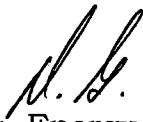


HOLD FOR MEETING  
December 16, 2016 Council meeting

EAR CR 16-200

MAUI COUNTY COUNCIL  
Amendment Summary Form

Legislation: Resolution authorizing the Mayor to enter into an agreement to accept the donation of certain equipment provided as part of the Jump Smart Maui Project from the New Energy and Industrial Technology Development Organization to the County of Maui.

Proposer: Don S. Guzman, Chair   
Economic Development, Energy, Agriculture, and Recreation  
Committee

Description: Amend resolution to remove the Static Var Converter from the Equipment Transfer Agreement.

Motion: Move to amend the resolution by removing the Equipment Transfer Agreement attached as Exhibit "A" and substituting the attached revised Equipment Transfer Agreement as a new Exhibit "A," which deletes the transfer of the Static Var Converter.

Reasons: The Committee is in receipt of correspondence dated December 14, 2016, from the Economic Development Director, stating the proposed Equipment Transfer Agreement was modified to remove the Static Var Converter from the proposed donation because of operational issues that cannot be repaired at a feasible cost by either the donor or the County. The revised Equipment Transfer Agreement will apply only to the Battery Energy Storage System at the Kihei Waste Water Treatment Plant.

Attachment: Revised Exhibit "A" – Equipment Transfer Agreement.

# **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 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 between MAUI and HITACHI ADVANCE CLEAN ENERGY CORPORATION, as amended by Resolution 14-134, 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 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 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 the EQUIPMENT for four (4) years from the 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 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

\_\_\_\_\_  
TEENA RASMUSSEN  
Director, 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                    )  
  ) SS.  
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	Kiheii Waste Water Treatment Plant	2013/12/17	112001020