

ALAN M. ARAKAWA
Mayor



TEENA M. RASMUSSEN
Economic Development Director

OFFICE OF ECONOMIC DEVELOPMENT

COUNTY OF MAUI

2200 MAIN STREET, SUITE 305, WAILUKU, MAUI, HAWAII 96793, USA

Telephone: (808) 270-7710 • Facsimile: (808) 270-7995 • Email: economic.development@mauicounty.gov

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OFFICE OF THE MAYOR

November 16, 2016

Honorable Alan Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, HI 96793

For Transmittal To:

Honorable Don Guzman, Chair
Economic Development, Energy,
Agriculture, and Recreation Committee
Maui County Council
200 South High Street
Wailuku, HI 96793

APPROVED FOR TRANSMITTAL

Alan Arakawa 11/22/16
Mayor Date

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OFFICE OF THE
COUNTY COUNCIL

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SUBJECT: AUTHORIZING DONATION AND TRANSFER OF EQUIPMENT TO MAUI FROM NEW
ENERGY AND INDUSTRIAL TECHNOLOGY DEVELOPMENT ORGANIZATION

Dear Chair Guzman,

We are submitting a proposed resolution to accept the donation and transfer of equipment currently situated on County property pursuant to Resolutions 14-134 and 14-135, copies attached.

In accepting the donation and transfer, the County would own the equipment including a Static Var Compensator at the Makawao Garage and a Battery Energy Storage System at the Kihei Waste Water Treatment Plant that were previously a portion of the Jump Smart Maui Project. The County in turn is working with MECO on an agreement in which MECO would operate the equipment, bringing flexibility to the grid in an effort to improve renewable resource integration.

We look forward to working with you in bringing this donation and transfer agreement before the EAR committee on November 29, 2016. Should you have additional questions, please contact me at ext. 7224.

Sincerely,

Teena M. Rasmussen

Teena M. Rasmussen
OED Director

Resolution

No. _____

AUTHORIZING ACCEPTANCE OF A DONATION OF JUMP SMART MAUI
PROJECT EQUIPMENT TO THE COUNTY OF MAUI,
PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE

WHEREAS, New Energy and Industrial Technology Development Organization has offered to transfer ownership of various equipment from its Jump Smart Maui Project to the County; and

WHEREAS, the equipment along with the terms of the transfer are described in more detail in the Jump Smart Maui Project on the Island of Maui Equipment Transfer Agreement, attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, Chapter 3.56, Maui County Code, authorizes the Council of the County of Maui to accept gifts and donations on behalf of the County; now, therefore,

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

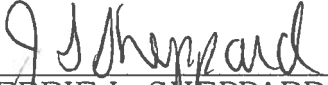
1. That it hereby expresses its appreciation and accepts the aforesaid donation on behalf of the County of Maui; and

2. That it authorizes the Mayor or the Mayor's authorized representative to execute all documents pertaining to said donation; and

Resolution No. _____

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, the Director of Public Works, and the New Energy and Industrial Technology Development Organization.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2016-1580

JUMP SMART MAUI PROJECT ON THE ISLAND OF MAUI

EQUIPMENT TRANSFER AGREEMENT

This equipment transfer agreement (hereinafter referred to as the "AGREEMENT") for the Jump Smart Maui Project on the Island of Maui (hereinafter referred to as the "PROJECT") which will be completed on February 28, 2017, is made and executed on the date of the last signature of all copies by the parties (hereinafter referred to as the "EFFECTIVE DATE"), by and between the New Energy and Industrial Technology Development Organization (hereinafter referred to as "NEDO") and the County of Maui (hereinafter referred to as "MAUI").

This AGREEMENT is designed to ensure the effective use of the equipment provided by NEDO, as listed in Exhibit "1", attached hereto and made a part hereof, (hereinafter referred to as the "EQUIPMENT"), for the PROJECT pursuant to a memorandum of understanding (hereinafter referred to as the "NEDO AND HAWAII MOU"), executed on November 22, 2011, between NEDO and the State of Hawaii, Department of Business, Economic Development & Tourism (hereinafter referred to as "SOH/DBEDT"), and the memorandum of understanding (hereinafter referred to as "NEDO AND MAUI MOU"), executed on June 14, 2013, between NEDO and MAUI, upon completion of the PROJECT.

