ST	KAUNAKAKAI	120
202011414325	Waipuna Well - Pump - 559, 560	LAHAINALUNA RD	LAHAINA	114
202011271725	Forensic Facility - The Milllyard	1831 WILI PA LOOP	WAILUKU	113
202013021789	Waichu Golf Course	WAIEHU BEACH RD	WAILUKU	111
202011293695	Country Club - Pump 566, 567	HANA HWY ELEC	PAIA	106
202010364059	Pookela Well - E12	OLINDA RD E12	MAKAWAO	105
201013563857	Dept of Parks and Rec - Office	S KAM AV (OFF)	KAHULUI	102
202014198909	Pukalani Park Pool	PUKALANI ST POOL	PUKALANI	99
202013905288	Department of Finance - Claims Div Office	KANALOA AVE CENTRAL	KAHULUI	97
202011154178	Lanai Police Station	855 FRASER AVE	LANAI CITY	92
202010682369	Fire Station	300 KILOHANA DR	KIHEI	92
202011414366	Kanaha - Well 1	4300 LAHAINALUNA RD	LAHAINA	89
202011060128	Napili-HNKW Sewer - NA-02	H PIILANI HWY NA-02	LAHAINA	89

202010634527	Pulehu - Flare	PULEHU RD FLARE	PUUNENE	84
202010681668	Kahului - Sewer Pump Station	58 HANA HWY	KAHULUI	81
202013943461	Kokua Pool	UHU ST POOL	KAHULUI	81
202014358008	Pool	LIPOA ST POOL	KIHEI	80
202011119353	Hamoia - Pump 597	HANA HAMOA PMP HWY E66A	HANA	78
202014331336	Department of Finance - Claims Div Office	KANALOA AVE	KAHULUI	76
202011453315	Sewer Pump Station - 8	2995 S KIHEI RD SP8	KIHEI	74
202011089333	Police Station	1762 H PIILANI HWY	LAHAINA	74
202011232172	Maui Memorial Center	KANALOA BSBALL AVE	WAILUKU	73
202011399310	Sewer Pump Station - 7	2385 S KIHEI RD SPS7	KIHEI	72
202010034371	NASKA B Y	KEOLANI PL	KAHULUI	71
202014953170	Ualapue Well	UALAPUE WELL	KAUNAKAKAI	69
202010432872	Wailuku Gym & Pool	2026 PAKAHI ST	WAILUKU	68
202013551223	Waiehu Golf Course	WAIEHU GOLF COURSE	WAILUKU	67
202011145804	Street Lights	AKAHI ST	LANAI CITY	66
202011523521	Sewer Pump Station - 4	S KIHEI RD SPS4	KIHEI	64
202010866475	Hana Community Complex	UAKEA RD	HANA	64
202011045608	Dept of Public Works - Office	41 KAAHUMANU AVE	WAILUKU	63
202010673632	Maui Lani Prkwy - Well 5	MAUI LANI PARKWAY WELL-5	WAILUKU	63
201012688903	Kekaa - Pump	KEKAA DR PUMP	LAHAINA	62
201015216470	Department of Water Supply	0000 W ALU RD	WAILUKU	60
202011089655	Police Station	1762 H PIILANI HWY A	LAHAINA	59
202013656428	Kawela Pump	KA WELA PUMP CL-09	KAUNAKAKAI	56
202011838325	Napili-HNKKW Sewer - NA-04	H PIILANI HWY NA-04	LAHAINA	53
202010762724	Department of Public Works	628 WHARF ST	LAHAINA	52
202014036281	Little League Park	REGIONAL PARK CL-09	KAUNAKAKAI	52
202013879871	Pool	SWIM POOL POLEI-I	KAUNAKAKAI	50
202010278978	Real Property Tax Division	70 E KAAHUMANU AVE A18	KAHULUI	50
202011231687	Maui Memorial Center	KANALOA AV FTBALL ST AVE	WAILUKU	49
202011381615	Fire Department	313 MANEA PL WHSE	WAILUKU	48
202011881457	Napili Water Treatment Plant	NAPILI RD	LAHAINA	47
202010082115	Kahalani Mid-Level Boosters	KEHALANI MIDLEVEL BOOSTERS	WAILUKU	47
202012265460	Sewer Pump Station - 5	S KIHEI RD SPS-5	KIHEI	47
202011111269	Fire Station	1762 H PIILANI HWY	LAHAINA	46
202011088699	Police Dept - Ulupalakua Radio Site	PUU MAHOE HILL	KULA	46
201012198606	Department of Water Supply.	KAHAKAPOO RD WTP	MAKAWAO	45
201013914043	Department of Parks and Rec	1501 LILOA DR PARK	KIHEI	45
202012032910	Irrigation Pumps - Kalama	KIHEI RD E-144	KIHEI	45
202010662163	Environmental Management - Pumping	PUNA RD	PAIA	44
202014328498	Claims Division	KANALOA AVE	WAILUKU	42
202011306554	Sewer Pump Station - 3	S KIHEI RD SPS3	KIHEI	41
202011392851	Dept of Parks and Rec - Pool	145 KAULAWAHINE ST	KAHULUI	40
202010532150	Sewer Maintenance Building	58 HANA HWY	KAHULUI	39
202011410117	Napili-HNKKW Sewer - NA-03	H PIILANI HWY NA-03	LAHAINA	39

202011339100	Dept of Public Works?	86 KAMEHAMEHA AVE	KAHULUI	37
202010433292	Kahului Fire Station	200 DAIRY RD	KAHULUI	36
202010160226	Waiehu Golf Course	HALEWAIU RD	WAILUKU	36
202011395748	Wailuku Fire Station	1972 KINIPOPO ST	WAILUKU	35
202011414424	Kahaha Well 2 - Pump 576	3500 LAHAINALUNA RD	LAHAINA	34
202011158294	Environmental Management - Landfill	PULEHU RD	PUUNENE	34
201013118710	Department of Water Supply	HANA HWY	HANA	33
202012094290	Napili Fire Station	HANAWAI ST	LAHAINA	32
202011099522	Park	MILL ST BASEBALL	LAHAINA	30
201011521642	Street Lights	MAUI LANI PARKWAY ST-LITE	WAILUKU	30
202010480707	Paukukalo Pump Station	608 KALAKAUA ST	WAILUKU	30
202010150730	KCC - Irrigation Well	ONEHEE ST	KAHULUI	30
201010531444	Lahaina Gateway Center	335 KEAWE ST B108	LAHAINA	29
202013055076	Pukalani Community Center	PUKALANI ST	PUKALANI	29
202010152744	Malu Ulu Olele Pump Station 5	FRONT ST	LAHAINA	29
202012039774	Fire Station	S KIHEI RD FIRE	KIHEI	28
202010258699	Kaa Pump Station	ALAHAO ST	KAHULUI	28
202010566703	Omaopio Tank & Booster - Pump - 580	OLD HALEAKALA HWY	PUKALANI	28
202011111541	Fire Station	HANA HWY	PAIA	27
202010402537	Papohaku Park	LOWER MAIN ST	WAILUKU	26
202011165364	Park	LILOA DR SOFTBALL	KIHEI	26
202011045152	Maui War Memorial Statium	KAAHUMANU AVE	WAILUKU	25
202013492972	Fire Station	KULA HWY	KULA	25
202010068924	Central Wailukui Heights - Pump #3	LII WAY PMP#3	WAILUKU	25
202011236298	Makawao Fire Station	MAKAWAO AVE	PUKALANI	25
202011111749	Lahaina Civic Center	1762 H PIILANI HWY	LAHAINA	23
202012389237	Dept of Finance?	131 S KIHEI RD	KIHEI	23
202011339290	Dept of Public Works?	86 KAMEHAMEHA AVE	KAHULUI	23
202010662940	Hana Civic Center	HANA HWY	HANA	22
202013339595	Park	KALAMA PKWY RINK	KIHEI	21
201011548975	Dept of Parks and Rec	211 KANALOA AVE	WAILUKU	21
202012386498	Environmental Management - Pumping	S KIHEI RD KIHEI-2	KIHEI	21
202013706314	Police Dept - Puu O Hoku Radio Station	PUU O HOKU CL-09	KAUNAKAKAI	21
202010428227	Dept of Finance - Office	1840 H PIILANI HWY	LAHAINA	20
202013781945	Fire Station	HOOLEHUA FIRE STATION CL-09	HOOLEHUA	20
202013812286	Hana Fire Station	HANA HWY	HANA	20
202010402818	Wailuku Community Center	395 WAENA ST WKU	WAILUKU	19
202010431064	Lanai Gym	LANAI AVE	LANAI CITY	19
202010343210	Keanae Well and Pump	WAILUA RD	HAIKU	18
202013875325	Molokai Community Center	MOLOKAI COMMUNITY CENTER CL-09	KAUNAKAKAI	18
202012039618	Lahaina Sewer Treatment Plant	H PIILANI HWY KAPALUA	LAHAINA	18
202010021105	Lanai Senior Center	309 SEVENTH ST	LANAI CITY	18
202014132494	Police Station	HANA AIRPORT SITE	HANA	18
202010842492	Environmental Management - Sewer	AKAKUU ST SEWER	WAILUKU	17

202011300847	Ainakea Park	ALAMOANA ST 4	LAHAINA	17
202013874856	Department of Water Supply	MAHINAHINA RD W	LAHAINA	17
202011298462	Skill Village - Pump - 595, 596	BALDWIN AVE	PAIA	17
202011095405	Wailuku Country Estates - Booster 3	WKU CTRY EST #3 BOOSTER	WAILUKU	16
202014133518	Police Station	KEANAE	HANA	16
202013714466	Kamiloloa Booster	KAHINANI PL PUMP	KAUNAKAKAI	16
202010438010	Spreck Pump Station	LAULEA PL	PAIA	16
202010984203	Kaunoa Senior Center	HANA HWY	PAIA	16
202010738021	Wakea - Sewer Pump Station	WAKEA AVE	KAHULUI	16
202010063370	Wailuku Tennis Center	WELLS ST TENNIS CRT ST	WAILUKU	16
202010872440	Kalae - Well 1	KAPALUA PL WELL-1	LAHAINA	16
202010561100	Haleakala Acres - Pumps 547, 548	OLD HALEAKALA HWY	KULA	16
202010129445	Kahului Community Center	UHU ST ST	KAHULUI	15
201013090836	Street Lights	MAUI LANI/KAM AVE S/L S/L	KAHULUI	15
202013304904	Environmental Management	SEWER TREATMENT STATION CL-09	KAUNAKAKAI	15
202010432419	Wailuku Gym & Pool	2026 PAKAHI ST	WAILUKU	15
202011030071	Environmental Management - Pumping	1827 KAOHU ST	WAILUKU	15
202010403170	Papohaku - Well Pump	LOWER MAIN ST PUMP-PAR	WAILUKU	15
202013682143	Department of Public Works	MLOA HWY	KAUNAKAKAI	15
201014619849	Hale Mahaolu Ewalu Senior Housing	65 OHIA KU ST COMM CTR	PUKALANI	15
202010068205	Wells Park & Tennis Court	1967 WELLS ST	WAILUKU	15
202010151050	Kahului Community Center Park	ONEHEE AVE	KAHULUI	14
202010130005	Kahului Community Center	275 UHU ST	KAHULUI	14
202010435180	Kula Community Center	KULA HWY E2-103	KULA	13
202010212027	Leisure Estate - Sewer Pump Station	AKAKE ST	WAILUKU	13
202011746015	Environmental Management	WAILEA RD COM-WWP2	KIHEI	13
202010734038	"Flako" Gym and Paia Park	BALDWIN AVE E57	PAIA	13
202011481183	Lanai WWTP	LANAI CITY	LANAI CITY	12
202010311811	Lahaina Recreation Center	SHAW ST	LAHAINA	12
202011087683	Waiehu Golf Course - Clubhouse	2220 KAHEKILI HWY	WAILUKU	12
202011115096	Environmental Management	2020 H PIILANI HWY KA-02	LAHAINA	12
202013272572	Environmental Management - Landfill	KAMEHAMEHA V HWY	HOOLEHUA	12
202011035286	Lahaina Park	245 SHAW ST	LAHAINA	12
202013554854	Eddie Tam Memorial Center	HALE KIPA RD RESTRM	MAKAWAO	12
202011657931	Sewer Pump Station - 16	4850 MAKENA ALANUI RD SP16	KIHEI	12
202013185717	Koali Boosters	HANA HWY KOALI	HANA	12
202011746338	Park	WAILEA RD WLKWY	KIHEI	12
202011041961	Dept of Parks and Rec	544 IAO RD	WAILUKU	12
202013157880	Park	S KIHEI RD COMFORT	KIHEI	11
202010794222	Police Station	31 KEANINI DR POLICE	HANA	11
202011348218	Kahului Community Center Park	ONEHEE AVE TENNIS	KAHULUI	11
202011307339	Street Lights	PRISON E9 ST	LAHAINA	11
202013786670	Department of Public Works	MLOA HWY	KAUNAKAKAI	11
202011555192	Environmental Management	NOHEA KAI ST KA-01	LAHAINA	11

202010527739	Makawao Park	MAKAWAO AVE 3	MAKAWAO	11
202011205038	Haiku Community Center	1008 HANA HWY	HAIKU	11
202010100925	Park	LOWER KULA RD	KULA	11
202010242875	Park	MAIHA ST PARK	LAHAINA	11
202013946332	Lahaina Baseball Complex	H PIILANI HWY BASEBALL	LAHAINA	10
202010682898	Department of Finance - Office	788 PAUOA ST	LAHAINA	10
202013275757	Kalae - Booster	KALAE BOOSTER	KUALAPUU	10
201014675460	Department of Finance - Office	2154 KAOHU ST A	WAILUKU	10
202012060762	Napili-HNKW Sewer - NA-05	H PIILANI HWY NA-05	LAHAINA	10
202014298295	Fire Station	PUKOO FIRE STATION CL-09	KAUNAKAKAI	10
201012194795	Environmental Management - Landfill	PULEHU RD	PUUNENE	10
202010839050	Wailuku Mini Park	70 N MARKET ST	WAILUKU	10
202011165661	Park	LILOA DR SOCCER	KIHEI	9
202010894394	Hana Garage	1510 UAKEA ST	HANA	9
201014259315	Dept of Parks and Rec	4655 KAMEHAMEHA AVE SWBD #3	KAHULUI	9
201012569772	Kahakuloa Radio Site	KAHAKULOA RADIO SITE	WAILUKU	9
201013118728	Department of Water Supply	HANA HWY	HANA	9
202013403698	Waiehu Terrace Park	ALIHILANI ST	WAILUKU	9
202011112879	Pukalani Community Center	252 HANA HWY	PAIA	9
202011017383	Street Lights	125 L LUNA RD	LAHAINA	9
202011393313	Kahului Pool	145 KAULAWAHINE ST	KAHULUI	9
202014141826	Molokai Baseyard	MAKAENA PL	KAUNAKAKAI	8
201013213545	Department of Finance	2050 MAIN ST 2B	WAILUKU	8
202010245464	Office economic dev - Maui Mall	MAUI MALL B9	KAHULUI	8
202010628438	Street Lights	HANA HWY	HANA	8
202011233808	Makawao Memorial Park	MAKAWAO AVE	PUKALANI	8
202013561370	Police Station	POLICE COTT A	KAUNAKAKAI	8
202011232628	Maui Memorial Center	KANALOA AV ZOO AVE	WAILUKU	8
201011689316	Street Lights	KAH IND PARK PH. 1B (18) S/L	KAHULUI	8
201013563816	Dept of Parks and Rec	4655 KAMEHAMEHA AVE SW BRD1	KAHULUI	8
202010111823	Haiku Community Center	1008 HANA HWY	HAIKU	8
202010988113	Hana - Pump 3	HANA HWY PMP-3	PAIA	7
202014063012	Kualapuu Community Center	LAMAII PL	KUALAPUU	7
202014168522	Eddie Tam Memorial Center	1075 MAKAWAO AVE	MAKAWAO	7
202013873775	Lahaina - Public Works Baseyard	3310 LOWER HONOAPIILANI RD	LAHAINA	7
202010657023	DHHL - Kula - Pump Station 2	KULA HWY PUMP	KULA	7
201013563824	Dept of Parks and Rec	4655 KAMEHAMEHA AVE SW BRD2	KAHULUI	7
202010037911	Lahaina - Sewer Pump Station 6	360 FRONT ST	LAHAINA	7
202010127563	Armory Park	519 FRONT ST	LAHAINA	7
202010739409	Hana Ball Park	HANA HWY	HANA	6
202010988501	Hana - Sewer Pump Station - 4	HANA HWY PMP-4	PAIA	6
202010987685	Hana - Pump 2	HANA HWY PMP-2	PAIA	6
202012033462	Kalama Park	S KIHEI RD TENNIS	KIHEI	6
202010249755	Street Lights	HANA HWY LITES	PAIA	6

