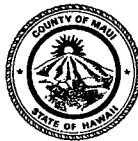


Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

December 9, 2016

RECEIVED
2016 DEC -9 AM 10:28
OFFICE OF THE
COUNTY CLERK

The Honorable Mike White
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair White:

**SUBJECT: AUTHORIZING COUNTY TO ENTER INTO A SITE
LEASE RELATED TO AN ELECTRICITY
GENERATING FACILITY AT WAILUKU-KAHULUI
WASTEWATER RECLAMATION FACILITY (IEM-68)**

May I request the attached revised proposed resolution, entitled "AUTHORIZING SITE LEASE RELATED TO AN ELECTRICITY GENERATING FACILITY AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Couch", is written over the printed name.

DON COUCH
Councilmember

paf:tntf:16-193a

Attachment

COUNTY COMMUNICATION NO. 16-327

Resolution

No. _____

AUTHORIZING SITE LEASE RELATED TO AN ELECTRICITY GENERATING FACILITY AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY

WHEREAS, the County desires a long-term clean energy strategy and electric grid independence, with the goal of utilizing renewable energy, as defined in Section 196-11, Hawaii Revised Statutes, wherever feasible; and

WHEREAS, the County of Maui, Department of Environmental Management ("Department"), issued a request for proposals related to the design, construction, maintenance, and operation of a facility for generation and sale of electricity ("Project") to the County for purposes of meeting the energy needs of the Wailuku-Kahului Wastewater Reclamation Facility, located at 281 Amala Place, Kahului, Hawaii, and described as tax map key (2)3-8-001:188 ("KWWRF"), under a 20-year power purchase agreement and Lease, which proposed Lease is attached hereto as Exhibit 1; and

WHEREAS the Project consists of an anaerobic digester, which will convert energy crops and other alternatives into methane gas, which will be utilized in turbines to produce electrical energy to meet the power needs of the KWWRF. Additionally, the Project consists of a sludge dryer, which will reduce current

operational costs and render the dried organic material usable for beneficial purposes; and

WHEREAS, the KWWRF property is owned by the State of Hawaii and leased to the County under Executive Order No. 3006, attached hereto as Exhibit 2, and the Department intends to seek the State of Hawaii Board of Land and Natural Resources' ("BLNR") consent to lease approximately one acre of the KWWRF property for the Project; and

WHEREAS, Anaergia Services, LLC, dba Maui All Natural Alternative, LLC, was selected as the winning proposer and has been issued a Notice of Intent to Award, with finalization and execution of the PPA predicated upon approval of the Site Lease by the Council and consent to lease by BLNR; and

WHEREAS, in accordance with Section 3.40.040.A, the Council may authorize a lease in excess of five years when such period is in the public interest and the terms of the proposed contract require the contractor to expend the sum of twenty-five thousand dollars or more for capital improvements; now, therefore,

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

1. That the Council hereby authorizes the Lease and authorizes the Department to obtain consent to lease from the State of Hawaii Board of Land and Natural Resources; and

2. That it does hereby authorize the Director of Finance, or the Director's duly authorized representative, to execute the Lease; and

Resolution No. _____

3. That certified copies of this resolution be transmitted to the Director of Finance, the Director of Environmental Management, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read "R Thomson", written over a horizontal line.

RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

LEASE

THIS LEASE is dated _____, 20____, and is by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii with its principal office and mailing address at 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "Lessor" and MAUI ALL NATURAL ALTERNATIVE, a Delaware limited liability company, whose address is 5780 Fleet Street, Suite 310, Carlsbad, California, 92008, hereinafter called "Lessee".

Pursuant to State of Hawaii Executive Order No. 3006, dated April 9, 1980 ("Executive Order"), as may be amended from time to time, Lessor has control and management of that certain real property located at 281 Amala Place, Kahului, Hawaii, also described as Tax Map Key No. (2) 3-8-001-188, upon which Lessor owns and operates the Wailuku-Kahului Wastewater Reclamation Facility, as shown on the map attached hereto as Exhibit "A" and made a part hereof (the "Property").