The EQUIPMENT is currently installed on MAUI property as part of a BATTERY LICENSE AGREEMENT and SVC LICENSE AGREEMENT between MAUI and HITACHI ADVANCE CLEAN ENERGY CORPORATION, as amended by Resolutions 14-134 and 14-135 respectively, and shall terminate upon the TRANSFER DATE set forth in this AGREEMENT.

NEDO and MAUI hereby agree as follows:

1. Subject to and in accordance with the terms and conditions set forth in this AGREEMENT, at the time the PROJECT is completed NEDO shall transfer as a donation to MAUI the ownership of the EQUIPMENT at no cost in its then existing condition. The date of completion of the PROJECT is hereinafter referred to as the "TRANSFER DATE."
2. On the TRANSFER DATE, ownership of the EQUIPMENT shall automatically be transferred from NEDO to MAUI pursuant to this AGREEMENT without any further action by NEDO or MAUI.
3. NEDO and MAUI acknowledge and agree that the EQUIPMENT represents part of the equipment as provided for in Article 7 of the NEDO AND HAWAII MOU and in Article 4 of the NEDO AND MAUI MOU.
4. NEDO shall not assume any responsibility for warranty, maintenance, refurbishment, or any other costs, losses, or liabilities pertaining to the EQUIPMENT upon and subsequent to the

EXHIBIT " A "

transfer of its ownership of the EQUIPMENT to MAUI. All operation and maintenance costs after the EQUIPMENT is transferred to MAUI shall be borne by MAUI, or by a third party operation and maintenance company assigned by MAUI.

5. After the transfer of ownership to MAUI pursuant to paragraph 2., MAUI shall make its reasonable best efforts to continue to operate each item of the EQUIPMENT in a manner consistent with its original purpose and maintain the EQUIPMENT in as usable a condition as it was at the time of the transfer of ownership for four (4) years from the respective date of acquisition as noted in Exhibit "1". For this purpose, MAUI may assign the operation and maintenance work to a third party. In the event that MAUI wishes to alter how the EQUIPMENT is used, MAUI shall consult with NEDO in advance and obtain NEDO's agreement prior to such alteration.
6. MAUI shall prepare annual reports on the status of each item of the EQUIPMENT for four (4) years from the respective date of acquisition noted in Exhibit "1", based on an April to March time period. MAUI shall submit these annual reports to NEDO if so requested.
7. After the transfer of ownership to MAUI, NEDO may access the site during normal business hours, subject to reasonable conditions, where the EQUIPMENT is located when necessary to confirm the operational status of the EQUIPMENT for four (4) years from the respective date of acquisition as noted in Exhibit "1". For this limited purpose, MAUI does hereby give and grant to NEDO, its contractors and agents, the right to enter the sites of the EQUIPMENT for a period not to exceed four years from the respective date of acquisition noted in Exhibit "1".
8. MAUI shall make its reasonable best efforts to ensure that the EQUIPMENT continues to be operated and maintained safely and reliably, with the understanding that MAUI is self-insured, upon the effective date of this AGREEMENT.
9. NEDO shall make its reasonable best efforts to provide operation and maintenance manuals and maintenance records which are in its possession or control to MAUI or its designee, including any third party operation and maintenance company, upon the transfer of ownership of the EQUIPMENT to MAUI, or as soon as reasonably practical thereafter, to assist MAUI's proper operation of the EQUIPMENT and for MAUI's consultation with any third party operation and maintenance company in establishing its ability to operate the EQUIPMENT.
10. Any problems resulting from or anything unspecified in this AGREEMENT shall be resolved through amicable consultation based on the principles of mutual benefit, equality, cooperation and trust.
11. This AGREEMENT may be amended by mutual written agreement of NEDO and MAUI.
12. This AGREEMENT embodies the entire agreement of the parties and shall become effective upon the EFFECTIVE DATE. The SVC LICENSE AGREEMENT and its first amendment,

and the BATTERY LICENSE AGREEMENT and its first amendment, shall terminate upon the TRANSFER DATE.