202011360171	Fire Station	FRASER AVE	LANAI CITY	6
202010255588	Street Lights	FRONT E9 ST	LAHAINA	6
202010063792	Wailuku Tennis Center	WELLS ST	WAILUKU	6
201011521618	Street Lights	LAA ST,MAA ST,PAA ST STLITE	WAILUKU	6
201013521301	Kahului Park	5795 HINA AVE	KAHULUI	6
202011055235	Street Lights	LAH BUSINESS PKWY ST- LITES	LAHAINA	6
202014064879	One Alii Park	ONE ALII PARK	KAUNAKAKAI	5
202010437574	Pakele Street - Pump Station	PAKELE ST PUMP STN PL	WAILUKU	5
202010925727	Police Station	1625 UAKEA ST	HANA	5
202010987396	Environmental Management	HANA HWY KUAU	PAIA	5
202011011220	Paia Basketball Court	HANA HWY	PAIA	5
202010282103	Department of Public Works	251 NAPUA ST	WAILUKU	5
201012524140	Department of Public Works	LILOA DR	KIHEI	5
201012223677	Wells Street Professional Center	2145 WELLS ST 103	WAILUKU	5
201010581134	Department of Water Supply	00-00 LAHAINALUNA RD	LAHAINA	5
202011304633	Baseyard - Garage St	KAOHU ST	WAILUKU	5
202013562071	Police Station	POLICE COTTAGE B	KAUNAKAKAI	5
202014291639	Kanaha Beach	KANAHUA BCH PKWY LIFE- GUA	KAHULUI	5
202011334515	Makawao Veterans Cemetery	76 BALDWIN AVE CEMETERY	MAKAWAO	5
202011731355	Dept of Parks and Rec	2594 S KIHEI RD	KIHEI	5
202012037612	Park Lighting	KALAMA PKWY LITES	KIHEI	5
202013936820	Dept of Parks and Rec	WAIPONO LN RESTROOM	WAILUKU	5
202013469772	Kuhao Business Center	KAUNAKAKAI-KUHAO BUS CTR CL-09	KAUNAKAKAI	5
202011801000	Park	KENOLIO RD COMFORT	KIHEI	4
201014978716	Moore Center	2 KAMOI PL UNIT-3	KAUNAKAKAI	4
202014035028	Parking Lot	KAI AU PL PRK-LITE	KIHEI	4
201014249688	Dept of Parks and Rec	WHARF ST 23	LAHAINA	4
201014619856	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A102	PUKALANI	4
202010327353	Police Station	29 KEANINI DR POLICE-C	HANA	4
202013240736	Kilohana Community Center	KILOHANA COMMUNIT	KAUNAKAKAI	4
202010010363	Dept of Parks and Rec	KUUPAOA & OHIA KU ST	KULA	4
202011490010	Makena - Parking	MAKENA RD PKLITE	KIHEI	4
202010701573	Haliimaile Park and Tennis	75 MAKOMAKO ST	MAKAWAO	4
202011087568	Hanakaoo Beach Park	H PHILANI HWY	LAHAINA	4
202011170851	Off Street Parking - Lights	200 VINEYARD ST	WAILUKU	4
202010341545	Street Lights	870 FRONT ST	LAHAINA	4
202011882687	Honukahu Well	NAPILI RD A	LAHAINA	4
201014620953	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E104	PUKALANI	4
202012389864	Kihei School	KIHEI SCHOOL E-10	KIHEI	4
202010097709	Dept of Finance	2145 WELLS ST 104	WAILUKU	4
202010271718	Street Lights	LAH BUSINESS PARK PH2 ST-LITE	LAHAINA	4
202011303585	Baseyard - Garage St	KAOHU ST	WAILUKU	4
202011313642	Kaunaoa Senior Center	401 ALAKAPA PL	PAIA	4

20101222992	Environmental Management	PUALEI DR	LAHAINA	4
201012064857	Kamaole Beach Park I	S KIHEI RD PARK	KIHEI	4
202011140896	Waikapu	WAIKO RD PARK RD	WAILUKU	4
201014686327	Street Lights	WAIKALE RD S/L	WAILUKU	4
202010811513	Park	LILOA DR OFF	KIHEI	4
202011305226	Baseyard - Garage St	KAOHU ST CM GARAGE ST	WAILUKU	4
202010406454	Lanai Gym	411 EIGHTH ST	LANAI CITY	3
202010496174	Hamakuapoko Well 2 & Boosters	HAMAKUAPOKO WELL-2	HAIKU	3
201014621324	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F205	PUKALANI	3
202011205491	Haiku Community Center	HANA BALL PARK HWY	HAIKU	3
202011278340	Street Lights	PAPELEKANE ST	LAHAINA	3
201014621134	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F103	PUKALANI	3
202011147016	Police Station	518 AKAHU ST	LANAI CITY	3
202010373738	Makawao Baseyard	1285 MAKAWAO AVE	MAKAWAO	3
201012918458	Pump	WAIKALE DR PUMP	WAILUKU	3
202011170232	Street Lights	493 S KAMEHAMEHA AVE	KAHULUI	3
202012038008	Honolua	H PIILANI HWY	LAHAINA	3
202010731836	Street Lights	670 MOLOKAI AKAU ST	KAHULUI	3
202011731892	Kamaole Beach Park III	S KIHEI RD KAMA3	KIHEI	3
202010709329	Ukumehame Firing Range	H PIILANI HWY FIRING	LAHAINA	3
202013339421	Dept of Parks and Rec	HOOKIPA PARK RESTRM	PAIA	3
202012417533	Waipoina	S KIHEI RD	KIHEI	3
201014620979	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E202	PUKALANI	3
201014620961	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E102	PUKALANI	3
202013718103	Little League Park	LITTLE LEAGUE PARK CL-09	KAUNAKAKAI	3
201014620078	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B105	PUKALANI	3
201014620284	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B205	PUKALANI	3
202010630335	Dept of Parks and Rec	280 SHAW ST	LAHAINA	3
201014620904	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D203	PUKALANI	3
202011094531	Claims Division	UAKEA RD	HANA	3
201014619864	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A103	PUKALANI	3
202013935947	Department of Parks and Rec	APAU PL	MAKAWAO	3
201014620896	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D202	PUKALANI	3
202010348979	Street Lights	229 S LEHUA ST	KAHULUI	3
202013059953	Carpenter Shop	1827 KAOHU ST	WAILUKU	3
202011095694	Wailuku Country Estates - Booster 2	WKU CTRY EST #2 BOOSTERS	WAILUKU	3
202011428044	Makawao Basketball Court	MAKAWAO AVE BB-CRT	PUKALANI	3
202010230540	Park	1827 KAOHU ST	WAILUKU	2
202010151308	Malu Ulu Olele Park	558 FRONT ST	LAHAINA	2
201014620599	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C103	PUKALANI	2
201014620243	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B203	PUKALANI	2
202011481290	Baseyard - Lanai	LANAI CITY	LANAI CITY	2
201014620862	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C204	PUKALANI	2
201015107885	Dept of Parks and Rec	3535 KEHALANI PARKWAY	WAILUKU	2
202010432013	Waikoa Gym	3590 KULA HWY GYM	KULA	2

202011308535	Street Lights	366 NIIHAU ST	KAHULUI	2
201014621209	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F105	PUKALANI	2
202010739730	Hana Tennis Court - Lighting	HAUOLI ST	HANA	2
201014621720	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A204	PUKALANI	2
201014620300	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C101	PUKALANI	2
201014620524	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A202	PUKALANI	2
202010827618	Hana Bay Beach Park	1632 KEAWA PL	HANA	2
202010836593	Dept of Parks and Rec	KALAMA PKWY SKATE	KIHEI	2
201014619880	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A201	PUKALANI	2
202014125472	Park	H PHILANI HWY COMFORT	LAHAINA	2
202013903960	Kaunakaka Park	KAUNAKAKAI BALL-PAR	KAUNAKAKAI	2
201014620011	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B102	PUKALANI	2
201014620839	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C202	PUKALANI	2
202010662502	Baldwin Park	HANA HWY	PAIA	2
201014620565	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D103	PUKALANI	2
201011520578	Dept of Public Works	WAIKALE RD & KUIKAHI DR	WAILUKU	2
202010984831	Senior Citizen MP	HANA HWY	PAIA	2
201014620847	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C203	PUKALANI	2
202010259093	Traffic Signal - Lono Ave	LONO AVE	KAHULUI	2
201014620516	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C102	PUKALANI	2
202010925156	Wailuku Elementary School	355 S HIGH ST	WAILUKU	2
201014620276	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B204	PUKALANI	2
201014620532	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A203	PUKALANI	2
201014621167	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F202	PUKALANI	2
201014620987	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E203	PUKALANI	2
202011011477	Pukalani Community Center	PUKALANI ST	PUKALANI	2
201013127828	Department of Water Supply	0000 S ALU RD	WAILUKU	2
201014741239	Department of Public Works	HOOKELE ST/PAKAULA ST TRF SIG	KAHULUI	2
202010720888	Moore Center	2 KAMOI PL UNIT-4	KAUNAKAKAI	2
201014620946	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E103	PUKALANI	2
202010480483	Department of Public Works	KAMEHAMEHA AVE/HINA AVE	KAHULUI	2
201014301810	Department of Parks and Rec	MAUI LANI PKWY	KAHULUI	2
201016011797	County Auditor - Office	2145 WELLS ST 303	WAILUKU	2
201014621183	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F203	PUKALANI	2
202013557246	Dept of Finance	NINTH ST	LANAI CITY	2
202013728573	Lanai Community Complex	FRASER AVE TENNIS	LANAI CITY	2
202012626596	Kamaole Beach Park II	S KIHEI RD KAMA2	KIHEI	2
202013051398	Traffic Signal - S Kihei Rd & Alamaha	WAKEA & ALAMAHA	KAHULUI	2
202013554771	Eddie Tam Memorial Center	HALE KIPA RD E6-49	MAKAWAO	2
201014621126	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F102	PUKALANI	2
201014620607	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C104	PUKALANI	2
201014620037	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B103	PUKALANI	2
202010098087	Dept of Parks and Rec	KUULA ST	KAHULUI	2
201014620557	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D102	PUKALANI	2
201014741247	Dept of Public Works	HOOKELE ST TRF SIG	KAHULUI	2

202011307602	Street Lights	PRISON ST	LAHAINA	2
201014621142	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F104	PUKALANI	2
202010011098	Dept of Finance	KUUPAOA & OHIA KU ST	KULA	2
202014193561	Traffic Signal	WAKEA/ONEHEE RD INTERSEC	KAHULUI	2
201014620094	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B106	PUKALANI	2
202010049775	Traffic Signal	HOOHANA ST/KAMEHAMEHA AVE TRAF	KAHULUI	2
202010879478	Traffic Signal - Liloa & Lipoa St	LILoa DR/LIPOA ST TRAF	KIHEI	2
202010898106	Traffic Signal - Onehee & Papa Ave	ONEHEE & PAPA AVE	KAHULUI	2
201014619872	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A104	PUKALANI	2
202010399667	Traffic Signal - Lower Main & Hookahi St	L MAIN/HOOKAHI ST	WAILUKU	2
201014620821	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST C201	PUKALANI	2
201011791575	Dept of Public Works	KAM AV & KANE ST	KAHULUI	2
201014621191	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F204	PUKALANI	2
202010659722	Traffic Signal - Piikea Ave	PIIKEA AVE	KIHEI	2
201014619823	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST A101	PUKALANI	2
202014060075	Traffic Signal	LOWER MAIN ST TRF-SIG	WAILUKU	2
202010999235	Hamakuapoko Well I & Boosters	HOLOMUA RD HPKO	HAIKU	2
202010202275	Traffic Signal	WAKEA/HOOHANA ST TRF- SIG	KAHULUI	1
202011171164	Parking Lot	LUAKINI ST PRK-LT	LAHAINA	1
201014790921	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST HM	PUKALANI	1
201014619898	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B101	PUKALANI	1
201014620581	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D104	PUKALANI	1
202010745612	Traffic Signal - S Kihei Rd & Welakahao Rd	S KIHEI/WELAKAHAO RD TRAF-SIG	KIHEI	1
202010876086	Dept of Public Works	3855 WAILEA ALANUI DR	KIHEI	1
201014620045	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B104	PUKALANI	1
202013945763	Traffic Signal	LONO & HINA AVE	KAHULUI	1
202013592664	Kualapuu Park	KUALAPUU PARK CL-09	KUALAPUU	1
202010791863	Traffic Signal - Lono & Wakea Ave	LONO/WAKEA AVE	KAHULUI	1
202014136016	Traffic Signal	ALAMAHA ST/KAM AVE TRAFF	KAHULUI	1
201014620995	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E204	PUKALANI	1
202011751700	Traffic Signal	S KIHEI RD E125	KIHEI	1
202011200534	Lahaina Recreation Center	MILL ST	LAHAINA	1
202011832203	Traffic Signal - S Kihei Rd &	S KIHEI RD	KIHEI	1
202010873505	Traffic Signal	S KIHEI RD/KE ALI ALANUI RD	KIHEI	1
201014620938	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E201	PUKALANI	1
202013901006	Tennis Court	TENNIS COURT LITES CL-09	KAUNAKAKAI	1
202014310546	Mahinahina Baseyard	MAHINAHINA	LAHAINA	1
202011275437	Traffic Signal - Lahina Shopping Center	PAPALAU/WAINEE ST	LAHAINA	1
202013219847	Piilani Firing Range	H PIILANI HWY FIRING	LAHAINA	1
202011212059	Dept of Finance	140 MAUNALOA RD	MAUNALOA	1
201014620912	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D204	PUKALANI	1
202010998526	Traffic Signal	WAKEA/KEA ST TRF-SIG	KAHULUI	1
201011062365	Traffic Signal	WAKEA/HINA AVE TRF SIG	KAHULUI	1

202010018176	Hookipa Park	HOOKIPA PARK LIFE GUAR	PAIA	1
202010217281	Keokea Park	218 KULA HWY	KULA	1
201014621159	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F201	PUKALANI	1
202010506584	Traffic Signal	MAKAWAO & HALEAKALA SIGNL	PUKALANI	1
202010240226	Pump - DHHL Kula Kai - Booster	MANO DR DHHL-PMP	KULA	1
202011368968	Street Lights	180 DICKENSON ST	LAHAINA	1
201014620292	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B206	PUKALANI	1
202011206200	Kahakuloa School	3508 KAHEKILI HWY	WAILUKU	1
202010991828	Traffic Signal - Keala Pl	KEALA PL TRF-LITE	KIHEI	1
202011299544	Lahaina Park	LAUNIUPOKO PARK- RESTROOM	LAHAINA	1
202014000923	Papohaku Beach Park	PAPOHAKU BEACH PARK	MAUNALOA	1
202014255055	Civic Center Boosters	CIVIC CENTER BOOSTER	LAHAINA	1
202011057389	Dept of Public Works	KAMEHAMEHA AVE/PAPA AVE	KAHULUI	1
202011525120	Wailea Parking Lights	KILOHANA DR	KIHEI	1
201014620920	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST E101	PUKALANI	1
202013698594	Kaunoa Senior Center	ALAKAPA PL	PAIA	1
202013462967	Traffic Signal	WAKEA/KAM AVE TRF-SIG	KAHULUI	1
202013873742	Honokowai Booster Pump	LOWER HONOAPIILANI RD BSTR-1	LAHAINA	1
202011427640	Makawao Tennis Court	1602 MAKAWAO AVE	MAKAWAO	1
201014620235	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B202	PUKALANI	1
202013598430	Ukumehame Firing Range	H PIILANI HWY FIRING	LAHAINA	1
202014198347	Wailea Tank - Booster	WAILEA TANK BOOSTERS	KIHEI	1
202011057611	Traffic Signal - Lower Main & Mill St	L MAIN/MILL ST TRAFFIC	WAILUKU	1
202011396266	Wailuku Fire Station	1972 KINIPOPO ST	WAILUKU	1
202010659698	Traffic Signal - C Road & Piilani Hwy	C RD/PIILANI HWY TRF-LITE	KIHEI	1
202011042357	Iao Water Treatment Plant	IAO VALLEY RD E90	WAILUKU	1
201014620870	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D201	PUKALANI	1
201014620540	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST D101	PUKALANI	1
201014790491	Hale Mahaolu Ewalu Senior Housing	57 OHIA KU ST HM	PUKALANI	1
202010982900	Traffic Signal	PUKALANI ST TRF-SIG	PUKALANI	1
202010303032	Traffic Signal	KAHULUI TANK SCADA	WAILUKU	1
202010909879	Dept of Parks and Rec	75 MAKOMAKO ST	MAKAWAO	1
201014621340	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F106	PUKALANI	1
202013402138	Mokuhau Park	NENEA ST	WAILUKU	1
202010977405	Dept of Public Works	N MARKET ST	WAILUKU	1
201014620102	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST B201	PUKALANI	1
201014621316	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F206	PUKALANI	1
201014790509	Hale Mahaolu Ewalu Senior Housing	59 OHIA KU ST HM	PUKALANI	1
202010434886	Kule Extention B	3690 LOWER KULA RD	KULA	1
202010983403	Pukalani Community Center	PUKALANI ST	PUKALANI	1
201014621118	Hale Mahaolu Ewalu Senior Housing	61 OHIA KU ST F101	PUKALANI	1
202010430173	Kahului Bobby Sox Field	LONO BALL PARK AVE	KAHULUI	1
201015746997	Tank Farm - Pulehu Rd	8100 PULEHU RD TANK FARM	PUUNENE	1
202013841335	Kalama Park	S KIHEI RD	KIHEI	1

