

REQUEST FOR LEGAL SERVICES

Date: August 3, 2018
From: Yukilei Sugimura, Chair
Policy, Economic Development, and Agriculture Committee

RECEIVED
By The Department of the Corporation Counsel at 4:09 pm, Aug 03, 2018

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jerrie Sheppard, Esq.

Subject: Authorizing an Amendment to Extend the Term and Modify Conditions Relating to Removal of Equipment for the Grant of a License of County Real Property for Electric Vehicle Quick Chargers and Local Battery Units (PEA-70)

Background Data: Per the Committee's discussion, please review the revisions to the document entitled, "Second Amendment to Electric Vehicle Quick Charger and Local Battery License Agreement," as attached to the revised proposed resolution. A clean copy of the document and a marked-up copy of the resolution are attached for review. Please review as to form and legality, and attach a signed hard copy of the resolution in your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature <u>Yuki Lei Sugimura</u> Yuki Lei Sugimura	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: 7134)
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RECEIVED
OFFICE OF THE COUNTY COUNSEL
2018 AUG - 7 AM 11:30

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)
 SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 14, 2018, 10 a.m.
REASON: For posting on the August 24, 2018 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: JLS	ASSIGNMENT NO. 2017-0098	BY: kku
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date 8/7/2018

By Jerrie Sheppard
(Rev. 7/03)

Resolution

No. _____

AUTHORIZING AN AMENDMENT TO EXTEND THE TERM AND MODIFY
CONDITIONS RELATING TO REMOVAL OF EQUIPMENT FOR THE GRANT OF
A LICENSE OF COUNTY REAL PROPERTY FOR ELECTRIC VEHICLE QUICK
CHARGERS AND LOCAL BATTERY UNITS

WHEREAS, pursuant to Resolution No 15-28, effective December 17, 2014, the County and Hitachi Advanced Clean Energy Corporation (“HACEC”) entered into a license agreement to conduct the JUMP Smart Maui project, which included installing, operating, and maintaining Electric Vehicle Quick Chargers and battery units for use by the public at Kihei Aquatic Center; the Lahaina Aquatic Center; the Kalana O Maui Building located at 200 South High Street, Wailuku; and the Haiku Community Center, hereinafter referred to as the “License Agreement,” a copy of which is attached hereto as Exhibit “1”; and

WHEREAS, the License Agreement was amended by the First Amendment thereto, a copy of which is attached hereto as Exhibit “2”; and

WHEREAS, through the proposed Second Amendment, attached hereto as Exhibit “3,” the Parties to the License Agreement desire to extend the term of the Agreement to March 31, 2020, and make other modifications of the agreement, including a proposed release payment to the County in lieu of requiring removal of the equipment at the end of the term; and

Resolution No. _____

WHEREAS, the Council of the County of Maui may authorize an Amendment to the License Agreement for use of County real property pursuant to Chapter 3.36, Maui County Code, by resolution; now, therefore,

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

1. That pursuant to Chapter 3.36, Maui County Code, the Second Amendment to the License Agreement, attached hereto and incorporated herein by reference as Exhibit "3," is hereby authorized; and
2. That the Mayor and the Director of Finance or their authorized representatives may execute the Second Amendment to the License Agreement; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, and HACEC.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE SHEPPARD
Deputy Corporation Counsel
County of Maui
2016-0312/2017-0098
PEA-70 2018-08-06 Resolution (Second Amendment)

ELECTRIC VEHICLE QUICK CHARGER AND LOCAL BATTERY LICENSE AGREEMENT

Effective as of December 17, 2014 (the "Effective Date"), and for good and valuable consideration, the receipt of which is hereby acknowledged the COUNTY OF MAUI, a political subdivision of the State of Hawaii ("Licensor"), and HITACHI ADVANCED CLEAN ENERGY CORPORATION, a Hawaii corporation ("Licensee"), agree as follows (this "Agreement"):

1. **Background.** Licensor is the owner of the properties described in the attached Exhibit "A" (each a "Property"). Licensee and Licensor desire that Licensee have the right to use a portion of each Property to install, operate and maintain electric vehicle quick chargers at Properties 1-3 and to install, operate, and maintain three (3) local battery units at Property 4. This Agreement is part of the project implemented by Licensee ("JUMP Smart Maui project"). At each Property Licensee will be permitted to design and install the equipment described in Exhibit B under "Licensee's Facilities".