Lessor hereby exclusively leases to Lessee a 45,000 square foot portion of the Property, as generally shown on the map attached hereto as Exhibit "A" (the "Facility Site"), together with access thereto, upon and subject to all of the terms and conditions set forth in this Lease for Lessee to install, operate, and maintain a facility that produces electricity and dries sewage sludge (the "Facility"), as more fully described in that certain Services Agreement for Electrical Generation and Sludge Drying, dated _____, 20__ ("Services Agreement") and subject to all encumbrances affecting the Property.

1. Term. This Lease shall commence on the date written above and shall terminate concurrently with the Services Agreement. In the event that Lessee violates any of the terms of this Lease, Lessor may terminate this lease if, after receiving written notice of a default of this Lease, Lessee fails to cure the breach within ninety (90) days, or if the breach cannot be cured within ninety (90) days, Lessee fails to commence action to cure the breach within ninety (90) days and thereafter, fails to diligently act to complete the cure of the default.

2. Lease Fees. The Parties agree that as consideration for this Lease, the fees owed by the County of Maui to the Lessee/Provider for services under the Services Agreement reflect the offset for payment of \$1 a year in Lease fees by the Lessee during the term.

3. Utility Services. Lessee shall design and secure the availability of all utilities necessary for the performance of the Facility and shall be responsible for extending and modifying all existing utilities as reasonably necessary at the Facility in order to support the construction, commissioning, and operations of the Facility. Lessee shall pay, prior to delinquency, all charges for services or utilities used by Lessee on the Facility Site during the term of the Lease unless otherwise expressly agreed in writing by Lessor.

4. Real Property Taxes and Assessments. Lessee shall, when and as the same become due and payable, pay all taxes and all other assessments and outgoings of any nature whatsoever to which the Facility Site, are now or may during the term of this lease become liable, provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments of principal, together with interest on unpaid balances thereof, as shall become due and payable during the term of this lease or any part thereof.

EXHIBIT " 1 "

5. Use. Lessee shall at all times have access and use of the Facility Site, and Lessor grants Lessee the right to construct, install, operate, maintain, improve and replace the Facility on the Facility Site in accordance with the terms of this Lease and the Services Agreement. Lessee will use the Facility Site for no other purposes without the prior written consent of Lessor. Lessee, its agents, employees and invitees, shall not use the Facility Site as temporary or permanent residence. Lessee shall not permit or allow any person to live on the Facility Site.

6. Property Rights of Lessee. Subject to the terms and conditions of the Executive Order and the Services Agreement, Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the Facility, and that the Facility may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered by or on behalf of Lessor.

Lessor represents and warrants to Lessee that as of the date hereof there are no matters which interfere with the rights of Lessee under this Agreement, including the rights of any lien holder, lessor, or creditor. Lessor shall not suffer or permit the Facility to become subject to any lien or encumbrance for debt of any kind that may be owed by or demanded of Lessor. Lessor represents and warrants Lessor has the authority from the State of Hawaii to enter into this Lease with Lessee.

7. Maintaining the Facility Site. Lessee shall, at its own expense, keep the Facility Site in good, clean and sanitary order, condition and repair, reasonable wear and tear excepted.

8. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Facility Site attributable to Lessee, Lessee's agents, representative and licensees,. All inventory, property, vehicles, approved improvements and equipment of Lessee keeps at the Facility Site will be placed or stored at the sole risk of Lessee..

9. Insurance. Lessee shall maintain the following minimum insurance coverage, or such other types and additional amounts of coverage as specified in the Services Agreement.

a. Maintenance of Insurance. Lessee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by Lessee or Lessee's agents, representatives, employees or subcontractors. The Lessor reserves the right to request and receive a certified copy of any insurance policy, including all endorsements, related to Lessee's Facility or this Agreement. Failure to maintain the necessary insurance in accordance with the provisions set forth in this article shall constitute a material breach of this Agreement and the Lessor shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement. Nothing in the insurance requirements of this Agreement shall be construed as limiting the extent of Lessee's responsibility for payment of damages resulting from its operations under this Agreement, including Lessee's separate and independent duty to defend, indemnify, and hold the Lessor and its officers and employees harmless pursuant to other provisions of this Agreement.