201014790483	Hale Mahaolu Ewalu Senior Housing	55 OHIA KU ST HM	PUKALANI	1
202014328936	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	1
201013563832	Dept of Parks and Rec	KAM AVE	KAHULUI	1
201014790913	Hale Mahaolu Ewalu Senior Housing	63 OHIA KU ST HM	PUKALANI	1
202010276303	Kaunoa Senior Center	401 ALAKAPA PL E3	PAIA	1
202011088624	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	1
202010185785	4th Marine Division Memorial Park	KOKOMO RD	HAIKU	1
202010214288	Wakiu Well - Pump - 559, 560	HANA HWY	HANA	1
201015522638	Puuohala Basketball Court	1660 PUUOHALA RD PARK	WAILUKU	0
201014790475	Hale Mahaolu Ewalu Senior Housing	53 OHIA KU ST HM	PUKALANI	0
202011096148	Claims Division	MILL ST	LAHAINA	0
202011149293	Police Station	548 AKAHI ST	LANAI CITY	0
202013901709	Court	MPC COURT-YA	KAUNAKAKAI	0
202011247733	Lahaina Civic Center	H PIILANI HWY	LAHAINA	0
202014299822	Dept of Finance	KULA HWY	KULA	0
202013216538	Reservoir	WAIKAMOI RD KAHA-RSV	MAKAWAO	0
202011525955	Kilohana	KILOHANA DR E1-12	KIHEI	0
202010431536	Lanai Community Complex	46 FRASER AVE	LANAI CITY	0
202013218294	Kilohana Park	KILOHANA BASKETBA	KAUNAKAKAI	0
202010979872	Dept of Finance	S MARKET ST	WAILUKU	0
202014035721	Nahiku SCADA System	L NAHIKU RD E1-6	HANA	0
202010764415	Dept of Public Works	BALDWIN AVE PKLOT	PAIA	0
201014380087	Dept of Parks and Rec	22 E WAIKO RD BASKETBALL	WAILUKU	0
202010928291	Kula Ag - Pump Station	PULEHU RD 3	KULA	0
202011100049	Dept of Public Works	PIIKEA AVE/LILOA DR	KIHEI	0
202011087980	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	0
202013931847	Makawao Public Parking Lot	MAKAWAO AVE PRK-LITE	PUKALANI	0
202013718400	Little League Park	K KAI LITTLE LEAGUE PRESS-BO	KAUNAKAKAI	0
202010116624	Kaunoa Senior Center	401 ALAKAPA PL	PAIA	0
202010826883	Hana Beach Pavilion	1628 KEAWA PL	HANA	0
201014982361	Haleakala Hwy Pump	0 HALEAKALA HWY PUMP	KULA	0
202011088327	Dept of Parks and Rec	1758 H PIILANI HWY	LAHAINA	0
202013276573	Kalae - Water Tank	KALAE WATER-TN	KUALAPUU	0
202010242941	Lipoa St - Reservoir	LIPOA ST RESERVOI	KIHEI	0
201011193327	Dept of Finance	201 KANALOA AVE	WAILUKU	0
202014350120	Park	WELLS ST PARK	WAILUKU	0
202011946995	Alaeloa Tank	ALAELOA TANK	LAHAINA	0
202011946599	Napili Water Treatment Plant	H PIILANI HWY	LAHAINA	0
202011214287	Dept of Finance	1295 MAKAWAO AVE SHOP	MAKAWAO	0
202011480714	Wailea Parking Lights	S KIHEI RD	KIHEI	0
201010296311	Department of Water Supply	ULUANUI RD	KAUNAKAKAI	0
202010656843	Pump - DHHL #1 - 3000 Kula	KULA HWY 3000	KULA	0
202014217121	Maalaea Valve	HAUOLI ST	WAILUKU	0
202010141804	Dept of Finance	LAE ST	PAIA	0
202011164623	Department of Water Supply	HWN HOMES #4	KULA	0

202010656892	Pump - DHHL #3 - 5000 Kula	KULA HWY 2355	KULA	0
202010150318	Onehee	E5 ONEHEE ST ST	KAHULUI	0
202011427566	Wailuki Heights - Tank 29	KUIKAHI DR HTS-4	WAILUKU	0
202010005900	Ukumehame Firing Range	UKUMEHAME FIRING RANGE	LAHAINA	0
202013374436	Kamaole Storage Tank	PIILANI HWY	KIHEI	0
201012705160	Dept of Parks and Rec	OLOMEA ST/MAKAI PARK	WAILUKU	0
202013559655	Waiehu Golf Course	2220 KAHEKILI HWY	WAILUKU	0
202011030691	Onehee	7 ONEHEE ST	KAHULUI	0
202010005280	Old Wailuku Heights Tank	EKOA PL E1A-8	WAILUKU	0
202010815068		MO OLU ST IRRIG	WAILUKU	0
202010730796	Upper Paia - Concrete Tank	BALDWIN AVE	PAIA	0
201015937083		2231 HALEWAIU ST	WAILUKU	0
201015937117		2221 HALEWAIU ST	WAILUKU	0
202010866020	Ainakea Park	AINAKEA RD	LAHAINA	0
202013309945	Civil Defense Siren	MLOA HWY 1ST-STRE	MAUNALOA	0
201016146593	Kaahumanu Park Lighting & Carnival Meter	KAAHUMANU AVE SOCCER	WAILUKU	0
202010593368	Haliimaile Tennis Court	HALIIMAILE RD E41	MAKAWAO	0
202011046580	Kaahumanu Park Lighting & Carnival Meter	KAAHUMANU AVE SOCCER	WAILUKU	0

Schedule B

The schedule below contains identified Purchaser owned TMKs and the adjacent TMKs owned by private parties. The Parties agree and acknowledge that prior to the Commencement of Installation of a System on an adjacent TMK land owner's Site listed in this **Schedule B to Exhibit 2**, a land lease (the "**Land Lease**") is required with the land owner of such Site. The Land Lease shall be in form and substance satisfactory to the Purchaser. The Parties agree that any Land Lease entered into with a third party owner of a Site shall provide that the Purchaser shall (i) have no monetary obligations under the Land Lease; except as set forth in item (v) below; (ii) no affirmative or negative covenants and/or obligations under the Land Lease; (iii) no liability to any party or person under the Land Lease; (iv) no obligation of indemnification under the Land Lease; and (v) pay no greater than the sum of \$1.00 per year under any Land Lease, which sum is subject to the non-appropriation clause set forth in Section 17.d. of this Agreement and Section 36-41, Hawai'i Revised Statutes. The Parties further agree that any Land Lease shall provide that if a System or a Site subject to such Land Lease is terminated pursuant to this Agreement, including but not limited to Sections 2.d., 2.e. and 5.g. of this Agreement, or the terms of the Land Lease, the Purchaser shall be released from any and all obligations or responsibilities related to such Land Lease without any further action by the Purchaser. Seller agrees that it shall be responsible for any and all necessary title searches, licenses, permits, approvals and entitlements related to a Land Lease and installation and maintenance of the System thereon. A draft of any Land Lease shall be provided to Purchaser for review and approval no later than thirty (30) business days prior to the target date of execution.

[Schedule follows on next page]

County Owned TMK	Owner Name	Adjacent TMK	Adjacent TMK Owner	Acreage
220240100000	COUNTY OF MAUI	220020840000	HALEAKALA RANCH COMPANY	2,175
220240110000	COUNTY OF MAUI	220020840000	HALEAKALA RANCH COMPANY	2,175
220240260000	COUNTY OF MAUI, BOARD OF WATER SUPPLY	220020840000	HALEAKALA RANCH COMPANY	2,175
220020700000	COUNTY OF MAUI	220020010003	HALEAKALA RANCH COMPANY	2,504
220020740000	BOARD OF WATER SUPPLY	220020010012	HALEAKALA RANCH COMPANY	2,504
220020510000	COM/BD OF WATER SUPPLY	220020010013	HALEAKALA RANCH COMPANY	2,504
230070330000	BOARD OF WATER SUPPLY COUNTY OF MAUI	230070370000	HALEAKALA RANCH COMPANY	11
230050250000	BOARD OF WATER SUPPLY	230050040000	HALEAKALA RANCH COMPANY	9,908
230060060000	COUNTY OF MAUI	230050040000	HALEAKALA RANCH COMPANY	9,908
230060060000	COUNTY OF MAUI	230060010000	HALEAKALA RANCH COMPANY	1,383
230040330000	COUNTY OF MAUI	230040130000	HALEAKALA RANCH COMPANY	643
230040320000	COUNTY OF MAUI	230040130000	HALEAKALA RANCH COMPANY	643
230040340000	COUNTY OF MAUI	230040160000	HALEAKALA RANCH COMPANY	752
230040200000	COUNTY OF MAUI	230040160000	HALEAKALA RANCH COMPANY	752
440020290000	COUNTY OF MAUI	440020390000	PIONEER MILL COMPANY, LLC and KAAHAPALI LAND MANAGEMENT CORP	108
220020750000	COUNTY OF MAUI	220020690000	MONSANTO TECHNOLOGY LLC	310
210080570000	COUNTY OF MAUI Fee Owner	210080010000	ULUPALAKUA RANCH INC Fee Owner	2,564
210081390000	BOARD OF WATER SUPPLY-COM	210081400000	WAILEA GOLF LLC Fee Owner	374
210080960000	COUNTY OF MAUI	210080560000	HONUA'ULA PARTNERS LLC Fee Owner	567
340368880000	Owner not listed on records	330180020000	HORCAJO, ROBERT TRUST and HORCAJO, TAMARA TRUST	37
330020240000	COUNTY OF MAUI	330180020000	HORCAJO, ROBERT TRUST and HORCAJO, TAMARA TRUST	37
320140010000	BOARD OF WATER SUPPLY	320140010000	Wailuku Water Company LLC (sharing ownership of land with BWS)	5,306
350011070000	COUNTY OF MAUI	350010010000	LEDERMAN BROTHERS and HAWAIIAN GROWTH VENTURES LLC	268
350010210000	COUNTY OF MAUI	350010010000	LEDERMAN BROTHERS and HAWAIIAN GROWTH VENTURES LLC	268
350131400000	COUNTY OF MAUI	350010010000	LEDERMAN BROTHERS and HAWAIIAN GROWTH VENTURES LLC	268
350010910000	COUNTY OF MAUI	350011000000	KEHALANI COMMUNITY ASSOCIATION	5
250040060000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040800000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040140000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040530000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040540000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040750000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040810000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
250040050000	COUNTY OF MAUI	250040390000	MP EAST B LLC	2,438
460180190000	County of Maui and State of Hawaii	460180030000	BISHOP B P TR EST	1,137

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Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to and limited by the Purchaser Restrictions (hereinafter defined), Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by each System or Systems installed at each Site during the Term (as defined in Section 2.a. below). Electricity generated by each System or Systems installed at each Site shall be delivered to Purchaser at the Delivery Point related to such System and Site. Title to and risk of loss for the electricity generated by the System(s) installed at each Site passes to Purchaser from Seller at the System's respective Delivery Point. Purchaser may purchase electricity for any Site from other sources to the extent Purchaser's electricity consumption requirements at such Site exceed the output of the System(s) installed on such Site.
2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date (as defined on the cover page hereto). The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 5) of the last System to be placed in service and continues for the duration of the Initial Term (as defined in **Exhibit 1**) and any Additional Term (as defined in **Exhibit 1**), unless earlier terminated as provided for in this Agreement (collectively, the "Term").
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement as set forth in **Exhibit 1** at a Contract Price to be agreed.
 - c. **Termination Due to Contract Price Adjustments or Lack of Site Viability.** If, at any time after the Effective Date and prior to the Commencement of Installation (as defined in Section 5) of a System at a Site, Seller determines that the installation of such System at such Site will not be technically or economically viable for any reason, and Seller provides written notice to Purchaser that a Site is not viable for installation of a System (i.e. a new roof is required) and the Parties have attempted to negotiate in good faith a Contract Price adjustment without reaching agreement thirty (30) days following written notice from Seller, either Party may terminate a particular System and/or Site by providing ten (10) days' prior written notice to the other Party. Neither Party shall be liable for any damages in connection with a termination pursuant to this Section 2.c. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation of a System on a Site has not occurred 60 months after the Effective Date, this Agreement is terminated as to such Site and System unless Purchaser notifies the Seller that Purchaser waives the requirement as to such System and Site. Seller will be given a day for day extension for any System and Site that is delayed due to action or inaction of Purchaser (i.e. Approval of Engineering Drawings, Site Access). Purchaser shall not liable for any damages in connection with a termination pursuant to this Section 2.d.
 - e. **Termination at Purchaser's Discretion.** If, at any time after the Effective Date and prior to March 31, 2023, Purchaser determines that the installation of such System at such Site will not be viable for any reason, Purchaser shall have the right to terminate such System at such Site by providing written notice to the Seller by March 31, 2023. Purchaser shall not liable for any damages in connection with a termination pursuant to this Section 2.e.
 - f. **Amendments and Clarifications.** Purchaser represents that to the best of its knowledge, it is authorized and empowered under applicable laws, ordinances, rules, regulations, and codes to enter into this Agreement; this Agreement is a legal, valid and binding obligation; Purchaser has complied with all public bidding and procurement rules and laws applicable to this Agreement; Purchaser has made the necessary determinations and taken all necessary action to obtain all necessary consents, approvals and authorizations to enter into this Agreement; and Purchaser and Seller acknowledge that, to further ensure that this recital is true and correct, each party will use its best efforts to incorporate any necessary additional amendments and clarifications to this Agreement prior to March 31, 2023.
3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by each System and delivered to the Delivery Points at the \$/kWh rate shown in **Exhibit 1** (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meters (as defined in Section 10). Subject to and limited by the Purchaser Restrictions, additional costs for items differing from the assumptions in **Exhibit 1**, Item 4 are Purchaser's responsibility.

responsibility.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electricity produced by the System(s) at each Site and delivered to the related Delivery Point(s), (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Within 30 days after receipt of an invoice, Purchaser may provide written notice to Seller of any alleged error therein. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (as published by the St. Louis Federal Reserve on the date of the invoice) but not to exceed the maximum rate permitted by law. If Seller notifies Purchaser in writing within thirty (30) days of receipt of Purchaser's notice of alleged error that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone, conference call or otherwise, within ten (10) days of Seller's response for the purpose of attempting to resolve the dispute. All payments shall be made in U.S. dollars. If any payment adjustment is made in favor of Purchaser, the amount payable to Purchaser pursuant to its then current invoice shall be credited in an amount equal to such adjustment. If any such adjustment is in favor of Seller, Seller will add the amount of such adjustment to Purchaser's invoice for the next monthly period.
- d. **Taxes.**
 - i. **Purchaser's Taxes.** Purchaser is responsible for any general excise tax in connection with the Purchaser's purchase of electricity pursuant to this Agreement.
 - ii. **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement and (2) payment of all taxes or fees involved in constructing the Systems, including the payment of all taxes assessed on the generation, sale, delivery or consumption of electricity produced by each System and the interconnection of each System to the utility's electricity distribution system.