2. **License.** Licensor licenses to Licensee a certain portion of the Property as described in Exhibit A 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 end on March 31, 2016.

4. **Permitted Use.** The License Area may be used by Licensee for electric vehicle quick charger stations that are available for use by the public; local battery units; and 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 installation of Licensee's Facilities and 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". Licensee shall have the right to replace or upgrade Licensee's Facilities at any time during the term of this Agreement so long as the "footprint" of the License Area does not expand. 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 responsibility of Licensee. Licensee shall remove Licensee's Facilities upon termination of this Agreement unless prior to such date mutually agreeable arrangements have been made for continued use of the property once the JUMP Smart Maui project has ended.

EXHIBIT " 1 "

(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 Licensor and Licensor approves such plans and specifications. If Licensor does not approve or disapprove of such plans and specifications within 10 (ten) business days after receipt, such plans and specifications shall be deemed approved. Licensor 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 Licensor in good, usable condition, normal wear and tear excepted.

(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 cause its use of such utility sources to be separately metered and nothing will be charged to Licensor. If there are not sufficient utility sources located on the Property to operate Licensee's Facilities, Licensor agrees to 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 Licensor and Licensee, (ii) for Property 2, Licensee shall cause its use of such utility sources to be separately metered and billed directly to Licensee by the applicable utility provider, and (iii) at Properties 1, 3, and 4, Licensee shall install a submeter to track the amount of electricity used by Licensee's Facilities and shall reimburse Licensor for the costs of electricity used.

(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

6. **Interference.** Licensee shall not use the License Area in any way which interferes with the use of the Property by Licensor, or tenants or licensees of Licensor, with rights in the Property prior in time to Licensee's rights. Similarly, Licensor shall not use, nor shall Licensor 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 will pay any personal property taxes assessed on, or any portion of such taxes attributable to, Licensee's Facilities. Licensor 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 by Licensor if Licensee defaults and fails to cure such default within that 30-day period, or such longer period as may be required to diligently complete a cure commenced within that 30-day period.

(b) If Licensor intends to develop any portion of its lands for the erection of buildings or other improvements with which License Area will interfere, then Licensor 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 or have the right to be licensed another portion of the property.

9. **Insurance and Subrogation.** Licensee will provide Commercial General Liability Insurance in an aggregate amount of \$2,000,000 and name Licensor as an additional insured on the policy or policies. Licensee may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Licensee may maintain.

10. **Indemnification.** Licensee will indemnify and hold Licensor (including without limitation visitors and invitees to Lessor's facilities) harmless from and against all claims and demands for loss or damage, including but not limited to reasonable attorneys' fees and costs (collectively, "Claims"), arising out of, or in connection with this Agreement.

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
Attention: Takenori Hatanaka
285 W. Kaahumanu Avenue, Suite 102,
Kahului, HI 96732
Phone: (808) 868-4673

with a copy to:

If to Licensor, to:

Managing Director
County of Maui
200 South High Street
Wailuku, HI 96793

with a copy to:

12. **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). In addition to the indemnity obligations in Section 10 above, Licensee shall indemnify Licensor 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.

13. **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 for the fee interest in the License Area shall be paid to Licensor without any apportionment to Licensee, provided that Licensee shall be separately be entitled to seek recovery from the condemning authority for compensation for loss of Licensee's Facilities and its license and any related severance and relocation damages.

14. **Assignment.** Licensee may otherwise assign this License only upon written approval of Licensor, which approval shall not be unreasonably delayed or withheld.

15. **Personal property determination.** Licensor hereby waives any right to claim that Licensee's Facilities have become real property, either as fixtures, business chattel or otherwise, it being the intent of the parties that Licensee's Facilities are the personal property of Licensee regardless of any installation on a Property. Licensee has the right to remove all or any portion of the same from time to time, whether before or after a default under this License, in Licensee's sole discretion and without Licensor's consent.

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) 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.

(c) 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.

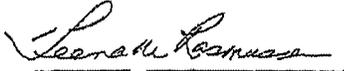
(f) The persons who have executed this Agreement represent that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

(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.

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

APPROVAL RECOMMENDED:



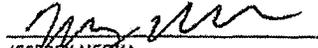
TEENA M. RASMUSSEN
Economic Development Director

COUNTY OF MAUI



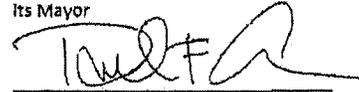
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM



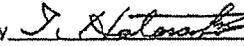
JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

QED:Hitachi_License Agmt.10.22.14.docx



DANILO F. AGSALOG
Its Director of Finance

HITACHI ADVANCED CLEAN ENERGY
CORPORATION

By 

TAKENORI HATANAKA
Its Vice President

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

Property 1. Parking lot In front of Kalana O Maui 200 South High St.