b. Lessor County of Maui as Additional Insured and Named Holder of the Insurance Certificates. With the exception of Workers' Compensation and Professional Liability insurance, the Lessor, its officers, officials, employees, and volunteers shall be added as additional insured with respect to the work contracted

for herein, and the insurance policies required herein shall not be cancelled, limited in scope of coverage, or non-renewed by Lessee on the applicable policies during the Term, provided however, should any policy required herein be cancelled and not immediately replaced, the Lessor, in addition to other remedies, reserves the right to procure the cancelled insurance and deduct the cost, upon documentation and proof provided of such cost thereof from any money due to Lessee. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Lessor shall be excess only and not contribute with this insurance. Lessee shall submit proof of the insurance coverage(s) by providing to the Lessor a certificate of insurance prior to the commencement of the work. Such certificates of insurance shall name the Lessor as additional insured and holder of said certificate and shall contain the following statement:

“Should any of the policies described herein be cancelled before the expiration date thereof, notice shall be delivered to the Lessor, Department of Corporation Counsel, Risk Management Division, 200 South High Street, Wailuku, Hawaii 96793, in accordance with policy provisions. This insurance includes coverage for the liability assumed by the insured under the Agreement between the insured and the Lessor of Maui, dated [insert Effective Date].”

c. Subcontractors. When a Subcontractor is utilized, Lessee shall furnish or require the Subcontractor to furnish the Procurement Officer within ten (10) Days after execution of the contract, or within such further time as the Lessor may allow, with a copy of a policy or policies of insurance and certificate of insurance covering the Subcontractor and the Subcontractor's employees or agents in the same amount and for the same liability specified in this Section, unless a lesser amount or type of coverage is approved by the Lessor in writing. In the event of cancellation or termination of any required policy or any substitute policy, Lessee or the subcontractor, as the case may be, shall immediately furnish the Procurement Officer with a substitute policy. Said insurance policy(ies) shall name Lessee and the Lessor as additional insureds and holders of the insurance certificates and shall also provide a waiver by the insurer of any right of subrogation in Lessee's and the Lessor's favor and coverage for the subcontractor's completed operations.

d. Minimum Insurance Coverage Requirements. Unless otherwise approved by the Lessor, the policy or policies of insurance maintained by Lessee shall provide the following minimum limit(s) and coverage(s) as specified herein, or greater amount of coverage as may be commercially reasonable from time to time by the Lessor, be placed with an insurance carrier licensed to do business in the State of Hawaii with a current A.M. Best's Financial Strength Rating of no less than A (Excellent), and Financial Size Category of no less than VII. Any lesser Best's Rating will be subject to approval by the Lessor. If the required insurance is not commercially available at a reasonable cost, the Lessor may, in its sole discretion, accept a lower coverage amount or type of coverage. The minimum liability limits of liability may be provided by a combination of primary and Umbrella or Excess Liability policies.

i. Installation Coverage. Prior to commencing construction and up to and on the Operations Commencement Date, Lessee shall obtain and maintain or cause to be obtained and maintained builder's risk coverage

in an amount equal to the replacement cost of the materials being installed at the Facility Site.

ii Professional Liability and Commercial General Liability Coverage. From the Construction Start Date, Lessee shall maintain or cause to be maintained Professional Liability Insurance and Commercial General Liability insurance against claims for bodily injury or property damage occurring on the Site and Property (including within the buildings thereon); and on the portion of the street and the sidewalks adjacent thereto with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate, or such greater amount as may be required from time to time by Lessor. Such insurance shall include coverage in like amount for products/completed operations, contractual liability, and personal and advertising injury. "Claims made" policies are not acceptable under this section.

iii Pollution Liability Insurance. Coverage for bodily injury and property damage including cleanup costs and defense costs resulting from sudden and accidental and gradual pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water shall be maintained. The Pollution Liability policy must include a minimum limit of \$2 million per accident or occurrence, \$5 million aggregate. The policy must, on a blanket basis or by specific reference to the Lease, extend to assumed liabilities with respect to contractual provisions. In addition to fixed site coverage related to Lessee's Site and Facility, the policy coverage must extend to losses arising from any waste, products or materials transported, shipped, or delivered via any transportation mode to a location beyond the boundaries of the Site at which Lessee or any entity for which Lessee is legally liable is performing or has performed the operations described in the Services Agreement. The policy must extend to off-site third party bodily injury and property damage due to releases from storage tanks (above and below ground). Coverage must include corrective action and clean-up due to releases from storage tanks.

iv Automobile Coverage. Lessee or its contractors, as applicable, shall carry a business automobile policy with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident.

v Workers Compensation Coverage. During the Term, Lessee and/or its contractors, as applicable, shall carry Workers' Compensation insurance during the full term or duration of the Agreement, to insure statutory liability for injury to his/her employees in the State of Hawaii. The policy should include coverage for Employers's Liability with limits as follows: Bodily injury by accident, \$1,000,000 each accident, and each employee a \$1,000,000 policy limit, or such higher limit as required by applicable law.