4. **RECs and Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the RECs (defined below) and Incentives (defined below). Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs and Incentives. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to Purchaser, Purchaser shall immediately pay or deliver such items or amounts to Seller.

"Governmental Authority" means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"Incentives" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"REC" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development, construction and installation of the System, subject to Section 2.c., Section 11 and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "Approval"):

- i any zoning, land use and building permits required for Seller to construct, install and operate the Systems; and
- ii. any agreements and approvals from the utility necessary in order to interconnect each System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

- c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of all Systems on all Sites within twenty-four (24) months after the Effective Date. "Commencement of Installation" means the date that Seller or its installation contractor has begun physical installation of a System on a Site.

- d. **Force Majeure.**

i. Force Majeure Event. If either Party is unable to timely perform any of its obligations (other than payment obligations or as a result of a Budget Non-Appropriation Event) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of a System on a Site to deliver electricity to the related Delivery Point, the Term as it relates to such System and Site will be extended day for day for each day delivery is suspended due to the Force Majeure Event, as permitted by law.

ii. Extended Force Majeure. If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement as to the Site(s) affected without either Party having further liability under this Agreement with respect to the Site(s) affected except: (a) liabilities accrued prior to termination of such Site(s), (b) Seller shall remove the System(s) from such Site(s) as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement as to the Site(s) affected) and (b) if Purchaser elects to terminate the Agreement in accordance with this Section 5.d., Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System(s) or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement as to the Site(s) affected so long as Seller continues to diligently pursue such actions.

iii. "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.

- e. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation of a System or Systems on a Site due to a Force Majeure Event, the time for achievement of Commencement of Installation related to such System(s) and Site(s) affected by such Force Majeure Event will be automatically extended day for day for each day installation is suspended due to the Force Majeure Event, as permitted by law.

- f. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation for each System on each Site (the date of such notice, the "Commercial Operation Date"). "Commercial Operation" means that the System on a Site is mechanically complete, capable of providing electricity to the related Delivery Point at the nameplate capacity specified in Exhibit 2 and has permission to operate from the relevant Governmental Authority

and utility. Seller shall provide Purchaser with documentation reasonably acceptable to Purchaser to evidence that a System is ready to begin Commercial Operation, which documentation shall include but shall not be limited to, all certificates of insurance required to be submitted under Section 13. Seller shall conduct testing of a System not less than three (3) days prior to the Commercial Operations Date. Purchaser shall have the right, but not the obligation, to be present at and observe the testing.

- g. **Target Commercial Operation Date.** The Parties agree that the Commercial Operation Date for a System shall occur on or prior to the Target Commercial Operation Date (as defined below). If the Commercial Operation Date for a System on a Site has not occurred prior to or on the Target Commercial Operation Date, this Agreement is terminated as to such Site and System. Purchaser shall not be liable for any damages in connection with a termination pursuant to this Section 5.g.

Notwithstanding the foregoing, if Seller reasonably anticipates that a System on a Site will not achieve Commercial Operation by the Target Commercial Operation Date for such System and Seller has used its best efforts to complete such System by the Target Commercial Operation Date, Seller may request from Purchaser an extension of the Target Commercial Operation Date for such System. Seller shall provide a written request to Purchaser not less than thirty (30) days but not more than sixty (60) days prior to the Target Commercial Operation Date for a System. Such request shall state (i) the System and Site the Seller is requesting an extension for; (ii) the original Target Commercial Operation Date for such System; (iii) the reason for the extension of the Target Commercial Operation Date, (iv) the proposed action necessary for the delay and (v) the expected new Target Commercial Operation Date for such System. Purchaser may, but shall have no obligation to, approve the establishment of a new Target Commercial Operation Date. The establishment of a new Target Commercial Operation Date shall be at the sole and absolute direction of Purchaser. If Purchaser does not approve the establishment of a new Target Commercial Operation Date, upon the original Target Commercial Operation Date for the System, this Agreement shall terminate as to such Site and System as set forth above.

Additionally, if the Seller is otherwise in compliance with the terms of this Agreement and has used its best efforts to obtain all agreements and approvals from the utility with respect to a System on a Site by such System's Target Commercial Operation Date but through no fault of Seller the local electric utility or permitting authority has delayed issuing such agreements and approvals, then the Target Commercial Operation Date for such System shall be extended provided however, Seller agrees to continue to use its best efforts to obtain the issuance of such agreements and approvals from the utility.

"Target Commercial Operation Date" shall mean with respect to a System a date not later than the lesser of (i) forty-eight (48) months from the date of Commencement of Installation of such System and (ii) eighty-four (84) months from the Effective Date.

Seller shall send a written notice to Purchaser when the last System has reached Commercial Operation. Such notice shall include a list of all Systems on all Sites and the date that each such System achieved Commercial Operation. Additionally such notice shall include a list of any Sites set forth in **Schedule A to Exhibit 2** and **Schedule B to Exhibit 2** for which a system was not installed.

6. Installation, Operation and Maintenance.

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain each System, in each case in a good and workmanlike manner and in accordance with this Agreement, applicable law and prudent solar industry practices in the state in which the Sites are located. Each System shall comply with all applicable rules, regulation and local building codes.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of each System design for approval prior to Commencement of Installation of such System. Purchaser shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such thirty (30) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may abandon that particular System or terminate this Agreement with respect to such System and Site pursuant to Section 2.c. above. Seller shall seek approval from Purchaser for any variances to the approved construction plans and shall organize the procurement of all materials and equipment for the installation of each System.

Seller shall perform all work in connection with the furnishing, installation, testing and commissioning of the Systems at the Sites on a schedule approved by Purchaser and in a manner that minimizes inconvenience and interference with Purchaser's use of the Sites.

Seller shall be responsible for making arrangements to ensure that all solar modules and photovoltaic panels are offloaded individually to rooftops to minimize potential overloading and shall by or through retaining a licensed structural engineer, at Seller's sole cost, ensure that each System installation and means of attachment is sufficient to satisfy, as applicable, the wind design requirements as required by the local county building codes or the Site's actual wind design requirements, whichever is stricter.

Seller shall ensure all energy generated by each System conforms to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification and all related costs.

Energy provided pursuant to this Agreement shall be of a quality equal to or better than electrical energy produced by the local electric utility.

- c. **System Repair and Maintenance.** Seller, at its sole cost and expense, shall provide all spare parts, Systems operation, repair, monitoring and maintenance services and any initial training required for Purchaser staff for Seller-installed equipment for the Term of this Agreement, including the monitoring and maintenance of metering equipment. Seller may suspend delivery of electricity from a System at a Site to the related Delivery Point for the purpose of maintaining and repairing such System; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser, and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors. Seller shall commence repairs to a malfunction in a System and restore the supply of energy as soon as reasonably possible after notice or upon its own discovery of any malfunction in the operation of such System or interruption in the supply of energy from such System. If an emergency condition exists, Seller shall promptly dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. Emergency maintenance personnel representing the Seller shall be on site within 72 hours of the notification to assess the condition and shall commence corrective action as soon as reasonably practicable.

Seller shall be responsible to repair any leakage occurring from any System installation and for the cost of any damage related to such leakage(s), provided that Purchaser shall promptly notify Seller of any roof penetration or leakage of which it has actual knowledge and take action to mitigate such damage where reasonably practical.

- d. **Outages.** Purchaser shall be permitted two (2) twenty-four (24) consecutive hour days offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the Systems; provided, however, that Purchaser shall have notified Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year for a reason other than a Force Majeure Event or Budget Non-Appropriation Event, and for all unscheduled outages, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with this Agreement.
- e. **No Alteration of Sites.** Not less than thirty (30) days prior to making any alterations or repairs to a Site listed in **Schedule A to Exhibit 2** or any Purchaser owned TMK listed in **Schedule B to Exhibit 2** (except for emergency repairs) or any Improvement thereon which may adversely affect the operation and maintenance of a System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or improvement result in a permanent and material adverse economic impact on a System, Purchaser may request relocation of a System under Section 8 hereof. To the extent that temporary disconnection or removal of a System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of a System, at Purchaser's cost, subject to Sections 6.b. and 6.c. Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with this Agreement and all applicable laws, codes and permits.

7. Miscellaneous Rights and Obligations of the Parties.

- a. **Access Rights¹**. Purchaser hereby grants to Seller and to Seller's Agents (as defined below) and the utility (i) a non-

¹ This Agreement provides for access to the Sites set forth in **Schedule A to Exhibit B** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2** through a license and assumes that the Purchaser is the owner of the Sites set forth in **Schedule A to Exhibit B** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**. Prior to the Commencement of Installation of a System on a TMK owned by a

exclusive license running with each Site set forth in **Schedule A to Exhibit 2** or any Purchaser owned TMK listed in **Schedule B to Exhibit 2** (the "**Non-Exclusive License**") for access to, on, over, under and across such Site from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement related to such Site (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. Seller and Seller's Agents must comply with Purchaser's site safety and security requirements when on any Site set forth in **Schedule A to Exhibit 2** or any Purchaser owned TMK listed in **Schedule B to Exhibit 2** during the License Term. During the License Term, Purchaser shall preserve and protect Seller's rights under the Non-Exclusive License and Seller's access to such Site(s) and shall not interfere, or permit any third parties under Purchaser's control to interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Non-Exclusive License.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with a System's Insolation on the Sites listed in **Schedule A to Exhibit 2** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**, and shall ensure that vegetation on such Sites are regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of a System on the Sites listed in **Schedule A to Exhibit 2** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall at all times be responsible for the quality of the work performed by its contractors and subcontractors, remain liable for the negligence acts, errors or omissions of such contractors and subcontractors and shall continue to be responsible for performance of all obligations of Seller hereunder. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
 - i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Sites listed in **Schedule A to Exhibit 2** and the Purchaser owned TMKs listed in **Schedule B to Exhibit 2**, (each a "**Lien**") on or with respect to the Systems. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to such Sites or the Improvements thereon, other than those Liens which Seller is permitted by law to place on the Sites due to non-payment by Purchaser of amounts due under this Agreement (other than as a result Budget Non-Appropriation Event). The foregoing sentence shall not limit Liens on the Systems related to a financing as set forth in Section 17.b. Seller shall also pay promptly before a fine or penalty may attach to a Site any taxes, charges, or fees of whatever type of any relevant Governmental Authority, relating to any work performed under this Agreement by Seller or Seller's Agents on a Site. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and subject to and limited by the Purchaser Restrictions (defined below), shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each Party has the right to contest any such Lien, so long as it provides, subject to and limited by the Purchaser Restrictions, a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.

"**Purchaser Restrictions**" means, with respect to any obligation imposed on the Purchaser pursuant to the terms of this Agreement, that Purchaser's responsibility to satisfy such obligation is limited by (1) applicable laws; (2) Section 15.b. (Purchaser's Requirements); (3) Section 17.e. (Termination for non-appropriation); and (4) the extent to which any actions required of Purchaser are applicable to Purchaser's performance hereunder and not inconsistent with this Agreement. Notwithstanding and superseding anything to the contrary contained in this Agreement (and any exhibits and appendices attached hereto), Seller acknowledges and agrees that any and all

private landowner listed in **Schedule B to Exhibit 2**, a land lease is required with such land owner. For third party owned TMKs, Seller will have access to such Site(s) through the Land Lease.

obligations, duties, responsibilities, and liabilities of Purchaser under this Agreement and Purchaser's liability for and/or performance of such obligations, duties, and responsibilities under this Agreement (including any that are intended to survive the expiration or termination of this Agreement) are expressly subject to and limited by the Purchaser Restrictions.

- ii. **Lien Indemnity.** The Seller shall indemnify the Purchaser from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against the Sites as a result of the Seller's breach of its obligations under Section 7.e.i.

8. **Relocation of System.**

If, during the Term, Purchaser ceases to conduct business operations at a Site listed in **Schedule A to Exhibit 2** and at any Purchaser owned TMK listed in **Schedule B to Exhibit 2** or vacates such Site, such Site has been destroyed (other than as a result of a Force Majeure Event); or the Purchaser is otherwise unable to continue to host System(s) on such Site or accept the electricity delivered by the System(s) on such Site for any other reason (other than a Default Event by Seller), Purchaser may propose in writing the relocation of the System(s), at Purchaser's cost, in lieu of termination of the Agreement by Seller with respect to such Site(s) affected for a Default Event by Purchaser. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of such System. If the Parties are unable to reach agreement on relocation of the System affected within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement with respect to the Site(s) affected pursuant to Section 11.b.ii.

9. **Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14.b, Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Site with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Site where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12.c.i shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal on the Sites listed in **Schedule A to Exhibit 2**. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, to remove the System to a public warehouse and restore the Site to its original condition (other than ordinary wear and tear) at Seller's cost.

10. **Measurement.**

- a. **Meter.** Each System's electricity output during the Term shall be measured by Seller's meter at each Site, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (each a "Meter" and collectively, the "Meters"). Seller shall install and maintain the Meters. Purchaser shall have access to the metered energy output data via the monitoring system installed and maintained by Seller as part of each System and upon Purchaser's request, Seller shall furnish a copy of all technical specifications and accuracy calibrations for each Meter.
- b. **Meter Calibration.** Seller shall test and calibrate the Meters in accordance with manufacturer's recommendations. Seller shall have each Meter tested at installation and then as necessary thereafter at Seller's expense by a certified, independent, third party approved by Purchaser. Purchaser shall be allowed to observe any Meter test and Seller shall provide notice of the testing to Purchaser at least ten (10) business days prior to the test date. Seller shall provide signed copies of the Meter test to Purchaser. In addition to the initial tests, the Seller shall test the Meters at any reasonable time upon the request of Purchaser. Purchaser shall reimburse Seller for the cost of the additional testes requested by Purchaser, unless such testing demonstrates that a Meter was operating outside of industry standard tolerance allowances or outside of standards defined by the State of Hawaii Public Utilities Commission for meter calibration and operation. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as a Meter. Purchaser shall have the right of access to all meters at reasonable times for the purpose of verifying readings and calibrations.
- c. **Meter Adjustments.** If testing of a Meter pursuant to this Section 10 indicates that such Meter is in error by more than two percent (2%) or if there is a discrepancy between the data from Purchaser's meter and the data from a Meter of greater than two percent (2%) over the course of a Contract Year, then Seller shall promptly repair or replace such Meter and reimburse Purchaser for the cost of any audit or testing (to the extent the same were paid by Purchaser).

Seller shall make a corresponding adjustment to the records of the amount of energy based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

11. Default, Remedies and Damages.

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":

i. failure of a Party to pay any amount due and payable under this Agreement (unless due to a Force Majeure Event or a Budget Non- Appropriation Event), other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");

ii. failure of a Party to perform any material obligation under this Agreement (unless due to a Force Majeure Event or a Budget Non- Appropriation Event) not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;

iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,

v. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the a Sites listed in **Schedule A to Exhibit 2** and any Purchaser owned TMK listed in **Schedule B to Exhibit 2** (unless due to a Force Majeure Event), unless (I) the Parties agree upon a relocation under Section 8 above, or (II) subject to and limited by the Purchaser Restrictions, Purchaser pays the applicable Termination Payment for such Site determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (I) permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Purchaser, including a Payment Default (not as a result of a Budget Non- Appropriation Event), Seller may suspend performance of its obligations under this Agreement related to such Site(s) affected until the earlier to occur of the date (a) that Purchaser cures the Default Event in full, or (b) of termination of this Agreement with respect to the Site(s) affected. Seller's rights under this Section 11.b.i are in addition to any other remedies available to it under this Agreement, at law or in equity.

ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement with respect to the Site(s) affected, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 11.a.iv, the Non-Defaulting Party may terminate this Agreement with respect to the Site(s) affected immediately.

iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement with respect to the Site(s) affected pursuant to Section 11.b.ii, the Defaulting Party shall, subject to and limited by the Purchaser Restrictions, pay a termination payment to the Non-Defaulting Party determined as follows (the applicable "**Termination Payment**"):

(1) **Termination by Seller.** If Seller terminates this Agreement with respect to the Site(s) affected for a Default

Event by Purchaser, the applicable Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth as Item 6 of **Exhibit 1** with respect to such Site(s), and (ii) any other amounts previously accrued under this Agreement and then owned by Purchaser to Seller with respect to such Site(s).

- (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement with respect to a Site or Sites, the Termination Payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electricity from the utility over the Contract Price for the reasonably expected production of the System(s) at such Site(s) for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement with respect to such Site(s) and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11.b.iii.(2) cannot be less than zero.

iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement with respect to a Site prior to the expiration of the Term pursuant to Section 11.b.ii, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11.b.iii.(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement with respect to such Site and is not a penalty.

- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11.b.ii, then following such termination, Seller shall remove the equipment constituting the System(s) from such Site(s) affected in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System from such Site(s) affected following the occurrence of a Default Event by Purchaser pursuant to Section 11.a.i, unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.

i. **Reservation of Rights.** Except in the case of a termination under Section 11.b.ii and payment of a Termination Payment, if any, determined pursuant to Section 11.b.ii, nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation.** Regardless of whether this Agreement with respect to a Site is terminated for a Default Event, the Non- Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the applicable Termination Payment set forth in Section 6 of **Exhibit 1** with respect to such Site following a Default Event by Purchaser.

iii. **No Limitation on Payments.** Subject to and limited by the Purchaser Restrictions, nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

iv. **Effect of Termination.** Any termination of this Agreement with respect to a Site shall not relieve either Party from its obligations under this Agreement as to any other Site(s) not so terminated.

12. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

i. **Licenses.** (a) Purchaser has title to the Sites listed in **Schedule A of Exhibit 2** and any Purchaser owned TMKs listed in **Schedule B of Exhibit 2** such that Purchaser has the full right, power and authority to grant the Non-Exclusive License on such Sites in Section 7.a. and (b) such grant of the Non-Exclusive License to the Sites listed in **Schedule A of Exhibit 2** and any Purchaser owned TMKs listed in **Schedule B of Exhibit 2** does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or such Sites and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects such Sites.

ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.

iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Sites, (b) the Improvements on which the System(s) is to be installed, if applicable, (c) Purchaser's planned use of the Sites and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. **Limit on Use.** No portion of the electricity generated by a System shall be used to heat a swimming pool.

c. **Seller's Covenants and Warranties.**

i. If Seller penetrates the roof of any Improvement on which a System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.

ii. If Seller damages any other part of a Site or any Improvement (including roof damages not covered under Section 12.c.i above), Seller shall repair or reimburse Purchaser or land owner, as applicable, for such damage, as agreed by the Parties.

iii. Seller shall take all actions reasonably necessary to ensure that each system is capable of providing energy at a continuous rate at the designated capacity.

iv. Seller has obtained or will obtain all required consents and licenses from the owners of the Site(s) listed in **Schedule B of Exhibit 2** so that Seller may perform its obligations under this Agreement.

iv. Seller shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with a reasonable accuracy any item relevant to this Agreement. Purchaser shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12.a. AND 12.c. OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12.a. AND 12.c., NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

13. **Insurance.**

a. **Insurance Coverage.** Commencing on the Commercial Operations Date of the first System to be placed in service and through the end of the Term, the Seller shall maintain the following insurance, as applicable. Seller shall maintain or ensure the following is maintained (a) property insurance on each System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program. Seller shall ensure Purchaser, Purchaser's officers, employees, agents and representatives, and any person acting for or on their

behalf is named as additional insured under the commercial general liability insurance policy obtained by Seller as required hereunder. Seller may not commence performance of work or other services under this Agreement or the construction, installation, ownership, operation, maintenance or removal of a System until Seller purchases and provides to Purchaser evidence (such as insurance certificates) reasonably satisfactory to Purchaser that Seller has obtained all required insurance coverage; provided however that the failure of the Purchaser to obtain such satisfactory evidence from Seller before permitting Seller to commence performance under this Agreement shall not be deemed to be a waiver by Purchaser, to any extent, of any insurance requirements herein and Seller shall remain under a continuing obligation to obtain and maintain insurance coverage and to supply to Purchaser evidence of insurance coverage satisfactory to the Purchaser.

The failure of Seller to obtain or keep any insurance required hereunder in force shall constitute a material breach of this Agreement and in addition to any other remedies provided herein, the Purchaser reserves the right to stop the energy services until evidence of the requisite insurance coverage satisfactory to the Purchaser is provided to the Purchaser.

Seller shall timely renew the required insurance coverage as necessary to keep such coverage in effect for the period specified herein and shall supply Purchaser within thirty (30) days of any expiration or renewal dates for such insurance policies or upon binding or renewal insurance policies, with evidence of all required insurance coverage, including updated replacement certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all insurance coverage in the same manner, limits of protection and scope of coverage as was provided by the certificates of insurance, amendatory riders or endorsements originally supplied.

Upon the failure of Seller to provide and maintain insurance required herein, after ten (10) days prior written notice to comply from Purchaser, the Purchaser may, but shall not be required to, procure such insurance, at the sole cost and expense of Seller, and Seller agrees to immediately reimburse Purchaser for the cost thereof plus fifteen percent (15%) for administrative overhead. Any lapse in or failure by Seller to procure, maintain or keep in full force and effect such insurance coverage as is required under this Agreement, at any time during and throughout the Term of this Agreement, shall be a material breach of this Agreement by Seller.

Purchaser may, upon reasonable notice and reasonable grounds, request Seller to increase or change the form, type, coverage or coverage limits of the insurance required hereunder as a result of changes in the nature, size or other attributes of risks insured, changes in type, availability of cost of insurance, and similar factors, in which event Seller shall cooperate in good faith with such request and will obtain such requirement insurance unless Seller reasonably determines that it is commercially impractical to do so.

- b. **Policy Provisions.** Seller's insurance policies shall (i) contain a provision whereby the insurer agrees to give Purchaser at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the Purchaser. All insurance required to be furnished by Seller hereunder shall be pursuant to policies in form and substance reasonably satisfactory to Purchaser and issued by companies of sound and adequate financial responsibility who are authorized to do business in the state of Hawaii, all reasonably satisfactory to Purchaser.
- c. **Certificates.** Seller shall deliver to the Purchaser certificates of insurance evidencing the above required coverage. Purchaser's receipt, review or acceptance of such certificate shall in no way limit or relieve the Seller of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Seller shall pay its own insurance deductibles, except in the case of claims resulting from a breach of this Agreement, in which case, subject to and limited by the Purchaser's Restrictions, the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance.
- e. **Seller to Require Seller's Agents to Provide Requisite Insurance Coverage.** Seller shall require each of Seller's officers, directors, employees, managers, contractors, subcontractors, agents, representatives and any other person acting on behalf of Seller or under Seller's control ("**Seller's Agents**") performing any portion of Seller's obligations hereunder to carry insurance coverage sufficient to cover exposure to risk presented by such agent's services, including the minimum scope and limits of insurance specified in this Section 13, whether or not Seller would be obligated to cover the same insurance coverage hereunder if Seller were performing any such obligation directly, and Seller may at its option, provide the insurance coverage for any or all of Seller's Agents and, if so, the evidence of insurance shall so stipulate.
- f. **Obtaining Insurance Coverage Does not Limit Responsibility.** Seller understands and agrees that any insurance protection furnished by Seller or any of Seller's Agents hereunder shall in no way limit such person's liability hereunder or fulfill or fully satisfy such person's indemnity, defense, and hold harmless obligations under the provisions of this Agreement. Notwithstanding said policy or policies of insurance, Seller shall be obligated for the full and total amount of any damage, injury, loss, liability, penalty, or assessment caused by Seller and/or Seller's

Agents under or in connection with this Agreement. The submission of insurance documentation to and acceptance by Purchaser which does not meet the requirements herein shall not be considered a waiver of the obligations of Seller, or the rights of Purchaser, under the terms of this Agreement.

14. Ownership; Option to Purchase.

a. Ownership of System.

i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the Systems, and all RECs and Incentives, and the Systems will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Sites or any Improvement on which the Systems are installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the Systems and all tax filings and reports shall be filed in a manner consistent with this Agreement. The Systems will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

ii. **Notice to Purchaser Lienholders.** Purchaser shall use commercially reasonable efforts to place all parties having a Lien on a Site or any Improvement on which a System is installed listed in **Schedule A of Exhibit 2** on notice of the ownership of such System and the legal status or classification of such System as personal property. If any mortgage or fixture filing against a Site listed in **Schedule A of Exhibit 2** could reasonably be construed as prospectively attaching to a System as a fixture of such Site, Purchaser shall provide a disclaimer or release from such lienholder.

iii. **Fixture Disclaimer.** If Purchaser is the fee owner of the Site, Purchaser consents to the filing of a disclaimer of a System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction where the Site are located. If Purchaser is not the fee owner, Seller shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.

b. Option to Purchase.

i. **Exercise of Option.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may elect to purchase all, but not less than all, Systems from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the Systems or the Termination Payment set forth in Section 6 of **Exhibit 1** applicable as of the date of the transfer of title to the Systems. Purchaser shall notify Seller of its intent to purchase the Systems at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.

ii. **Fair Market Value.** The "Fair Market Value" of the Systems shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the Systems, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the Systems. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Systems on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the Systems to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The Systems will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the Systems (other than as to title). Seller shall also provide Purchaser all Systems' operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the Systems upon Purchaser's reasonable request. Upon purchase of the Systems, Purchaser shall assume complete responsibility for the operation and maintenance of the Systems and liability for the performance of (and risk of loss for) the Systems, and, except for any Seller obligations that survive termination under Section 19.d., Seller will have no further liabilities or obligations hereunder for the Systems.

15. Indemnification and Limitations of Liability.

a. Seller's Requirements. Seller shall defend, indemnify and hold harmless the Purchaser, its affiliates and the

Purchaser's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 15.c. relating to the Seller's breach of any representation or warranty set forth in Section 12 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Seller or Seller's Agents in connection with this Agreement; provided, however, that nothing herein will require the Seller to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15.a. does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15.d.

- b. **Purchaser's Requirements.** Purchaser shall be responsible for damages or injury caused by its officers, employees and agents in the course of their employment to the extent that Purchaser's liability for such damage or injury has been determined by a court or otherwise agreed to by Purchaser, and Purchaser shall pay for such damages and injury to the extent permitted by law, including without limitation: (a) the Non-Appropriation clause set forth in Section 17.d., and (b) Section 36-41, Hawai'i Revised Statutes, setting forth requirements for "energy performance contracts" as defined therein. Any provision of this Agreement (including an Exhibits, Addenda or other attachments) providing for an obligation by Purchaser over and above the manner stated herein shall be null and void. In each instance in this Agreement where Purchaser is obligated to assume responsibility or liability of any type or nature for damages or injuries, including any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Section 15.b. Seller acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense or hold harmless obligation of the Purchaser. The provisions of this paragraph shall survive termination of this Agreement with respect to events occurring prior to such termination.
- c. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Seller written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Seller may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Seller and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Seller. The Seller shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Seller, assume the defense of any Claim if the Seller fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15.c. unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Seller has no liability under this Section 15.c. for any Claim for which such notice is not provided if the failure to give notice prejudices the Seller.
- d. **Environmental Indemnification.**
- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless Purchaser and all Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near any Site of any Hazardous Substance (as defined in Section 15.d.ii.) to the extent deposited, spilled or otherwise caused by Seller or any of Seller's Agents.
- ii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Sites generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- e. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15.c., neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising

out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15.e.

- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement with respect to the Site(s) affected and remove the System and restore the Site(s) in accordance with Section 9 without either Party having further liability under this Agreement with respect to the Site(s) affected except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement or Seller's performance of this Agreement with respect to a Site, either illegal or impossible, then Seller may terminate this Agreement with respect to such Site(s) immediately upon notice to Purchaser and Seller shall remove the System(s) and restore the Site(s) so affected in accordance with Section 9 without either Party having further liability under this Agreement with respect to such Site(s) except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

17. **Assignment and Financing.**

a. **Assignment.**

i. **Restrictions on Assignment.** Subject to the remainder of this Section 17.a. this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the Systems.

ii. **Permitted Assignments.** Notwithstanding Section 17.a.i.:

1. Seller may, by providing prior notice to Purchaser and without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17.b.), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
2. Purchaser may, by providing prior notice to Seller, assign this Agreement:
 - a. to an affiliate of Purchaser or a purchaser of the Site; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's

creditworthiness; and

- b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.

iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. Financing. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the Systems. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
- c. Termination Requires Consent. Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.
- d. Termination for non-appropriation. Pursuant to Section 36-41(c)(5), HRS, the following two sentences are required to be included in this Agreement: "The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made" Due to the foregoing and certain constitutional limitations pertaining to multiple-year contracts, Purchaser and this Agreement are subject to a budget non-appropriation event if the applicable funding authority does not appropriate sufficient funding in any year covered by this Agreement to enable Purchaser to cover the continued procurement of energy and/or the performance of Purchaser's obligations under this Agreement (a "**Budget Non-Appropriation Event**"). To the extent Purchaser is (A) obligated to perform under this Agreement, (b) obligated to make any payments under this Agreement or (c) deemed liable under this Agreement, Purchaser's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amounts of money, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities.

This agreement will terminate in the event of a Budget Non-Appropriation Event without penalty. Upon termination Purchaser shall not be obligated to make any payment provided for in this Agreement beyond the then current Fiscal Year. Such termination shall not be considered or treated as a default under this Agreement or any other document. If this Agreement is terminated pursuant to this Section, the Purchaser agrees to surrender to the Seller the Systems, in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance, except for reasonable wear and tear, and to cease use of the Systems. Upon termination of this Agreement, the Seller may, at the end of the then-current Fiscal Year, remove any fixture, structure or sign added by the Seller, which may be removed without damaging the Improvements. Seller shall remove the Systems and restore the Sites in accordance with Section 9.

18. Confidentiality.

- a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18.a.
- b. Permitted Disclosures. Notwithstanding Section 18.a.:
 - i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers,

directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Subject to and limited by the Purchaser Restrictions, each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.

ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that subject to and limited by the Purchaser's Restrictions, the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the Systems and their use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Sites reflecting its association with the Systems.

19. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state where the Systems are located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in Wailuku, Hawaii. The arbitration shall be administered by Dispute Resolution, Inc. in accordance with its arbitration rules, and subject to and limited by the Purchaser's Restrictions, judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted prior to arbitration. Subject to and limited by the Purchaser's Restrictions, the prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement,

including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.

- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other person.
- m. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. **Laws and Regulations.** Seller shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights of way and all changes thereto, which in any manner affect this Agreement and all performance thereof.
- o. **Requisite Standards.** The Systems shall be installed with due care by qualified Seller's Agents and shall conform to applicable industry standards and practices, applicable law, and this Agreement. If Seller fails to meet any of the foregoing standards, Seller shall perform at its own cost, and without additional charge to Purchaser, the professional services necessary to correct errors and omissions, including any necessary replacement of the Systems, that are caused by Seller's failure to comply with the above standards so that the Systems are capable of energy services at a

reasonably continuous rate.