13. It is expressly understood that the County does not in any way or for any purpose become a partner of NEDO in the conduct of its business or otherwise or a joint venturer or a member of a joint enterprise with NEDO.
14. This Agreement may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, NEDO and MAUI have executed two (2) originals of this AGREEMENT by their duly authorized representatives, and shall each retain one (1) original.

NEW ENERGY AND INDUSTRIAL
TECHNOLOGY DEVELOPMENT
ORGANIZATION:

Date

KAZUYUKI TAKADA
Director, New Energy and Industrial
Technology Development Organization
Japan

COUNTY OF MAUI

Date

By: _____
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:

FREDERICK REDELL
Energy Commissioner, Office of Economic Development

APPROVED AS TO FORM
AND LEGALITY:

JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2016-1580

STATE OF _____)
COUNTY OF _____) SS.

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

Notary Public, State of Hawaii

Print Name

My commission expires:

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

Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
COUNTY OF MAUI)

On this ____ day of _____, 20____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of 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 by authority of its Charter; and the said ALAN M. ARAKAWA 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.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

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

Notary Signature: _____	
Date: _____	

List of EQUIPMENT TO BE Transferred by NEDO

Item	Quantity	Location	Acquisition Date	Serial Number
Lead Battery System	1	Kihei Waste Water Treatment Plant	2013/12/17	112001020
Static Var Compensator System	1	Makawao Garage	2013/12/17	112001021

Resolution

No. 14-134

AUTHORIZING THE FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT

WHEREAS, the County of Maui and AEC-USA, INC. ("AEC"), entered into that Battery License Agreement dated August 1, 2013, attached hereto as Exhibit "1" and by reference made a part hereof, for an area at the Kihei Wastewater Treatment Plant, identified as TMK: (2) 2-2-024:011 ("Property"); and

WHEREAS, AEC has installed, operated, and maintained a battery utilized for energy storage testing purposes on the Property; and

WHEREAS, in accordance with Section 3.40.180, Maui County Code, the term of the license was for a period of twelve months, with any extension of tenancy requiring approval by the County Council; and

WHEREAS, effective the week of July 21, 2014, AEC changed its name to HITACHI ADVANCED CLEAN ENERGY CORPORATION ("HITACHI"); and

WHEREAS, the County and HITACHI desire to extend the license period for an additional five years; and

WHEREAS, the First Amendment to the Battery License Agreement, attached hereto as Exhibit "2" and by reference made a part hereof, extends the term under the agreement for a period of five years, or until July 31, 2019; now, therefore,

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

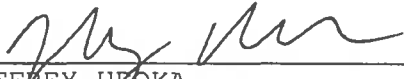
Resolution No. 14-134

1. That it hereby approves a five-year extension, through July 31, 2019, of the Battery License Agreement to HITACHI ADVANCED CLEAN ENERGY CORPORATION; and

2. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute the First Amendment to the Battery License Agreement; and

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Department of Environmental Management, and HITACHI ADVANCED CLEAN ENERGY CORPORATION.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UFOKA
Deputy Corporation Counsel
County of Maui

S:\ALL\JTU\RESOS\Battery License Agreement (First Amendment).wpd

BATTERY LICENSE AGREEMENT

Effective as of August 1, 2013 (the "Effective Date"), COUNTY OF MAUI, a political subdivision ~~of the State of Hawaii~~ ("Licensor"), and AEC-USA, INC., a Hawaii corporation ("Licensee"), agree as follows (this "Agreement"):

1. **Background.** Licensor is the owner of the property described in attached Exhibit "A" (the "Property"). Licensee and Licensor desire that Licensee have the right to use a portion of the Property to install, operate and maintain improvements, personal property and facilities necessary to operate Licensee's stationary lead-acid battery and related cables and utility lines (collectively, "Licensee's Facilities").

2. **License.** Licensor licenses to Licensee a certain portion of the Property sufficient to install, operate and maintain Licensee's Facilities, together with all necessary space and easements for access and utilities to operate Licensee's Facilities, as generally described and depicted in attached Exhibit "B" (collectively, the "License Area"). This Agreement shall constitute a license coupled with an interest but shall not be deemed to grant, transfer, or convey to Licensee any real property interest in the Property.

3. **Term.** The term of this Agreement shall commence on the Effective Date and shall be a month-to-month tenancy for a period not to exceed one year. Any renewal or extension shall be subject to Maui County Council approval by resolution.