- e. All Policies. All insurance required hereunder, including Workers Compensation coverage, shall include an insurer's Waiver of Subrogation in favor of Lessor and will be in a form and with insurance companies acceptable to Lessor. Before the Construction Start Date, Lessee shall furnish to Lessor reasonably satisfactory proof that Lessee has, or, as applicable, its contractors, have taken out for the period covered by the work under this Lease and/or Services Agreement, full compensation insurance for all persons employed directly by him/her or through subcontractors in carrying out the work contemplated under this Contract, all in accordance with the Applicable Law and any acts amendatory thereof.
- f. Evidence Required. Insurance certificates for all coverage required by this Lease shall be provided by Lessee to Lessor within twenty (20) Business Days before the Construction Start Date and upon renewal during the Term hereof, but not less than once annually or as may be otherwise reasonably requested in writing by Lessor.

10. No Representation or Warranties. Lessor has not made and will not make, any representation or warranty, implied or otherwise, with respect to the condition of the Facility Site, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the Facility Site, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Facility Site in completely "as is" condition.

11. Compliance with Laws. Lessee shall not make or suffer any unlawful use of the Facility Site. Lessee will comply with all laws and ordinances and governmental rules and regulations, including but not limited to obtaining, at its sole cost and expense, all governmental permits necessary for its use of the Facility Site.

12. Litigation. In case Lessor is without any fault on its part made to a party to any litigation, investigation or governmental proceeding (other than condemnation proceedings) commenced by or against Lessee and arising out of Lessee's operations on the Facility Site, then Lessee shall and will pay all costs, expenses, damages and reasonable attorneys' fees incurred by or imposed on Lessor by or in connection with such litigation, investigation or governmental proceeding. Lessee shall pay all costs, expenses and reasonable attorneys' fees which may be incurred or paid by Lessor in enforcing any covenant and agreement of this lease which may be breached by Lessee.

13. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, if any, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Facility Site for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved,

(b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Facility Site and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Facility Site during the term of this Lease. Lessee shall indemnify and hold harmless Lessor from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

Lessor shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Facility Site in violation of any applicable law or regulation. If Lessor becomes aware any such hazardous toxic or dangerous materials, Lessor shall promptly notify Lessee of the type and location of such materials in writing. Lessor agrees to assume full responsibility for any liability, investigation or cleanup obligations for any contamination or pollution or breach of environmental laws which affecting the Facility Site preceding the Term or due to any Lessor act or omission during the Term. The obligations of Lessor under this section shall survive the expiration or earlier termination of the Lease without limitation.

Lessee plans to investigate and obtain an environmental assessment of the Facility Site. If the investigation shows hazardous conditions requiring remediation of the Facility Site or surrounding areas in order for Lessee to be able to use and possess the Facility Site for the purposes considered in the Service Agreement, which in Lessee's discretion, Lessee does not desire to pay for, Lessee will have the right to terminate this Lease and the Service Agreement with no liability or payment to Lessor.

14. No Liens. Lessee shall not commit or suffer any act or neglect whereby the real property on which the Facility Site is located shall at any time become subject to any attachment, lien, charge or encumbrance whatsoever and shall indemnify, defend and hold harmless Lessor from and against all liens, charges and encumbrances and all expenses resulting therefrom, including reasonable attorneys' fees, it being hereby expressly agreed that Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the real property of the Facility Site.

15. Indemnification. Lessee shall indemnify, defend and hold harmless Lessor from and against all actions, suits, investigations, governmental proceedings damages and claims filed against Lessor, and for all costs and expenses (including attorneys' fees) incurred by Lessor, by third party brought or made by reason of or arising out of any mishap, fire, casualty occurring or made on the Facility Site by Lessee, or (d) the use or occupancy of the Facility Site by Lessee, or Lessee's invitees, permittees, employees, agents or contractors, or (e) Lessee's breach of any of the terms or conditions of this Agreement.