- p. **Amendments.** This Agreement shall not be amended, modified, or supplemented without the written agreement of Seller and Purchaser at the time of such amendment, modification, or supplement.
- q. **Utility Rate True-Up Clause** In order to assure Purchaser will not pay more for solar energy procured under this Agreement than it would have paid if it acquired the same amount of energy from the Utility, Seller agrees that during the first or second 10-year period following the Commercial Operation Date, if Purchaser has paid Seller more for energy provided under this Agreement than it would have paid the Utility for the same amount of energy during the same period, Seller will provide Purchaser at no charge with energy from the System equitable to the amount that Purchaser paid under this Agreement. The amount of energy to be supplied at no charge to Purchaser shall be calculated as follows:

kWh_U = total energy delivered from the utility over a specified time period (one year)

kWh_S = total energy delivered from the Solar PPA over a specified time period (one year)

$\$/kWh_U$ = all in kWh rate from the Utility, calculated as total bill divided by total delivered kWh from the Utility over a specified time period (one year)

$\$/kWh_S$ = all in kWh rate from the Solar PPA, calculated as total bill divided by total delivered kWh from the Solar PPA over a specified time period (one year)

Annual Rate Differential = $(\$/kWh_S - \$/kWh_U)$

Annual Amount Differential = $(\text{Annual Rate Differential} \times kWh_S)$

Total True Up Differential = $\sum (\text{Annual Amount Differential over applicable 10 - year period})$

If the Total True-Up Differential is positive (Contract Price charges exceeded the cost of buying the same amount of energy from the Utility), then the Total True-Up kWh Differential will be divided by the Contract Price in effect at the end of such 10-year period to determine the "Total True-Up Energy" in kWh.

if Total True Up Differential > 0, then reconciliation as described below; otherwise nothing is done under this section

$\text{Total True Up Energy} = \text{Total True Up Differential} \div \text{Contract Price}$

Seller will then provide Purchaser with the Total True-Up Energy from System at no charge beginning immediately upon determination of the amount of said Total True-Up Energy.

If the Total True-Up Differential for the initial 10 year period is negative, then savings for the first 10 year period will be included in the determination of savings for the second 10 year period, thereby reducing any Total True Up Differential for the second 10 year period.

If Seller owes Purchaser Total True-Up Energy during the initial 10 year period, the same amount of time will be added to the duration of the Initial Term of this Agreement. If Seller owes Purchaser Total True-Up Energy during the second 10 year period, the same amount of time will be added to the Initial Term of this Agreement. This Utility Rate True-Up shall be payable only in Energy from the System, and not in cash. This Utility Rate True-Up clause shall not apply to Utility rates that fall below the Initial Rate of this Agreement.

End of Exhibit 3

Exhibit 4

HECO Customer Authorization and Acknowledgement Form



**Hawaiian
Electric**

CUSTOMER AUTHORIZATION & ACKNOWLEDGEMENT FORM

CUSTOMER-GENERATOR/PROPERTY OWNER*

Name: **County of Maui** Meter #: **See attached sites**
Agreement ID#: (if available) Phone #: **8082707845** TMK: **See attached sites**

Service Address:
See attached sites

Authorized Contractor Company Name:
Johnson Controls, Inc.

GRANT OF AUTHORITY

I hereby appoint and authorize the contractor listed above to act on my behalf in all manners relating to my Distributed Energy Resources (DER) application, including but not limited to, the authority to (i) request, access and receive directly from Hawaiian Electric, on my behalf, all information and documentation relating to my proposed project, and (ii) make decisions and execute agreements, if required, regarding the proposed project.

This Grant of Authority shall remain in effect until Hawaiian Electric's receipt of written termination of such Grant of Authority by Customer, or Customer's resubmittal of an updated Grant of Authority.

I acknowledge that this authorization is granted for the sole purpose of my application, and for managing questions related to the system post-installation. Utility service outside of the PV system is not included, unless said information directly affects processing of my application. I understand that a new form must be submitted if I change my installing contractor.

I/We authorize submission of this Authorization in its original form assigned by me/us or by other means intended to preserve the original graphic and pictorial appearance of the signature(s), such as a photocopy or PDF scan. Such a copy or scan of my/our signature(s) shall be considered an "original" for purposes of this Authorization and Hawaiian Electric may rely upon such submission for all purposes expressed above.

Please read the additional acknowledgements on the following page and be sure to provide your signature.

Please upload this form online to your application record or send/mail it to the applicable address below:

O'ahu (MAIL OR EMAIL)		Maui County (MAIL OR EMAIL)	Hawai'i Island (MAIL OR EMAIL)
Customer Grid Supply (CGS)/ Customer Self Supply (CSS)	Standard Interconnection Agreement (SIA)	All Programs	All programs except Standard Interconnection Agreement (SIA)
Hawaiian Electric Distributed Energy Resources P.O. Box 2750, AT10-SE Honolulu, HI 96840	Hawaiian Electric Attn: SIA; AT10-SE P.O. Box 2750 Honolulu, HI 96840	Hawaiian Electric Renewable Projects P.O. Box 398 Kahului, HI 96733	Hawaiian Electric Renewable Projects P.O. Box 398 Kahului, HI 96733
connect@HawaiianElectric.com	SIAinfo@HawaiianElectric.com	connectmauicounty@HawaiianElectric.com	connecthawaiiisland@HawaiianElectric.com



Hawaiian
Electric

CUSTOMER AUTHORIZATION & ACKNOWLEDGEMENT FORM

ACKNOWLEDGEMENTS

By signing this form, I agree to the foregoing Grant of Authority and the following:

- ❖ The existing meter socket is in sound operating condition, or that it will be by the time permission to operate the proposed system is granted, and I understand that I am responsible for any upgrades necessary to meet current code requirements.
- ❖ I understand that proof of insurance may be required prior to execution of the program agreement (see the appropriate program's Rule or Tariff for specific requirements).
- ❖ I agree not to interconnect and operate this proposed system without prior written approval from Hawaiian Electric; provided however, that, if my proposed system is no more than 100 kW, I may energize my system once a meter is installed, my electrical inspection is closed, and Volt-Watt is activated.
- ❖ The inverters used for this system will be compliant with all of Hawaiian Electric's current requirements and understand that proof of compliance with these requirements will be necessary prior to the execution of the program agreement.
- ❖ (1) The distributed generation facility shall meet Hawaiian Electric's Interconnection Standards stated in Appendix I: Distributed Generating Facility Interconnection Standard Technical Requirement of Rule 14; (2) the specific characteristics or needs of each distributed generating facility may change its interconnection requirements; and, therefore, (3) the distributed generation facility may be subject to additional interconnection requirements that are necessitated by the results of the technical review process.
- ❖ As the Technical Review of the proposed system may require a no-cost Supplemental Review, I pre-authorize a Supplemental Review.
- ❖ I authorize Hawaiian Electric to post the following information on its website, in an area designated for customer contractors, for a period not to exceed 90 days: (1) my service address and (2) the date my net meter was replaced by Hawaiian Electric.

Customer-Generator/Property Owner* Signature

Bruce B. B. B.

Date

1-27-2023

* The Customer-Generator/Property Owner printed name must be identical to that person or of the entity listed on the Distributed Energy Resources application; the Customer-Generator/Property Owner's signature also must be that of the same person who will be signing the final agreement.

BANK OF HAWAII

EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

EQUIPMENT LEASE AGREEMENT NO. 1474

THIS EQUIPMENT LEASE AGREEMENT is made by and between BANK OF HAWAII, a Hawai'i corporation, hereinafter referred to as "Lessor", and the COUNTY OF MAUI, a political subdivision of the State of Hawai'i, whose address is 200 South High Street, Wailuku, Maui, Hawai'i 96793, hereinafter referred to as "Lessee":

WITNESSETH:

1. **LEASE.** Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to hire from Lessor, the personal property (hereinafter referred to as the "equipment") described in Exhibit 5461 attached hereto and in any succeeding Exhibits hereto (hereinafter referred to either individually or collectively, as the context may require, as the "Exhibit"), each and every such Exhibit being incorporated herein by this reference. Lessee irrevocably authorizes Lessor to insert in the Exhibit and in any other document related to this Lease or any such Exhibit, either before or after execution of the Lease or such Exhibit or any such other document, any serial numbers or other language which Lessor deems necessary to identify the equipment.

2. **TERM.** The term of the lease for the equipment shall be as shown in the Exhibit.

3. **RENT.** As rent for all of the equipment listed on the Exhibit, Lessee agrees to pay Lessor the amount stated in the Exhibit; provided, however, that (a) Lessor reserves the right to increase or decrease the amount of the rent payment at any time before the equipment is conditionally accepted by Lessee, and (b) if the purchase price of the equipment is different than the amount set forth in the Exhibit, Lessor may adjust the lease rent to reflect the amount of any such difference. Rent shall be paid monthly or annually, in advance or in arrears, each as may be set forth in the Exhibit, and without notice at Lessor's principal place of business, or at such other place as Lessor may designate by written notice to Lessee, on the same day of the month as the day the Lease term commences. Interim rent, if any, shall be payable as stated in the Exhibit. If all the equipment is not accepted at one time, rental amounts will be based upon the dates and prices of the items of equipment accepted until such time as all of the equipment has been accepted at which point the rental amounts will be combined and payable on one date as determined by Lessor in its sole discretion. Lessee agrees:

(a) To make rental and other payments when due without abatement, deduction or offset;

(b) That in the event Lessee shall be more than ten (10) days in default in the payment of any rent payment hereunder, Lessee shall pay Lessor, as additional rent, late charges as shown in the Exhibit.

(c) That if Lessee shall be deemed to have committed a total breach and default of this Lease and Lessor declares all of Lessee's obligations for the full remaining term of this Lease immediately due and payable as provided in paragraph 24 below, Lessee shall pay Lessor as additional rent, interest on the amount of default from the date Lessor declares all of Lessee's obligations for the full remaining term of this Lease immediately due and payable to the date of payment at the rate of twelve percent (12%) per annum.

With reference to Lessee's status as a political subdivision of the State of Hawai'i, the parties also agree as follows:

(i) **Rent Payments Limited to Available Funds.** The obligation of Lessee to make rent payments shall be limited to funds appropriated or otherwise made available, from time to time, by the Maui County Council (the "Council") to pay amounts due under this Lease for the fiscal year ("Fiscal Year," which, at the date of this Lease is the period from July 1 to and including the following June 30) in which such payments are due ("Available Funds"). In no circumstance shall Lessee be obligated to pay amounts due under the Lease from any source other than Available Funds, nor shall the Council be obligated in any manner to appropriate or otherwise make available Available Funds.

(ii) **Rental Payments to Constitute a Current Expense of the Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay rent payments under the Lease shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of the Lessee, nor shall the Lease be construed to be an instrument of indebtedness, in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee. The Lease shall not create an immediate indebtedness for any aggregate payment which may become due during the Lease Term. The Lease, including the obligation of Lessee to pay the portions of the rent payments treated as principal and interest principal and interest, shall not be an obligation for which the full faith and credit of the Lessee is pledged. Lessor shall have no claim or lien on any revenues or other moneys of Lessee, except Available Funds. Notwithstanding any other provisions of the Lease, Lessee, in its sole and absolute discretion, may terminate the Lease as set forth in Section (iii) below.

(iii) **Non-Appropriation.** In the event sufficient Available Funds shall not be appropriated by the Council for the payment of the rental payments required to be paid in the next succeeding Fiscal Year to continue the leasing of the Equipment, Lessee may terminate the Lease, without penalty, as to all of the Equipment at the end of the then-current Fiscal Year,

and Lessee shall not be obligated to make payment of the rent payments provided for in the Lease beyond the then-current Fiscal Year. Such termination shall not be considered or treated as a default under the Lease or any other document. If the Lease is terminated under this paragraph, the Lessee agrees to surrender to Lessor the Equipment, in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance, except for reasonable wear and tear, and to cease use of the Equipment. Upon termination of this Lease, Lessor may, at the end of the then-current Fiscal Year, remove any fixture, structure or sign added by the Lessor, which may be removed without damaging the Equipment.

(iv) Tax Clearance. Pursuant to Haw. Rev. Stat. § 103-53, any final payment to be made under any Rental payment schedule of this Lease shall be withheld from Lessor until a State of Hawaii and federal tax clearance is submitted to Lessee immediately prior to the time of final payment.

(v) Non-Substitution. The Lessee agrees that in the event the Lessee exercises its right to terminate this lease in accordance with the non-appropriation provisions contained herein, the Lessee will not purchase, lease, or rent other equipment for the purpose of performing the functions and projects which were to be performed by the leased equipment for a period of one hundred eighty (180) days from the date of termination of this Lease.

4. LICENSING, REGISTRATION AND TAXES. Lessee agrees:

(a) To obtain and maintain, at its sole cost and expense, such licensing and registration of the equipment as is required by law. Any such document evidencing title shall show Lessor as the owner of the equipment and shall immediately be delivered to Lessor;

(b) To pay, as additional rent, an amount equal to (1) the State of Hawai'i General Excise Tax (and any increase in such tax) imposed against Lessor on the rental payments due hereunder after the date this Lease is executed, (2) any other tax (other than a tax measured solely by Lessor's net income), imposed, accrued, assessed or levied upon Lessor or the equipment by any state, federal or local government as a result of the purchase, sale, delivery, ownership, possession, use, operation, maintenance or return of the equipment or the receipt of rent hereunder, including without limitation, sales, use, personal property, ad valorem, value added, stamp, leasing, lease use and excise taxes, imposts, duties and other taxes related thereto, and (3) any recording or documentation fees related to the equipment or any collateral securing the obligations of Lessee;

(c) To pay all fines, penalties, interest, costs and expenses related to any of the foregoing in (a) and (b) above;

(d) Lessor shall not be required to contest any tax or other sum assessed by any governmental or other entity. Lessee agrees that its obligations hereunder shall survive the expiration or termination of this Lease; and

(e) To the extent permitted by law, and unless Lessor elects otherwise, Lessee shall pay all licensing and registration fees and taxes described in (a) and (b) above directly to the respective licensing, registration or taxing authority and shall, upon request by Lessor, provide evidence of such payment, in form and content satisfactory to Lessor. If any report, return, registration or statement (hereinafter collectively referred to as "Return") is required to be filed or submitted with respect to any such licensing or registration fee or tax, Lessee shall file or submit the Return. If Lessee is not permitted by applicable law to file or submit a Return in its own name, Lessee shall so notify Lessor and shall prepare and deliver to Lessor such Return, along with such related information as Lessor may request or as required to be submitted or filed with such Return, all to be accomplished by Lessee sufficiently in advance of the due date of such Return to permit timely filing by Lessor.

5. ORDERING, DELIVERY AND INSPECTION OF EQUIPMENT. (Applicable only if equipment is to be purchased by Lessor from a vendor.)

(a) Lessor will order the equipment for delivery to Lessee at the time and place specified in the Exhibit. Lessee shall be responsible for all costs of delivery, including without limitation, transportation, freight and shipping charges, and all costs of installation of the equipment. Lessee acknowledges that the equipment is being purchased by Lessor at Lessee's request specifically for the purpose of leasing the equipment to Lessee, that the equipment has been selected by Lessee and will be purchased from a vendor selected by Lessee and on the basis of and in accordance with specifications and requirements furnished by Lessee, and that Lessor has not held itself out as having knowledge or skill particular to the equipment or made any affirmations of fact regarding the equipment.

(b) If the vendor of the equipment fails to deliver the equipment within the time specified in the Exhibit (the "Outside Delivery Date"), either Lessor or Lessee may, at its option, terminate the Exhibit by giving the other party written notice thereof within six (6) months after the expiration of the Outside Delivery Date; provided, however, the termination of the Exhibit shall not relieve Lessee of its obligation to pay any accrued but unpaid carrying charges owed to Lessor pursuant to this Lease for any advances paid to the vendor. If, prior to delivery of the equipment, either Lessee's financial condition materially or adversely changes or its intended use of the equipment substantially changes, Lessor may, at its option, terminate this Lease by giving written notice of termination to Lessee.

(c) Lessee agrees to make, at Lessee's sole cost and expense, all necessary inspections and tests of the equipment to determine whether the equipment conforms to the specifications and requirements submitted to the vendor within the time specified in the Exhibit. At the conclusion of the period for inspection, Lessee shall, unless it rejects the equipment in accordance with paragraph 5(d) below, send Lessor an executed Certificate of Acceptance (hereinafter called "Certificate"). If Lessee fails to send the Certificate as specified, and Lessee fails to make a rejection of the equipment as required in paragraph 5(d) below, the equipment shall be deemed to be accepted by Lessee and Lessee shall immediately, upon request, provide Lessor with

the executed Certificate. Lessee agrees that Lessor shall have no liability to Lessee arising from Lessee's inspection of or failure to inspect the equipment. Lessee's acceptance (including deemed acceptance) of the equipment pursuant to this paragraph 5(c) is for the purpose of commencing Lessee's rental payments and other obligations to Lessor under this Lease, and is only for the benefit of Lessor. Such acceptance (including deemed acceptance) shall have no effect on Lessee's or Lessor's rights or claims against any vendor, manufacturer or supplier of the equipment for defects, malfunctions, damage or other equipment related problem. LESSEE SHALL NOT PUT THE EQUIPMENT TO ITS INTENDED USE, OTHER THAN FOR INSPECTING AND TESTING PURPOSES, PRIOR TO THE EXECUTION OF THE CERTIFICATE.