4. **Permitted Use.** The License Area may be used by Licensee for a stationary lead-acid battery location for the installation, operation and maintenance of Licensee's Facilities and related activities. Licensee shall obtain, at Licensee's expense, all licenses and permits required for Licensee's use of the License Area from all applicable government or regulatory entities (the "Governmental Approvals") and may obtain a title report, perform surveys, soils tests, and other engineering procedures on, under and over the Property, necessary to determine that Licensee's use of the License Area will be compatible with Licensee's engineering specifications, system, design, operations and Governmental Approvals. Licensor agrees to reasonably cooperate with Licensee (at no cost to Licensor), where required, to perform such investigations or obtain Governmental Approvals.

5. **Improvements; Utilities; Access.**

(a) Licensee shall have the right, at its expense, to install, operate and maintain Licensee's Facilities on the License Area. Licensee's Facilities shall be initially configured generally as depicted in Exhibit "B", any gross deviation from Exhibit "B" shall require Licensor's approval in writing. Licensee shall have the right to replace or upgrade Licensee's Facilities at any time during the term of this Agreement. Licensee shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Licensee's Facilities shall remain the exclusive property of Licensee and/or such third parties who have licensed the use of such property to Licensee, as the case may be. Licensee shall have the right to remove Licensee's Facilities upon termination of this Agreement. Licensee's Facilities shall be contained within the License Area. Notwithstanding the foregoing, in case Licensor intends to have ownership of the Licensee's Facilities after termination of this Agreement, Licensor may discuss with Licensee the terms and conditions of the transfer. In the event that Licensor concludes not to obtain the Licensee's Facilities at the end of the license term, Licensee shall pay all rent from the Effective Date through the

date of termination of this Agreement, at the rate of thirty three US dollars and seventy nine cents(USD 33.79) per month.

(b) Licensee shall not commence the Installation of Licensee's Facilities, or make any alterations or upgrades until Licensee submits the plans and specifications for Licensee's Facilities, or alterations or upgrades, to Licenser and Licenser approves such plans and specifications. If Licenser does not approve or disapprove of such plans and specifications within ten (10) days after receipt, such plans and specifications shall be deemed approved. Licenser shall not unreasonably withhold or delay its approval of such plans and specifications.

(c) Licensee shall, at Licensee's expense, keep and maintain the License Area in commercially reasonable condition and repair during the term of this Agreement, normal wear and tear excepted. Upon termination of this Agreement, the License Area shall be returned to Licenser in good, usable condition, normal wear and tear excepted. Licensee shall be responsible for the securing the License Area, ensuring the safety of all users of the License Area and the Licenser's surrounding property.

(d) Licensee shall have the right, at Licensee's expense, to install and maintain utilities and to improve the present utilities to the License Area (including, but not limited to the installation of overhead or underground utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary equipment to connect Licensee's Facilities to utility sources located on the Property). If there are sufficient utility sources located on the Property to operate Licensee's Facilities, Licensee shall have the right to connect to such sources at Licensee's expense; provided, however, that Licensee shall (i) cause its use of such utility sources to be separately metered and (ii) reimburse the cost of its use of such utility sources to Licenser within twenty (20) days after receipt of Licenser's invoice for such actual utility cost with a copy of the relevant billing from the applicable utility provider. If there are not sufficient utility sources located on the Property to operate Licensee's Facilities, Licenser may grant to Licensee or the local utility provider the right to install such utilities on, over, under and through the Property as necessary for Licensee to operate Licensee's Facilities, at Licensee's expense; provided, however, (i) the location of such utilities shall be as reasonably designated by the mutual agreement of Licenser and Licensee and (ii) Licensee shall cause its use of such utility sources to be separately metered and billed directly to Licensee by the applicable utility provider.

(e) During the term of this Agreement, Licensee and its employees, agents, contractors, customers and other invitees shall have a non-exclusive right of ingress and egress from a public right-of-way in and through the Property to and from the License Area on a 24-hours-a-day, 7-days-a-week basis.

(f) Licenser shall have the right to restrict access to the License Area for health, safety, welfare reasons. In case of such restriction, Licenser shall so notify Licensee in writing as soon as reasonably possible.