16. Assignment. Lessee shall not directly or indirectly, by operation of law or otherwise, assign, mortgage or encumber this Lease or sublease the whole or any portion of the Facility Site. Any merger, consolidation or liquidation of Lessee or any change in the ownership of or power to vote the majority of Lessee's outstanding voting stock shall constitute an assignment of this lease for purposes of this paragraph. Any assignment, mortgage, encumbrance or sublease may be made with Lessor's express written consent, which shall not be unreasonably withheld. No assignment of this Lease shall release or be deemed to relieve Lessee from the full and faithful performance of any terms and conditions in this Lease contained and on Lessee's part to be observed and performed, or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder.

17. Surrender Upon Termination. Upon the termination, surrender or expiration of this Lease, subject to Lessor's option to purchase all or part of the Facility as described in the Services Agreement, Lessee shall peaceably surrender the Facility Site to Lessor in good, clean and sanitary condition, order and repair (reasonable wear and tear excepted), and shall restore the land as nearly as is reasonably possible to its condition prior to the Lessee's occupancy of the Facility Site, or as otherwise agreed to by the Parties.

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

19. Notice. Any notice or demand to be given to or served upon either Lessor or Lessee in connection with this Agreement shall be deemed to have been sufficiently given or served for all purposes by being sent as registered or certified mail, postage prepaid, addressed to the parties at the respective addresses set forth in the introductory paragraph of this Agreement, or at such other address as a party may from time to time designate in writing to the other party, and any such notice or demand shall be deemed conclusively to have been given or served upon the earlier to occur of the actual date of delivery or three business days after the date of mailing.

20. No Waiver. Lessor's acceptance of rent or any other sums paid under this Agreement shall not be deemed to be a waiver by Lessor of any breach by Lessee of any term, covenant or condition of this Agreement herein contained, or of Lessor's right to declare and enforce a forfeiture for any such breach. The failure of Lessor to insist upon strict performance of any of the terms, covenants and conditions of this Agreement, or to exercise any option herein

conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such terms, covenants, conditions or option, but the same shall be and remain in full force and effect. The term "Lessor" in these presents shall include Lessor, its successors and assigns and the term "Lessee" shall include Lessee, its successors and assigns.

21. Reservations. Reserving unto the State of Hawaii and/or the County of Maui:

a. Minerals and Waters.

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

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

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

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

23. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Facility Site, Property, or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. "12101-12213 (2000). Lessee shall be responsible for only the Facility Site's complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against claims regarding non-compliance of the Facility Site with any requirement of the ADA relating to the Facility Site only.

All costs relating to any required improvements or modifications to the Facility Site only, and any existing improvements thereon, shall be borne by Lessee.

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

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

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

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

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

29. Neither Party Deemed to be the Drafter. All provisions of this Agreement have been negotiated by Lessor and Lessee at arm's length and with the opportunity for full representation of their respective legal counsel and neither party shall be deemed to be the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against either party as the drafter of the Agreement.

30. Counterparts. This Agreement may be executed in one or more counterparts, and all of the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

31. No Other Agreements. This Agreement supersedes all prior written or oral agreements between the parties hereto, all of which earlier agreements are hereby terminated.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

LESSOR:

COUNTY OF MAUI

By _____
DANILO F. AGSALOG
Its Finance Director

LESSEE:

MAUI ALL NATURAL ALTERNATIVE, LLC

By _____
(Signature)

(Print Name)

(Title)

By _____
(Signature)

(Print Name)

(Title)

APPROVAL RECOMMENDED:

STEWART STANT, Director
Department of Environmental
Management, County of Maui

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 20__, before me appeared DANILO F. AGSALOG, to me personally known, who being by me duly sworn did say that he is the Finance Director of the County of Maui, a political subdivision of the State of Hawaii, in the capacity shown, having been duly authorized to execute such instrument in such capacity, 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 in behalf of said County of Maui by authority of its Charter, 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.

Notary Public, State of Hawaii

Print Name:

My commission expires: _____

[Stamp or Seal]

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

STATE OF _____)
COUNTY OF _____) SS.

On this ___ day of _____, 20__, before me personally appeared _____ and _____, 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.