(d) Lessee may reject the equipment if such rejection is allowed under applicable law governing the sale of goods. If Lessee elects to reject the equipment, Lessee agrees that it shall (1) notify Lessor and the vendor in writing that the equipment has been rejected, and (2) comply with, at Lessee's sole cost and expense, all applicable laws dealing with the obligations of a purchaser incurred upon rejection of goods.

(e) If Lessor purchases the equipment by assumption or assignment of a purchase order previously issued by Lessee, Lessee agrees that (1) it shall execute a Certificate of Acceptance no later than the day of the month in which the first payment is due from Lessor under the purchase order, and (2) notwithstanding Lessor's acceptance or assumption of the purchase order, Lessee shall continue to be bound by all terms thereof.

6. WARRANTIES.

(a) **Vendor's Warranties.** During the term of this Lease, and during such time as Lessee renders faithful performance of its obligations hereunder, Lessor hereby assigns to Lessee any and all factory, manufacturer or dealer warranties on the equipment. All claims or actions under any warranties so assigned shall be made or prosecuted by Lessee, at its sole cost and expense, and Lessor shall have no obligation whatsoever to make any claim on any such warranty; provided, however, that to the extent any breach of warranty results in damage or liability to Lessor or Lessor's interest in the equipment, Lessor may, but shall have no obligation to, make or prosecute a claim or action in addition to or in lieu of any claim or action by Lessee. Any proceeds recovered by Lessee from any claims on any such warranties shall first be used to repair the equipment.

(b) **No Warranties by Lessor.** LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LEASE OR THE EQUIPMENT LEASED HEREBY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE EQUIPMENT IS LEASED "AS IS" AND LESSOR SPECIFICALLY MAKES NO WARRANTIES;

(1) THAT THE EQUIPMENT IS FREE OF ANY SECURITY INTEREST OR OTHER LIEN OR ENCUMBRANCE OR OF ANY RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE;

(2) THAT THE EQUIPMENT IS FIT FOR A PARTICULAR USE; OR

(3) THAT THE EQUIPMENT IS IN COMPLIANCE WITH ANY APPLICABLE GOVERNMENTAL REQUIREMENTS OR REGULATIONS.

Lessee acknowledges that Lessor has no familiarity with the equipment and assumes no responsibility for the installation, adjusting or servicing thereof. Lessee agrees that Lessee shall not assert against Lessor any claim or defense arising as a result of any breach of warranty by the vendor or manufacturer or any malfunction or defect in the equipment or dissatisfaction on the part of Lessee. Lessee shall look to the manufacturer, supplier and/or vendor of the equipment and not to Lessor, for any claims related to the equipment. Lessee further agrees that under no circumstances will any claim be made against Lessor for loss of anticipated profits or other consequential or indirect damages. All such risks, as between Lessor and Lessee, are to be borne by Lessee at its sole risk and expense.

(c) **Lessee's Warranties.** Lessee represents and warrants:

(1) That it has the full power, authority and legal right to enter into and perform this Lease and any other agreements made in connection with the transactions hereunder (collectively, the "Transaction Documents");

(2) That the execution of this Lease and the Transaction Documents do not contravene any agreement to which Lessee is a party (including its constituent documents);

(3) That no mortgage, lease, security interest, lien or other voluntary or involuntary encumbrance of any type which now covers or affects any real or personal property or interest of Lessee will attach to or affect the equipment;

(4) That all credit and financial information submitted to Lessor by Lessee is true and correct;

(5) That the execution of this Lease and the Transaction Documents and Lessee's performance of obligations thereunder do not contravene any applicable federal, state or local laws, rules, regulations, codes, ordinances or guidelines, including without limitation, the procurement code applicable to Lessee.

7. LOCATION. During the term of this Lease, the equipment shall not be removed from the location specified in the Exhibit without the prior written consent of Lessor.

8. **LESSOR'S INSPECTION.** Lessor shall have the right at any time during normal business hours to enter the premises where the equipment may be located for the purpose of inspecting the equipment.

9. **LABELING.** During the term of this Lease, Lessee shall, at Lessee's sole expense, affix upon the equipment such labels, plates or other markings evidencing Lessor's ownership as Lessor may require. Lessee may affix, at Lessee's sole cost and expense, its business logo, name or other form of advertisement of its business to the equipment, provided, however, that Lessee shall, upon expiration of the term of this Lease, and unless Lessee purchases the equipment, remove such logo, name or such other advertisements from the equipment and restore the equipment to its condition prior to such affixation, all to be done at Lessee's sole cost and expense.

10. **USE OF EQUIPMENT.** Lessee agrees to use the equipment carefully and in accordance with the recommendations of the manufacturer and to comply with all laws, ordinances, regulations, warranty and insurance requirements relating to the use, operation or maintenance of the equipment. **LESSEE SHALL USE THE EQUIPMENT FOR BUSINESS OR COMMERCIAL PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.**

11. **MAINTENANCE AND REPAIR.** Lessee agrees, at its sole cost and expense, to keep the equipment in good repair, condition and working order, reasonable wear and tear excepted. Lessor authorizes Lessee to obtain whatever service the manufacturer or supplier customarily, or by law or agreement, renders, provided that all such service shall be at the sole expense of Lessee. All servicing and repair of the equipment shall be performed only by persons trained and qualified to do such servicing and repair work, and shall be done at Lessee's sole expense. All repairs and replacement parts made or added to the equipment shall become a part thereof and shall be the property of Lessor. Lessee shall maintain complete records covering the maintenance and repair of the equipment, which records shall be subject to inspection by Lessor.

12. **ALTERATIONS.** Lessee shall not make any alterations, additions or improvements to the equipment, or add any accessories thereto, without the prior written consent of Lessor. All additions, improvements and accessories of whatsoever kind and nature made or added to the equipment shall become a part thereof and shall be the property of Lessor. Lessee shall maintain complete records covering any such alterations, additions, accessories and improvements, which records shall be subject to inspection by Lessor.

13. **ATTACHMENT TO REAL PROPERTY.** Lessee shall not affix or attach the equipment to any real property without the prior written consent of Lessor. It is the intent of Lessor and Lessee that the equipment leased hereunder shall at all times remain personal property regardless of whether it becomes affixed or attached to real property, or permanently rests upon any real property or any improvements thereon. Lessee agrees, if requested by Lessor, to provide waivers (in form and substance approved by Lessor) from any person or political subdivision owning an interest in the real property upon which the equipment is placed, including without limitation, Lessee's mortgagee(s), Lessee's landlord, and the landlord's mortgagee(s), if any, waiving any rights to the equipment.

14. **LOSS AND DAMAGE.**

(a) From the date of execution of this Lease, or, if the equipment is ordered from a vendor, from the date risk of loss passes from the vendor, until the date of delivery of the equipment to Lessor upon termination of this Lease, Lessee shall bear the risk of loss, damage or destruction (hereinafter collectively referred to as "Loss") of the equipment from any and every cause whatsoever, including but not limited to fire, theft, or governmental action (includes without limitation, any action taken by a federal, state, county or other governmental agency, department, board or other authority, for any reason or cause whatsoever, including, but not limited to health, safety, national security or other public purposes, which results, either directly or indirectly, in loss, destruction, damage, seizure, condemnation or taking of the equipment), whether such loss is covered by insurance or not. **LOSS OF THE EQUIPMENT, OR OF ANY PART THEREOF, SHALL NOT RELIEVE LESSEE OF ANY OBLIGATION UNDER THIS LEASE, INCLUDING LESSEE'S OBLIGATION TO PAY RENT, UNLESS AND UNTIL SUCH TIME AS LESSEE'S OBLIGATIONS ARE TERMINATED PURSUANT TO PARAGRAPH 14(b)(2) HEREOF.**

(b) Should any of the equipment be subject to Loss, Lessor may, at its option, require Lessee to:

(1) Repair the equipment to the condition existing prior to the Loss, at Lessee's sole expense;

or

(2) Pay Lessor, in cash, an amount equal to all sums payable by Lessee to Lessor under the Lease for the equipment subject to Loss (with the interest portion of any future rental payment discounted on a present value basis).

Upon Lessor's receipt of payment under paragraph 14(b)(2), Lessor shall, subject to the rights of any insurer which has paid benefits with respect to the equipment subject to Loss, transfer to Lessee or its designee all of Lessor's remaining interest in such equipment "AS IS" and "WHERE IS". Upon receipt of payment under paragraph 14(b)(2), the rental payable hereunder shall be reduced by the amount of rent attributable to the equipment subject to Loss.

15. **HAZARDOUS MATERIALS.** Notwithstanding any other provision of this Lease, Lessee covenants and agrees that Lessee will not use the equipment to generate, manufacture, treat, handle, refine, produce, process, store, discharge, release or dispose of any Hazardous Material, except in full compliance with all applicable Hazardous Materials Laws. As used herein, the term "Hazardous Materials" means and includes any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under, or for purposes of, the Hazardous Materials Laws. As

used herein, the term "Hazardous Materials Laws" means and includes all federal, state and local laws, ordinances and regulations, now or hereafter in effect, relating to environmental conditions or industrial hygiene, including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6992k; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Clean Air Act, 42 U.S.C. §§ 7401-7642; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001-11050; and any similar state or local laws, ordinances and all regulations now or hereafter adopted, published or promulgated pursuant thereto.

16. **INSURANCE.** Lessee, at its sole cost and expense, shall procure and maintain insurance in the following amounts and covering the following risks:

(a) All risk perils (including but not limited to fire, lightning, explosion, smoke, windstorm (hurricane), water, flood, theft, vandalism, malicious mischief and extended coverage) or special cause of loss insurance in an amount which is at all times during the term of this Lease at least equal to the greatest of (i) the fair market value of the equipment or (ii) the original purchase price of the equipment or (iii) the replacement value new of the equipment and showing Lessor as a loss payee;

(b) Commercial general liability insurance (including but not limited to liability caused by the fault of Lessee, products-completed operations liability, contractual liability, personal and advertising injuries, and coverage for the contractual liability assumed by Lessee under this Lease) for and against liability or loss or injury to persons or property, or death of any person or persons, resulting from or arising out of the ownership, use, possession or operation of the leased equipment, with limits as specified in the Exhibit and showing Lessor as an additional named insured; and

(c) Owners and contractors protective liability insurance (if Lessee is a contractor) and automobile accident liability insurance in such amounts as Lessor may require from time to time and showing Lessor as an additional named insured.

All such insurance shall be maintained from the date of execution of this Lease, or if the equipment is ordered from a vendor, from the date risk of loss passes from the vendor, until the date the equipment is delivered to Lessor upon termination of this Lease (or if the equipment is lost or destroyed, until Lessee has fulfilled all of its obligations under this Lease). All such insurance shall be in a form approved by Lessor, and with carriers approved by Lessor, such approvals not to be unreasonably withheld. Lessee acknowledges that Lessor has not made the entering into of this Lease or any other related agreement or document contingent on Lessee procuring the insurance required hereunder from any insurance company designated by Lessor. Said policies shall provide that they may not be altered or cancelled without thirty (30) days written notice to Lessor. If Lessee fails to maintain any of the above described insurance, Lessor may, but shall not be required to, obtain such insurance in accordance with the provisions of paragraph 25. Lessee hereby waives, on Lessee's behalf and on behalf of any insurance carriers of Lessee, any claim which Lessee might otherwise have against Lessor from any risk required to be insured against by Lessee under this Lease. Lessee shall furnish Lessor with copies of all policies and such other evidence of insurance as Lessor may reasonably require. Lessee hereby irrevocably appoints Lessor as its attorney in fact with full power to negotiate, prosecute, settle and/or compromise all claims or actions under or pursuant to said insurance policies, and to execute in the name of Lessee any proofs of claim or loss, and to endorse the name of Lessee on any settlement, draft or check. Lessee shall cooperate in the prosecution of all claims. THE PROCEEDS OF ANY FIRE, EXTENDED COVERAGE, THEFT, COLLISION OR OTHER INSURANCE PROVIDING COVERAGE FOR RISK OF LOSS OR DAMAGE TO THE EQUIPMENT SHALL BE PAYABLE SOLELY TO LESSOR AND SHALL BE CREDITED BY LESSOR TOWARD THE PAYMENT OF OBLIGATIONS OF LESSEE UNDER PARAGRAPH 14 HEREOF, THE BALANCE OF THE PROCEEDS, IF ANY, TO BE THE PROPERTY OF LESSOR.

17. **ENCUMBRANCES.** Lessee agrees to keep the equipment free and clear of, and to defend Lessor's title against any and all levies, liens, claims and encumbrances (hereinafter collectively referred to as "Liens"), whether voluntary or involuntary, and whether arising by or through Lessee, vendors or otherwise, and to immediately notify Lessor in writing if any such Lien attaches to any item of equipment.

18. **RESPONSIBILITY FOR DAMAGES.** Lessee shall be responsible for damages or injury caused by its officers, employees and agents in the course of their employment to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and Lessee shall pay for such damages and injury to the extent permitted by law, including without limitation: (a) the Non-Appropriation clause set forth in Section 3(iii) above, and (b) Section 36-41, Hawai'i Revised Statutes, setting forth requirements for "energy performance contracts" as defined therein. Any provision of this Lease (including an Exhibits, Addenda or other attachments) providing for an obligation by Lessee over and above the manner stated herein shall be null and void. The provisions of this paragraph shall survive termination of this Lease with respect to events occurring prior to such termination.

19. **OWNERSHIP BY LESSEE; TAX COVENANTS.** As between Lessor and Lessee, Lessee shall be treated as the owner of the equipment for tax purposes. However, Lessor makes no representations or warranties regarding the tax treatment of the equipment, this Lease or the payments to be made hereunder. Lessee shall have no other right, title or interest therein except as expressly set forth in this Lease. Lessee hereby covenants and agrees that:

(a) The parties anticipate that Lessor can exclude the portion of the rent payments treated as interest under this Lease from federal and State of Hawaii gross income. Lessee covenants and agrees that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Code; (ii) not permit the equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS

guidelines for permitted management contracts, as the same may be amended from time to time; (iii) not take any action that would cause this Lease or any related agreements to be treated as arbitrage bonds within the meaning of Section 148(a) of the Code; (iv) not take any action that would cause this Lease or any related agreements to be treated as federally guaranteed within the meaning of Section 149(b) of the Code; and (v) comply with any and all provisions and regulations applicable to establishing and maintaining the excludability of the portion of the rent payments treated as interest under this Lease from federal gross income pursuant to Section 103 of the Code, and from State of Hawaii gross income.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the portion of any rent payment treated as interest under a Lease from federal and/or State of Hawaii gross income because Lessee breached a covenant contained herein, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to rent payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the portion of the rent payments treated as interest under such Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after-tax yield on the transaction evidenced by this Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding rent payment due date in such amount as will maintain such after-tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error). Notwithstanding anything in a Lease to the contrary, any payment that Lessee is required to make pursuant to this subsection (b) shall be made only from moneys appropriated or otherwise made available, from time to time, by the County Council to pay amounts due under this Lease for the fiscal period in which the payments are due, together with any unexpended proceeds of this Lease, and any reserves or other amounts that have been deposited in trust to pay amounts due under this Lease.

20. **END OF LEASE PURCHASE RIGHTS AND OBLIGATIONS.** At the expiration of the full term of this Lease, Lessor and Lessee shall have those rights and obligations specified in the Exhibit attached hereto.

21. **SURRENDER.** Upon the expiration or earlier termination of this Lease, and subject to the provisions of paragraph 20, Lessee agrees to return the equipment to Lessor, free of all advertising or insignia placed thereon by Lessee, in good repair, condition and working order, ordinary wear and tear resulting from proper use excepted, by delivering the equipment, at Lessee's sole cost and expense, to any of the following locations selected by Lessor:

- (a) Any location within the State of Hawaii; or
- (b) Any carrier that Lessor selects, packed and ready for shipment.

In addition, Lessee shall turn over to Lessor all records pertaining to the repair, maintenance and servicing of the equipment, all records of alterations, additions, accessories and improvements to the equipment, and all operating manuals, warranties and other documents which came with the equipment or were sent from the manufacturer, supplier or vendor.