6. **Interference.** Licensee shall not use the License Area in any way which interferes with the use of the Property by Licenser, or tenants or licensees of Licenser, with rights in the Property prior in time to Licensee's rights. Similarly, Licenser shall not use, nor shall Licenser permit its tenants, licensees, employees, invitees or agents to use any portion of the Property in any way which interferes with the operations of Licensee.

7. **Taxes.** Licensee or such third parties who have licensed the use of such property to Licensee will pay any personal property taxes assessed on, or any portion of such taxes attributable to, Licensee's Facilities. Licensors shall pay when due all real property taxes and all other fees and assessments attributable to the Property.

8. **Termination.**

(a) This Agreement may be terminated without any penalty or further liability upon thirty (30) days written notice to vacate by Licensors to Licensee.

(b) If Licensors intend to develop any portion of its lands for the erection of buildings or other improvements with which License Area will interfere, then Licensors shall so notify Licensee in writing at least four (4) months prior to such development and Licensee shall thereafter have the right to terminate this Agreement.

9. **Insurance.** In order to protect itself as well as the Licensors under the indemnification agreement set forth below, Licensee shall obtain, pay for, and keep in force throughout the period of this Agreement comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name Licensors, its officers, employees and agents as "Additional Named Insured", and shall include a duty to defend Licensors, its officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with this Agreement.

The insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of site construction work, Licensee shall furnish Licensors with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Agreement, Licensee shall, upon renewal of the insurance policy, provide Licensors with a copy of the renewed insurance policy certificate together with the required endorsements.

The insurance policy shall expressly state that in the event that the policy is canceled or terminated prior to the expiration date, notice of said cancellation or termination shall be delivered to Licensors.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of Licensors, Licensee shall obtain and maintain such coverage.

10. Indemnification. Licensee shall indemnify and save Licensors, its employees, and agents, harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the this Agreement or arising from the construction of Licensee's improvements, installation or use of Licensee's utilities, and Licensee's access to the Property, from the failure of Licensee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Agreement, or from any act or negligence or omission to act of Licensee, its agents, contractors, servants, employees, concessionaires or licensees in or about the Property, or in any connection with this Agreement. In case any action or proceeding be brought against Licensors (in addition to Licensee) by reason of any such claim, even though such claim be based on alleged fault of Licensors, Licensee agrees to pay the reasonable costs and expenses thereof, secured against Licensors by reason of such action or proceeding. The obligations of Licensee under this section shall survive the expiration or earlier termination of this Agreement without limitation.

11. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Licensee, to:

with a copy to:

AEC-USA, Inc.
Attn:Munehisa Matsumoto
2-2-10 Kume, Naha, Okinawa, 900-0033
Japan

AEC Co.,Ltd
Atten:Munehisa Matsumoto
2-2-10 Kume,Naha, Okinawa,Japan
E-mail:matsumoto@aec-oki.co.jp

If to Licensors, to:

with a copy to:

Director of Finance
County of Maui
200 S. High Street
Wailuku HI 96793

Office of Economic Development
County of Maui
200 S. High Street
Wailuku HI 96793

12. Quiet Enjoyment, Title and Authority. Licensors covenants and warrants to Licensee that (i) Licensors has full right, power and authority to execute this License; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Licensee which will not interfere with Licensee's rights to or use of the License Area; and (iii) execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of any mortgage, license, or other agreement binding on Licensors. Licensors covenants that at all times during the term of this License, unless sooner terminated as provided herein, Licensee's quiet enjoyment of the License Area shall not be disturbed.

13. Hazardous Materials. Licensee shall not permit any of its employees, agents, contractors, or any other person to use, handle, discharge, release, dispose of or allow to exist on, within, under or about the License Area any Hazardous Materials (defined below) in violation of any Hazardous Materials Laws (defined below). Licensee shall indemnify Licensors from and against all Claims directly arising out of or attributable to the release, threatened release, or disposal of Hazardous

Materials on, under or about the License Area by Licensee. The term "Hazardous Materials" means any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproduction toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any Hazardous Materials Laws. The term "Hazardous Materials Laws" means any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the License Area. Licensee's obligations under this Section shall survive termination of this Agreement.