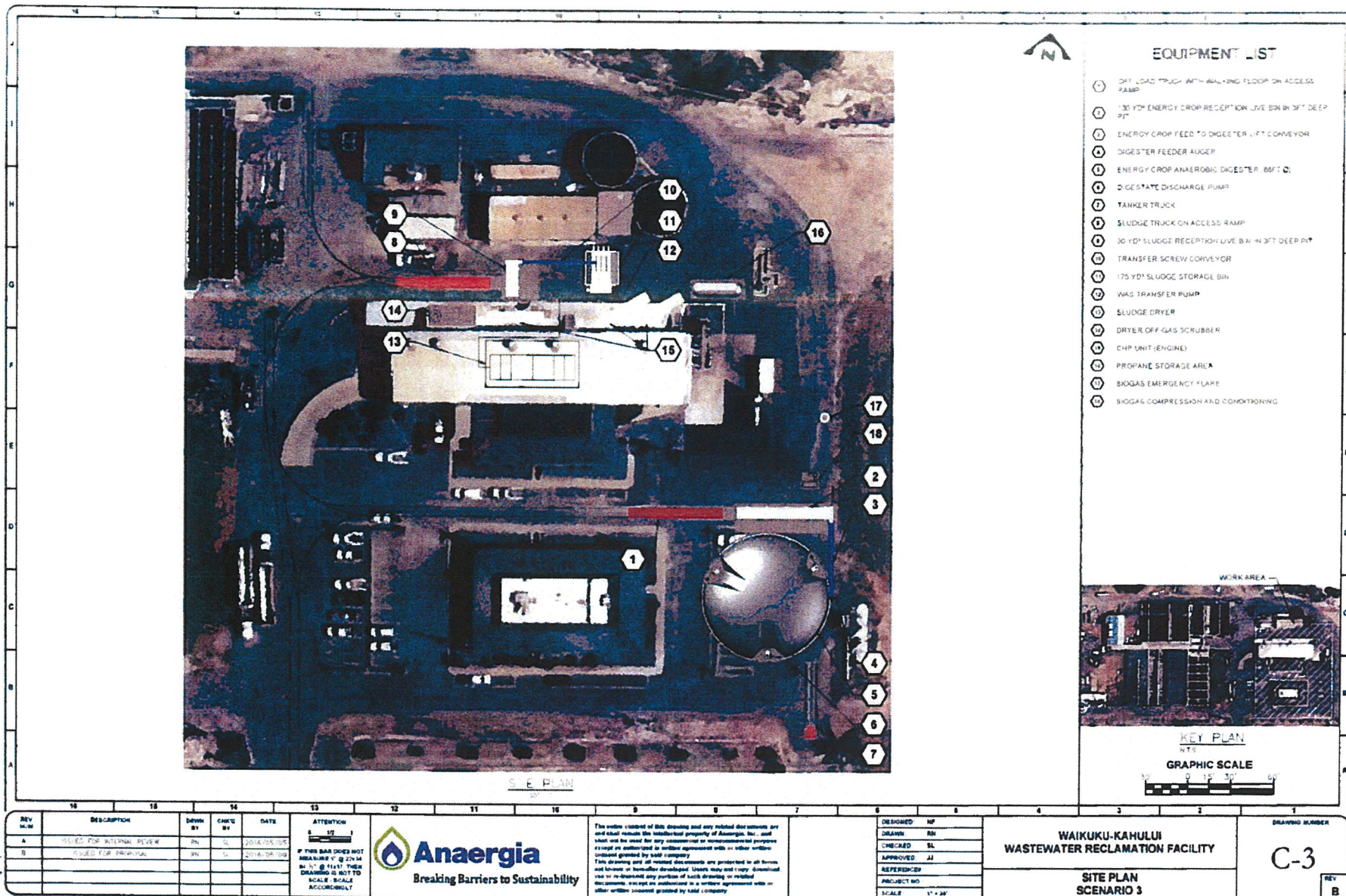
or Seal] Notary Public, State of Hawaii [Stamp

Print Name

My commission expires:

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

Notary Signature: _____	[Stamp or Seal]
Date: _____	



Executive Order No. 3096

Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR SEWAGE TREATMENT PLANT PURPOSES, to be under the control and management of the County of Maui, Department of Public Works, and being designated the Wastewater Treatment Plant Site, containing an area of 18.755 acres, more or less, and Easement 18, containing an area of 8,666 square feet, more or less, situate at Kahului, Wailuku, Maui, Hawaii, said land being more particularly described in Exhibit "A" and delineated on Exhibit "B", both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 18,099 and dated April 26, 1978.