If the equipment is not returned to Lessor when required upon the expiration of the term of this Lease, Lessee shall pay Lessor continuing rent in an amount equal to 1/30 of the monthly rental payment specified in the applicable Exhibit hereto for each day following the expiration date until the equipment is delivered to Lessor pursuant to the requirements of this Lease. Notwithstanding Lessee's payment and Lessor's acceptance of any such continuing rent, Lessee's failure to return the equipment, when required under the terms of this Lease, shall constitute a default under this Lease, unless Lessor consents in writing to continue the lease of such equipment on terms and conditions as may be set by Lessor.

22. **ASSIGNMENT BY LESSEE.** Lessee shall not, without the prior written consent of Lessor, sell, assign, sublet, lend, create a security interest in or otherwise transfer this Lease, the equipment, or any part thereof or interest therein or permit the equipment to be used by anyone other than Lessee or Lessee's employees. If Lessee is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any general partner, or dissolution of the partnership, and if a limited partnership, the assignment or transfer of a majority interest of the limited partnership units, shall be deemed an assignment and transfer of this Lease. If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization, or the sale or transfer of a controlling percentage of the capital stock of Lessee, or any corporation directly or indirectly controlling Lessee, or the sale of at least fifty-one percent (51%) of the value of the assets of Lessee shall be deemed an assignment and transfer of this Lease. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors.

If Lessee desires Lessor's consent to the assignment or transfer of this Lease, Lessee shall give Lessor not less than sixty (60) days prior written notice thereof. Notwithstanding any provision to the contrary, Lessor may, in addition to any other reasons supportive of refusal to consent, refuse to consent to an assignment or transfer because of an honest belief, reasonably formed:

- (a) That the proposed assignee is financially unable to perform in accordance with the terms of this Lease; or
- (b) That the use to be made of the equipment by the proposed assignee is not within the scope of the use originally intended by this Lease.

Without limiting the foregoing, Lessor must be satisfied with the proposed assignee's business experience and reputation, personnel qualifications, management ability, financial status and corporate/partnership status (such as place of incorporation or registration, etc.). Lessor may require an investigation of the financial condition, business reputation, credit standing, performance history, quality of business operation and other relevant aspects of Lessee's proposed assignee to be conducted to enable Lessor to make an informed decision on whether Lessor should consent to the assignment. All reasonable costs of such an investigation shall be paid for by Lessee.

No assignment or transfer shall in any way release Lessee or any guarantor of this Lease from their obligations under this Lease or any guaranty. Lessee and any guarantor shall remain primarily liable to Lessor for the payment of rent and the performance of all other obligations due under this Lease or any guaranty, notwithstanding any such assignment or transfer, unless and except Lessor consents in writing to release same.

Any assignment or transfer of this Lease by Lessee without the prior written consent of Lessor shall constitute a default under this Lease, in which case, in addition to and not in limitation of all of Lessor's rights and remedies under this Lease available to Lessor in the event of a default, Lessor may demand and collect rent payments from the purported assignee or transferee without waiving its right to enforce this Lease against Lessee, and such collection of rent by Lessor shall not be deemed a waiver of any rights of Lessor as against Lessee under this Lease or any guaranty.

23. **ASSIGNMENT BY LESSOR.** Lessor may assign, transfer, pledge, hypothecate, or grant a security interest in this Lease or the equipment, in whole or in part, without the prior consent of Lessee, and Lessor's assignee or secured party may reassign said interest without the prior consent of Lessee; provided, however, that prior to any such assignment hereunder, Lessor (or any successor-in-interest to Lessor under this Lease, as the case may be), shall deliver written notice thereof to Lessee. Should this Lease or the equipment or any interest or part therein be so transferred, Lessee agrees:

- (a) That no such transfer shall give Lessee the right to demand assurances of performance;
- (b) That no breach or default by Lessor hereunder shall excuse performance by Lessee of any provision hereof, and no transferee shall be obligated to perform any covenant, condition or obligation required to be performed by Lessor hereunder;
- (c) That it will not assert against the transferee any claim, counterclaim or defense which it may now have or may hereinafter acquire against Lessor; and
- (d) That in the case of the foreclosure of any mortgage or security interest in the equipment, the transferee shall have the right to ratify and affirm the continuance of this Lease, and in such event Lessee shall continue to perform its obligations hereunder.

24. **DEFAULT.** Time is of the essence of this Lease. If Lessee fails to pay when due rent or any other amount required herein to be paid by Lessee and Lessee shall fail to cure the same within ten (10) days of the applicable due date, or if Lessee fails to perform any other provision hereof on its part to be performed within thirty (30) days of Lessor's written notice to Lessee describing such default, or if a longer period of time is reasonably necessary to cure such default then up to any additional ninety (90) days, so long as Lessee continuously prosecutes the same to completion within such 30-day period and throughout such 90-day period, or if Lessee or any guarantor of the Lease shall breach any representation or warranty made by Lessee or any such guarantor, respectively, Lessee shall be deemed to have committed a total breach and default of this Lease. In that event, or if Lessee fails generally to pay its debts as they become due, or if any proceeding under the Bankruptcy Code is commenced by or against Lessee, or if a receiver is appointed to take possession of any item of equipment, or if Lessee makes any assignment for the benefit of creditors, or if similar proceedings are instituted by or against Lessee, or if Lessee shall die or become incompetent or insolvent, or if Lessee shall cease doing the type of business for which the equipment was intended to be used, or if the equipment is confiscated, attached, seized, or threatened with confiscation, attachment or seizure, or if there shall be, in Lessor's sole discretion, any material adverse change in the condition of Lessee or any guarantor of this Lease, or if Lessee shall fail to comply with the insurance requirements under this Lease, or if such insurance is canceled or the coverage reduced prior to the termination of this Lease, or if the Lessee shall create any unauthorized lien or encumbrance on the Equipment which shall adversely affect the Lessor's rights under this Lease and in the Equipment, or if Lessee shall engage in any act or activity that, in Lessor's exclusive judgment, shall in any way prejudice or render insecure the Lessor's rights in the Equipment, or if Lessee shall be in default under any other lease between Lessor and Lessee, or if Lessee shall be in default under any loan, lease, credit facility, extension of credit, agreement or obligation with Lessor, or any subsidiary, affiliate, parent or successor of Bank of Hawaii, all of which shall also constitute a default under this Lease, then Lessor may terminate this Lease and/or with or without terminating this Lease and at its election:

- (a) Recover from the Lessee the sum of (i) all amounts then currently due under the Lease and all remaining rental payments due under the Lease during the fiscal year in effect when the default occurs and (ii) interest and late charges due thereon;
- (b) Enter upon Lessee's premises and take possession of the equipment. Lessee waives any damages occasioned by such taking of possession whether or not Lessee was in default at the time possession was taken, so long as Lessor reasonably believed at the time that Lessee was in default at said time;
- (c) Lease the equipment to any other person or persons at such rental and upon such terms and conditions as Lessor shall determine, including the right to lease such equipment beyond the expiration of the term of this Lease;

(d) Sell or otherwise dispose of the Equipment in such commercially reasonable manner as the Lessor shall determine, and if Lessor so disposes of any Equipment, then Lessor shall apply the entire proceeds of such disposition as follows: first, to pay costs that Lessor has incurred in connection with exercising its remedies; second, to payment of amounts that are payable by Lessee under clause (a) above; and then to payment of the Stipulated Loss Value set forth in the applicable Schedule for the last Rent Payment due date for the fiscal year in which the related default occurs; provided, however, that any disposition proceeds in excess of payment of all of the foregoing amounts shall be paid promptly by Lessor to Lessee;

(e) Pursue any applicable remedies provided under the Hawaii Uniform Commercial Code or applicable law; or

(f) Bring an action for damages to pursue any other remedy at law or equity which Lessor may have.

No right or remedy herein conferred upon or reserved by Lessor is exclusive, and each remedy is cumulative and may be enforced separately or concurrently from time to time. Lessor's acceptance of rent or other performance shall not be deemed a waiver of any of its remedies in the event of Lessee's default. The proceeds of any rental or sale of the equipment, minus all reasonable costs and expenses incurred in the recovery, repair, storage, renting or sale, shall be applied to the payment of Lessee's obligations hereunder. Lessee shall remain liable for any deficiency. Regardless of the remedy or remedies pursued by Lessor, Lessee agrees to be liable for, and, upon demand, to pay to Lessor, in addition to all other sums due hereunder, the full amount of all reasonable costs or expenses, including reasonable attorney's fees, incurred by Lessor in connection with any action by Lessor hereunder. Lessee shall not assert against Lessor or Lessor's assignee, any claim or defense arising from any breach of warranty by any vendor, supplier or manufacturer, or from any equipment defect, and Lessee waives any claims against Lessor for loss of profits, damages, costs or other expenses arising therefrom. In the event of Lessee's bankruptcy, there shall be no extension of the 60-day time period under the Bankruptcy Code within which this Lease must be accepted or rejected and, if not accepted, this Lease shall immediately terminate. Notwithstanding anything to the contrary contained herein, any failure by the Council to appropriate Available Funds for payments hereunder shall not constitute a default of this Lease.

25. PERFORMANCE BY LESSOR; ADVANCEMENT OF FUNDS. In addition to any other remedies provided herein, if Lessee fails to observe or perform any agreement, condition or obligation of this Lease, including, without limitation, Lessee's obligations to provide insurance, to register and license the equipment and to keep the equipment free of liens and encumbrances, or if any suit, proceeding or other contingency shall arise or be threatened which may in the opinion of Lessor threaten the equipment or Lessor's interest therein, Lessor may, without notice or demand, perform any obligation of Lessee and make any advances or incur such expenses, costs or attorneys' fees as Lessor in its judgment deems advisable to protect the equipment or Lessor's interest therein or to carry out Lessee's obligations hereunder. All such advances, costs, expenses and attorney's fees shall be paid by Lessee to Lessor upon demand and shall bear interest from the date incurred until paid at the rate of twelve percent (12%) per annum.

26. LESSOR'S RIGHT OF SET-OFF; SECURITY INTEREST IN ACCOUNTS. If Lessee shall be in default under this Lease, Lessor may set-off any funds of Lessee held in accounts maintained with Lessor or any subsidiaries or affiliates of Lessor (such as checking and savings accounts) against any sums owed by Lessee to Lessor under this Lease, and Lessor may do so without having to resort to any other collateral which may have been given to secure this Lease. To secure Lessee's obligations under this Lease, Lessee hereby grants to Lessor a security interest in all checking, savings and other deposit accounts now or hereafter maintained by Lessee with Lessor or any subsidiaries or affiliates of Lessor.

27. APPLICABLE LAW. The validity, enforcement and performance of this Lease shall be governed and determined by the laws of the State of Hawai'i.

28. TERMINATION, MODIFICATION AND WAIVER. This Lease cannot be terminated or cancelled except as expressly provided herein. No amendment, alteration, change to or waiver of any provision of this Lease shall be effective unless the same shall be in writing and signed by Lessor and Lessee. Failure by Lessor to exercise any remedy which Lessor may have hereunder or any other acquiescence in the default of Lessee shall not constitute a waiver of any obligation of Lessee including the obligation in which Lessee is in default, and Lessor shall be entitled to pursue any remedy available to it hereunder until Lessee has rendered complete performance of all obligations of this Lease.

29. ACCIDENTS. Lessee agrees to immediately notify Lessor, and within three (3) days thereafter, confirm such notification in writing, of any loss of or damage to, or of any accident connected with, the use or operation of any of the equipment, giving such information as may be pertinent to Lessor's investigation of the occurrence as Lessor may reasonably require.

30. REPORTS AND DOCUMENTS. Lessee shall submit to Lessor within two hundred forty (240) days of the close of its fiscal year and at Lessee's sole cost and expense: (a) Lessee's annual financial statement (audited by an independent certified public accountant) including income and expense data, (b) a comprehensive annual financial report of Lessee, and (c) an annual fiscal budget of Lessee. In addition, Lessee shall submit to Lessor such corporate resolutions, opinions of counsel, financial statements, tax returns and other documents related to this Lease, its tax treatment or the equipment as Lessor may reasonably request from time to time. Lessee shall execute such documents as Lessor shall require to effectuate the transfer or recording of its interest in this Lease or the equipment, in whole or in part, as may otherwise be necessary to protect, license, register, or evidence Lessor's ownership or interest thereof.

31. NOTICES. All notices required or permitted under this Lease shall be sufficient if delivered personally or mailed to the party at its principal place of business, or at such other address as either party may designate in writing from time to time. Any such notice mailed to such address shall be effective seventy-two (72) hours after it has been deposited in the United States mail, duly addressed and postage prepaid.

32. **ENTIRE AGREEMENT.** This Lease, its Exhibits and any Certificates executed pursuant hereto constitute the entire understanding or agreement between Lessor and Lessee. There is no understanding or agreement, oral or otherwise, which is not set forth herein.

33. **BINDING EFFECT.** Subject to the provisions of paragraph 23, this Lease inures to the benefit of and is binding upon the respective heirs, devisees, personal representatives, successors and assigns of the parties. If this Lease is signed by more than one person, firm and/or corporation as Lessee, all of the covenants and obligations contained in the Lease and on the part of Lessee to be performed shall be considered the joint and several covenants and obligations of each signer of the Lease.

34. **SEVERABILITY.** If any provision of this Lease is held invalid or illegal, such invalidity or illegality shall not affect any other provisions which can be given effect without the invalid or illegal provisions. The provisions of this Lease are severable and this Lease and any provision hereof shall be enforceable to the extent and only to the extent it is valid and legal.

35. **HEADINGS.** Paragraph headings contained herein shall not govern, limit, modify, or affect the scope, meaning or intent of the provisions of this Lease.

36. **SURVIVAL OF COVENANTS.** Wherever the context permits, Lessee's covenants under this Lease shall survive the delivery and return of the equipment leased hereunder.

37. **NATURE OF TRANSACTION.** It is the intent of the parties hereto that this be a conditional sale of the equipment leased hereby and all terms of this Lease shall be construed as to give effect to that intention.

38. **ADMINISTRATION FEES.** If Lessee requests changes or modifications to this Lease or requests any other action by Lessor related to this Lease, or if Lessee, by its actions or inaction causes Lessor to take action under this Lease, Lessor shall have the right to collect from Lessee reasonable fees for having to take such action, including by way of example only and without limitation, fees for processing any amendments or modifications of this Lease, and any consents related to this Lease. Such fees shall be based, when applicable, on Lessor's rates as set from time to time by Lessor and shall include all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in having to take such action.

39. **JURY TRIAL WAIVER.** Lessor and Lessee hereby waive trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Lease or any documents executed in connection with this Lease.

40. **COUNTERPARTS.** The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatories to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

41. **ELECTRONIC SIGNATURES.** The parties hereto agree that delivery of a signature page to, or an executed counterpart of, this Agreement by facsimile, email transmission of a scanned image or other electronic means, shall be effective as delivery of an originally executed signature page or counterpart, and shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law. Alternatively, you agree to adopt your electronic signature below as your signature and you are creating a valid, binding contract under the Federal Electronic Signatures in Global and National Commerce Act, the Hawai'i Uniform Electronic Transactions Act and/or the Hawai'i Uniform Commercial Code. You further acknowledge and agree that upon request you will deliver an original, fully executed copy of this document to Bank of Hawaii.

42. **OTHER TERMS AND CONDITIONS.**

- a) Lessor shall be named as legal owner and lien holder and Lessee shall be named as registered owner of all vehicles covered by this Lease. All such vehicles shall be maintained as recommended by the applicable owner's manual and all maintenance shall be documented and maintained in the respective vehicle.
- b) The Lessor and Lessee intend that the transaction evidenced hereby is a lease of the equipment. To protect the interest of the Lessor in the event that any court should make a contrary determination, the Lessee authorizes the Lessor to file one or more financing statements describing the equipment and any other statutory liens held by the Lessor.
- c) The terms and conditions of the following addenda attached hereto are hereby incorporated by reference:

Addendum B – Modification of Insurance Requirements
Advance Funding Addendum

[The remainder of this page is intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on this 30th day of September, 2022.

LESSOR

BANK OF HAWAII

By 
Name: _____
Its: _____

By 
Name: _____
Its: _____

LESSEE

COUNTY OF MAUI

By 
Name: MAY-ANNE A. ALIBIN
Its: DEPUTY DIRECTOR OF FINANCE

By _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY

By 
Deputy Corporation Counsel
County of Maui