14. Condemnation. If all or any portion of the License Area shall be taken or condemned by any authority having the power of eminent domain, then all compensation and damages payable the fee interest in the License Area shall be paid to Licensor without any apportionment to Licensee, provided that Licensee shall be entitled to recover only from the condemning authority full compensation for loss of Licensee's Facilities and its license and any related severance and relocation damages.

15. No Assignment. This License is not assignable, unless otherwise agreed in writing by Licensor and Licensee.

16. Miscellaneous.

(a) The covenants contained herein shall inure to the benefit of and be binding upon, the parties and their respective heirs, personal representatives, beneficiaries, successors, successors in trust and assigns.

(b) The substantially prevailing party in any litigation arising under this Agreement shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(c) This Agreement constitutes the entire agreement and understanding of the parties regarding the subject matter of this Agreement, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement must be in writing and executed by both parties.

(d) This instrument shall be governed, interpreted, construed and regulated by the laws of the State of Hawaii, excluding its choice of law rules that may otherwise require the application of the law of another jurisdiction.

(e) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

(f) The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

(g) The paragraph headings included herein are for convenience only and shall not be construed to limit or expand the content of such paragraphs.

(h) This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the License Area location within the Property and site plan) may be attached to this License in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and B, which may have been attached hereto in preliminary form, may be replaced by Licensee with such final, more complete exhibit(s).

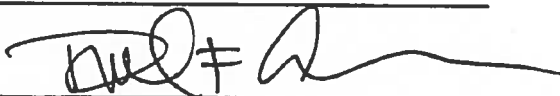
[Signatures begin on the following page]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