SUBJECT, HOWEVER, to the following:

1. Unrestricted access to the easement area by members of the staff of the Department of Land and Natural Resources and the Department of Transportation.
2. Disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed.

Done at the Capitol at Honolulu this 9th day of April, Nineteen Hundred and 80.



Governor of the State of Hawaii

Approved as to form:


Deputy Attorney General

Dated: MAR 8 1980

EXHIBIT "2"

State of Hawaii

Office of the Lieutenant Governor

3006

This is to Certify That the within is a true copy of Executive Order No.
setting aside land for public purposes, the original of which is on file in this office.

In Testimony Whereof, the Lieutenant Governor of the
State of Hawaii, has hereunto subscribed his name
and caused the Great Seal of the State to be affixed.

DONE in Honolulu, this day of
..... A.D. 19.....

Executive Order No. 3006

Setting Aside Land for
Public Purposes

Land

Purpose

Date



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

April 26, 1978

S.F. No. 18:089

WASTEWATER TREATMENT PLANT SITE
AND
EASEMENT 10

Kahului, Wailuku, Maui, Hawaii

Being a portion of Grant 3343 to Claus Sprackels
conveyed as follows:

- (a) Portion of Parcel 1 of the former Naval Air Station at Kahului, conveyed to the Territory of Hawaii by the United States of America by Quitclaim Deed dated December 10, 1956, recorded in Liber 4250, Page 299 and modified by instrument dated August 11, 1965 (Land Office Deeds 16432 and S-18727).
- (b) Quitclaim Deed dated November 7, 1968, releasing Easement 2 reserved for railroad purposes, from Alexander and Baldwin, Inc., successor to Hawaiian Commercial and Sugar Co., Ltd. to the State of Hawaii, recorded in Liber 6301, Page 402 (Land Office Deed S-24630).

WASTEWATER TREATMENT PLANT SITE:

Beginning at the southwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "FOU.NENE" being 1257.74 feet South and 21,111.97 feet West, thence running by azimuths measured clockwise from True South:-

1. 172° 47' 39" 725.01 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427);

Thence along highwater mark at seashore as of November 22, 1977, for the next eleven (11) courses, the direct azimuths and distances between points along said highwater mark at seashore being:

- | | |
|-------------|--------------|
| 2. 272° 00' | 60.52 feet; |
| 3. 272° 25' | 240.00 feet; |
| 4. 275° 21' | 156.00 feet; |
| 5. 283° 03' | 123.00 feet; |
| 6. 274° 17' | 113.00 feet; |

April 26, 1978

7. 288° 26' 210.00 feet;
8. 274° 07' 61.00 feet;
9. 269° 06' 125.00 feet;
10. 271° 24' 154.00 feet;
11. 278° 50' 184.00 feet;
12. 283° 14' 131.00 feet;
13. 352° 47' 39" 340.00 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427);
14. 82° 47' 39" 1500.00 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427) to the point of beginning and containing an AREA OF 18.755 ACRES.

EASEMENT 10: Non-exclusive easement (15-foot wide) for wastewater force mains.

Beginning at the northwest corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU NEHE" being 1336.30 feet South and 21,515.95 feet West, thence running by azimuths measured clockwise from True South:-

1. 262° 44' 09" 532.24 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427);
2. 172° 44' 09" 26.73 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427);
3. 262° 47' 39" 15.00 feet along the Wastewater Treatment Plant Site;
4. 352° 44' 09" 41.72 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427);
5. 82° 44' 09" 354.48 feet along the remainder of Parcel A, Kahului Airport (Governor's Executive Order 2427);

C.S.F. No. 18,099

April 26, 1978

6. 198° 30'

16.66 feet along the remainder of Grant 3343 to
Claus Spreckels to the point of beginning
and containing an AREA OF 8,666 SQUARE
FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: James Chrystal, Jr.
James Chrystal, Jr.
Lead Surveyor.

Compiled from maps by
Wright-Harvey & Wright
dated Jan. 29, 1972, Reg.
Map 4132 and Govt. Survey
Records.

2b

