

AMENDMENT NO. 1 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. 1 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, County and 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

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

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

RECEIVED AT EDB MEETING ON 2-6-2020
Director of Environmental Management (EDB-48)

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

1. The definition of "Excess Acceptable Waste" is hereby modified to remove Sewage Sludge from said definition and any obligations of Contractor relating to accepting Excess Acceptable Waste as it relates to Sewage Sludge.
2. The definition of "Sewage Sludge" is hereby modified to exclude Sewage Sludge that has been processed and dried with the intent by the County to utilize such material as landfill cover. Such dried Sewage Sludge received at the Central Maui Landfill does not constitute Acceptable Waste requiring delivery or payment of a tipping fee to the Contractor.
3. 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 forty-eight (48) 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."

4. Section 6.03 of the Contract is amended in full as follows:

"Guaranteed Annual Minimum Tonnage of Acceptable Waste. Beginning on the Commercial Operations Date, the County will deliver or cause to be delivered a minimum of 103,000 tons of Acceptable Waste per Contract Year to MRRF ("Guaranteed Annual Minimum Tonnage of Acceptable Waste"), provided that the County does not control and cannot guaranty the quality or composition of said Acceptable Waste or its suitability for any purpose.

Whether the County meets the Guaranteed Annual Minimum Tonnage of Acceptable Waste shall be measured as the average tonnage delivered in the current Contract Year and the two prior Contract Years. For example, if the tonnage of Acceptable Waste delivered in Contract Years 1, 2, and 3 is 105,000, 104,000, and 102,000, respectively, the average annual tonnage delivered is 104,000, and the County is deemed to have met its obligation to deliver the Guaranteed Annual Minimum Tonnage of Acceptable Waste in Contract Year 3. However, if in Contract Year 4, the

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tonnage of Acceptable Waste delivered is 102,000, the average of Years 2, 3, and 4 then is 102,666, and the County is deemed to have delivered a shortfall of 334 tons in Contract Year 4.

If the Guaranteed Annual Minimum Tonnage is not delivered, the County shall compensate MRRF by paying the then-applicable per-ton price for MSW for the tonnage of deficiency as part of the Annual Settlement Process in Section 6.10. If MRRF does not accept up to the per ton limits set out in the definition of Excess Acceptable Waste, as measured on a Contract Year basis, fails to meet any of the Performance Guarantees applicable to the current Contract Year as set out in Article IX, or accepts Acceptable Waste from others pursuant to Section 6.01, this Section 6.03 shall not apply.”

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

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IN WITNESS WHEREOF, the Parties execute this Amendment No. 1 by their signatures, on the dates below, to be effective as of the date of last signature hereto.

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)

Its: Arun Sharma
President

Date 1/12/17

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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)
) ss.
County of San Diego)

On 01/12/2017 before me, Maria E. Fisco Notary Public, personally appeared
Arun P 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/it~~/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.

WITNESS my hand and official seal



Maria E. Fisco
Signature
Maria E. Fisco
Print Name

My commission expires: 08/18/2018

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COUNTY EXECUTION PAGE

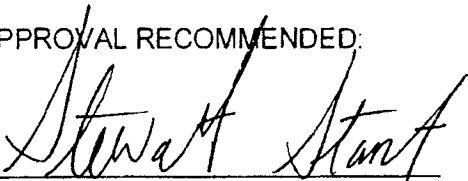
COUNTY OF MAUI



By _____
DANILO F. AGSALOG
Its Director of Finance

Date FEB 14 2017

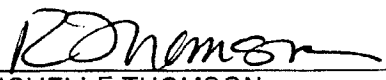
APPROVAL RECOMMENDED:



STEWART STANT, Director
Department of Environmental Management

Date 1/17/17

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE THOMSON
Deputy Corporation Counsel
County of Maui

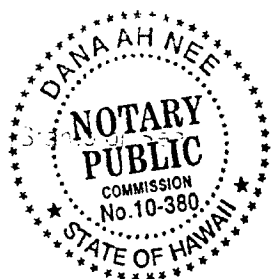
Date 1/19/2017

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STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this 14th day of February, 2017, before me appeared DANILO F. AGSALOG, to me personally known, who being by me duly sworn, did say that he is the 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 DANILO F. AGSALOG 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 2018

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>FEB 14 2017</u>	# Pages: <u>7</u>
Notary Name: <u>DANA AH NEE</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>Amendment no. 1 to Contract</u>	
<u>no. M1016</u>	
[Stamp or Seal]	
Notary Signature: <u>Dana Ah Nee</u>	
Date: <u>FEB 14 2017</u>	