APPROVED AS TO FORM
AND LEGALITY


Deputy Corporation Counsel
County of Maui


COUNTY OF MAUI

By 

Name: DANILO F. AGSALOG
Title: Director of Finance

Licensor

AEC-USA, INC., a Hawaii corporation

By 

Name: Munehisa Matsumoto
Title: President

Licensee

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

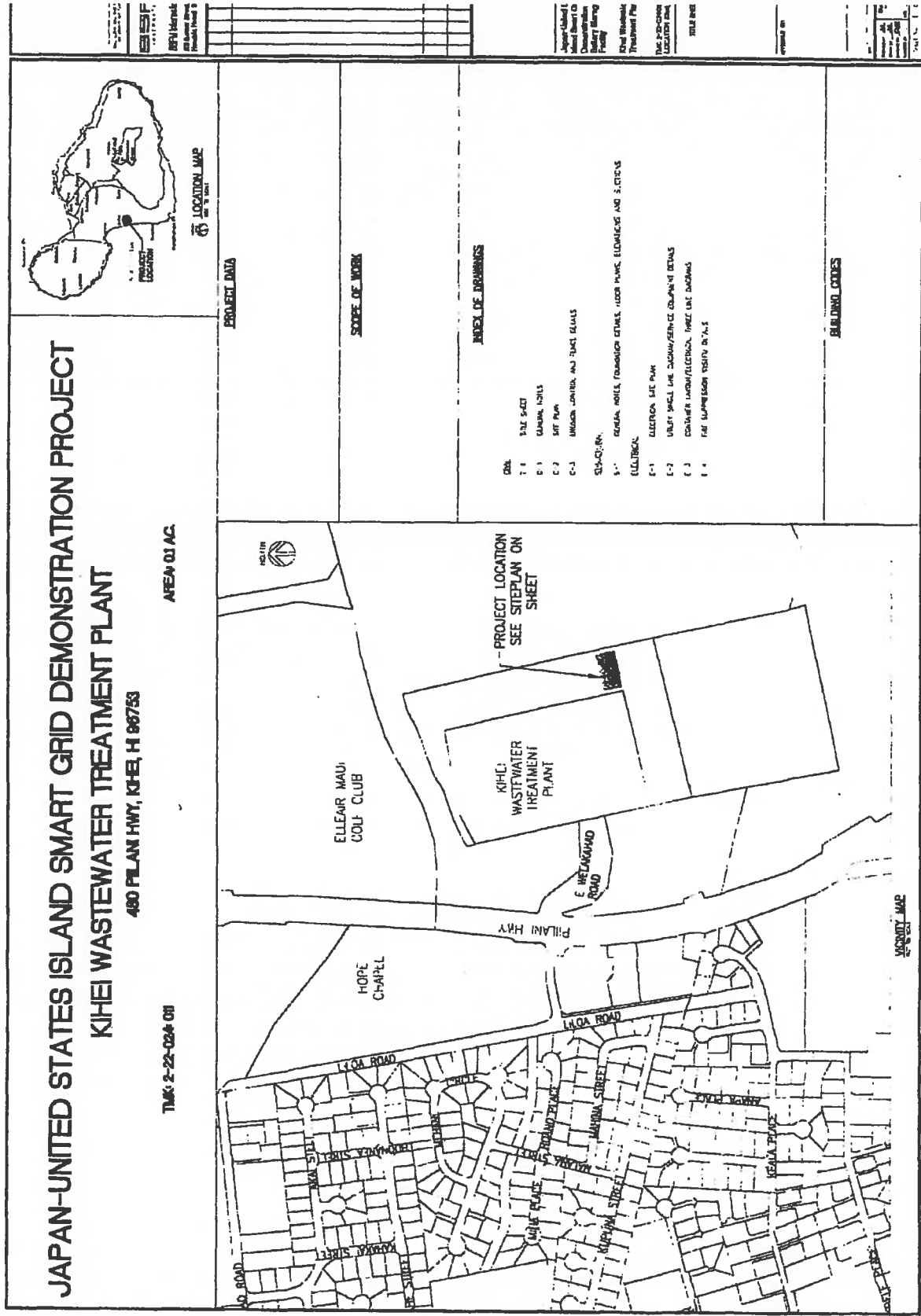


EXHIBIT "1"

EXHIBIT "B"

DESCRIPTION OF THE LICENSE AREA AND SITE PLAN

FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT

This FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as "Licensor", and HITACHI ADVANCED CLEAN ENERGY CORPORATION, a Hawaii corporation, whose mailing address is 285 W. Kaahumanu Avenue, Suite 102, Kahului, Maui, Hawaii 96732, hereinafter referred to as the "Licensee", and collectively referred to as "Parties."

R E C I T A L S:

1. WHEREAS, the Licensor and AEC-USA, INC., entered into the Battery License Agreement effective August 1, 2013, hereinafter referred to as "Agreement", on file with the Director of Finance and incorporated herein by reference; and

2. WHEREAS, AEC-USA, INC., changed its name to HITACHI ADVANCED CLEAN ENERGY CORPORATION, effective the week of July 21, 2014; and

3. WHEREAS, the Parties wish to amend said Agreement to provide for a term extension.

AMENDMENT OF AGREEMENT

1. Section 3., Term, is amended to read as follows:

"3. Term. The term of this Agreement shall commence on August 1, 2013 and shall be a month-to-month tenancy for a period of six years. Any renewal or extension shall be subject to Maui County Council approval by resolution."

2. Section 11., Notices, is amended to read as follows:

"11. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Licensee, to:

HITACHI ADVANCED CLEAN ENERGY CORPORATION
285 w. Kaahumanu Avenue, Suite 102
Kahului HI 96732

If to Lessor, to:

Director of Finance
County of Maui
200 S. High Street
Wailuku HI 96793

With a copy to:

Office of Economic Development
County of Maui
200 S. High Street
Wailuku HI 96793"

3. All other provisions of this Agreement, as amended, shall remain unchanged and in full force and effect.

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

[EXECUTION PAGES TO FOLLOW]

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Licensors:

COUNTY OF MAUI

By _____
DANILO F. AGSALOG
Its Director of Finance

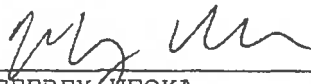
Date _____

APPROVAL RECOMMENDED:



KYLE K. GINOZA
Director, Department of
Environmental Management

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY DEOKA
Deputy Corporation Counsel
County of Maui
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I hereby represent and warrant that I have the legal right and authority to execute this Agreement on behalf of the Licensee.

Licensee:

HITACHI ADVANCED CLEAN ENERGY
CORPORATION

By J. Hatanaka
(Signature)

Takenori Hatanaka
(Print Name)

Its Vice President
(Title)

Date 2014. Oct. 15

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COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 14-134 was adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of December, 2014, by the following vote:

MEMBERS	Gladys C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Excused	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye


COUNTY CLERK