

AMENDMENT NO. 3 TO CONTRACT NO. M1016

Department: Environmental Management - Solid Waste Division

Project Title: Integrated Waste Conversion and Energy Project

RFP No.: 13-13/P32

Additional Certification Requested from County: \$0.00

This AMENDMENT NO. 3 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 MAUI RESOURCE RECOVERY FACILITY, LLC, a Delaware limited liability company, whose mailing address is 5780 Fleet Street, Suite 310, Carlsbad, California 92008, hereinafter referred to as the "Contractor." County and Contractor shall hereinafter be referred to collectively as the "Parties".

RECITALS:

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

CONTRACT NO.	DATE	ADDITIONAL CERTIFIED AMOUNT	TOTAL CERTIFIED AMOUNT	TIME OF PERFORMANCE/ EXTENSION	RENEWAL OPTION FOR MULTI TERM CONTRACT
M1014	1/8/2014	NOT APPLICABLE	\$0.00	1/8/2014 to 20 years from Commercial Operations Date	None
Amd. 1	2/14/2017	\$0.00	\$0.00	Same	None
Amd. 2	11/29/2017	\$0.00	\$0.00	Same	None

2. WHEREAS, the Contract and any Amendment(s) thereto listed above shall be hereafter collectively referred to as "Contract"; and

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

RECEIVED AT EDB MEETING ON 2-6-2020
Director of Environmental Management (EDB-US)

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WHEREAS, the Contractor has represented to the County, and the County has acknowledged the execution of the contract has been impacted by reasons beyond reasonable control of the Contractor;

WHEREAS, County acknowledges that an amendment to the contract to provide additional time to the Contractor to achieve specific milestones is interest of the County

4. WHEREAS, the Parties now desire to amend the Contract.

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

1. Section 3.07(d) is amended in full as follows:

“(d) If the conditions set forth in this Article are not completed, waived, or extended by written agreement within seventy-eight (78) months of the Effective Date and MRRF is not diligently pursuing such permits, licenses, and other approvals, the County shall have the option to terminate the Agreement without triggering the default provisions of this Agreement or incurring any liability under this Agreement.”

2. Section 9.01 is amended in full as follows:

“MRRF shall have until June 30, 2020 (“Offtake Contract Milestone Date”) to execute a binding contract with Maui Electric Company for sale of electricity or renewable gaseous fuel (“Offtake Contract”) generated by MRRF’s processing of Acceptable Waste, which deadline may be extended at the sole discretion of the County. In the event the contractor achieves the Offtake Contract Milestone Date, the Parties shall negotiate in good faith a reasonable milestone to achieve the Commercial Operations Date. In the event the Offtake Contract is not fully executed by the Offtake Contract Milestone Date, either Party may terminate the Agreement with notice to the other Party without triggering the default provisions of this Agreement or incurring any liability under this Agreement.”

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

IN WITNESS WHEREOF, the Parties execute this Amendment No. 3 by their signatures, on the dates below, to be effective as of the date of last signature hereto.

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

CONTRACTOR:

MAUI RESOURCE RECOVERY FACILITY, LLC

By Arun Sharma
(Signature)

ARUN SHARMA
(Print Name)

Its PRESIDENT
(Title)

Date 12/7/18

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STATE OF California)
County: San Bernardino) SS.

On this 7 day of December, 2018, before me personally appeared Anna Gopal Sharma, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.


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

(SEE ATTACHED)
Notary Public, State of _____
Print Name: _____
My commission expires: _____

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

COUNTY EXECUTION PAGE

COUNTY OF MAUI

By 
MARK R. WALKER
Its Director of Finance

Date DEC 11 2018

APPROVAL RECOMMENDED:


STEWART STANT, Director
Department of Environmental Management

Date 11/28/18

APPROVED AS TO FORM
AND LEGALITY:


RICHELLE THOMSON
Deputy Corporation Counsel
County of Maui

Date 12/11/2018

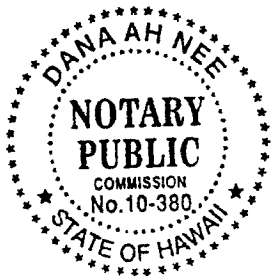
LF2016-0541

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STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

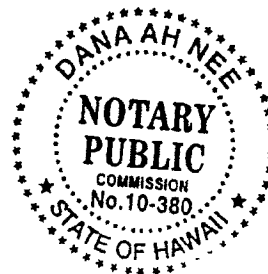
On this 11th day of December, 2018, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Acting Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

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



Dana Ah Nee
 Notary Public, State of Hawaii
 Print Name: DANA AH NEE
 My commission expires: NOV 14 2022

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	<u>DEC 11 2018</u> # Pages: <u>7</u>
Notary Name:	<u>DANA AH NEE</u> Judicial Circuit: <u>2nd</u>
Doc. Description:	<u>Amendment No. 3 to</u> <u>Contract No. M1016</u>
Notary Signature:	<u>Dana Ah Nee</u>
Date:	<u>DEC 11 2018</u>



CALIFORNIA NOTARY ACKNOWLEDGMENT

For An Individual Acting In His/Her Own Right:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Bernardino) ss.

On December 7, 2018 before me, Ivan Marquez-Marquez Notary Public, personally appeared
Arav Gopal Sharma

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



Ivan Marquez-Marquez
Signature
Ivan Marquez-Marquez
Print Name

My commission expires: 01/25/2022