Property 2. Parking lot at the Haiku Community Center

Property 3 Parking lot at the Lahaina Aquatic Center

Property 4 Machine room at the Kihei Aquatic Center

EXHIBIT "B"

LICENSEE'S FACILITIES:

Licensee's Electric Vehicle Charging Stations shall have a maximum of 4 charging ports at one location. Licensor and licensee shall agree the number of charging ports to install at Properties 1 - 3.

Properties 1-3: Electric Vehicle Charging Stations that are UL listed, and designed and installed in compliance with the applicable Electric Code. Each charging station to have at least two charging ports that comply with the ChaDeMo Standard, at least one Level II charging port that meets SAE J 1772, and by the end of the JUMP Smart Maul test, at least two additional fast charging ports that meet SAE Level 3 standards or such other fast charge standard as Licensee agree to. The parties presently anticipate that Combo CCS units will be provided but recognize that the technology is rapidly changing. Each charging station will contain a telecommunication device called a micro DMS. All electrical use for the EV charging station shall be via a dedicated meter and Licensee shall be solely responsible for the cost of all electricity used by the EV charging station.

Property 4. Local battery system including the telecommunication device micro DMS that will be used as part of the JUMP Smart Maul system. Licensee shall further discuss with Licensor the possibility of utilizing the local battery system for emergency use at the Licensor's facilities.

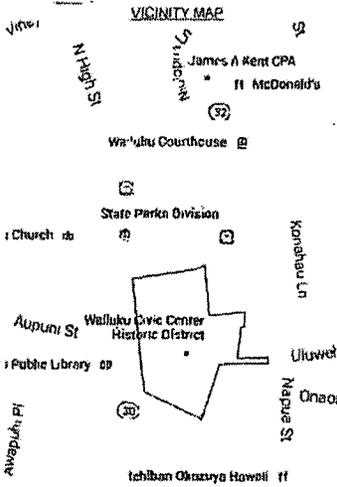
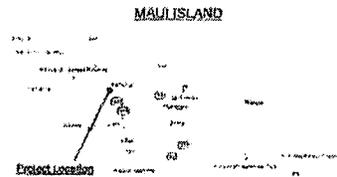
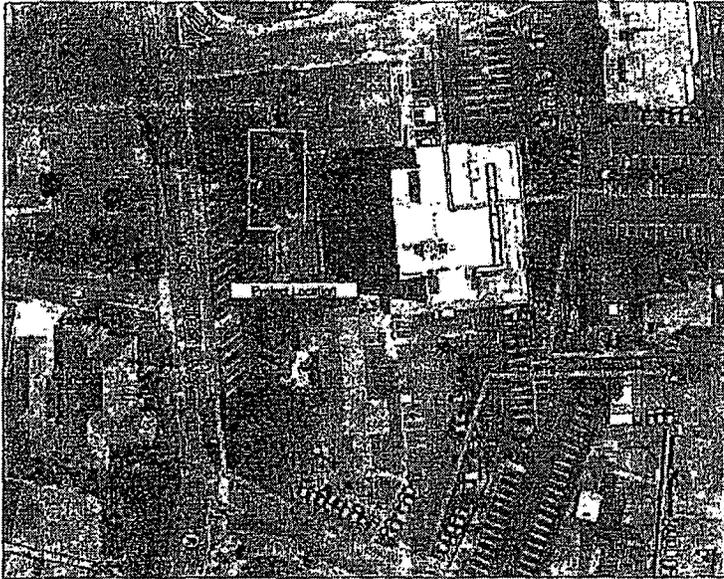
DESCRIPTION OF THE LICENSE AREA AND SITE PLAN

HITACHI TO PROVIDE

Exhibit A (Property 1)

Electric Vehicle Charging Station Project for : County of Maui

KALANA PAKUI BUILDING AND PARKING
250 S. HIGH STREET WAILUKU MAUI HI 96732
T.M.K. : (2) 3 - 4 - 008 : 042



REV	DESCRIPTION	DATE
0	Revised	08/19/2014
1		08/19

TITLE	LOCATION	REV
Exhibit A (Property 1)	County Building	

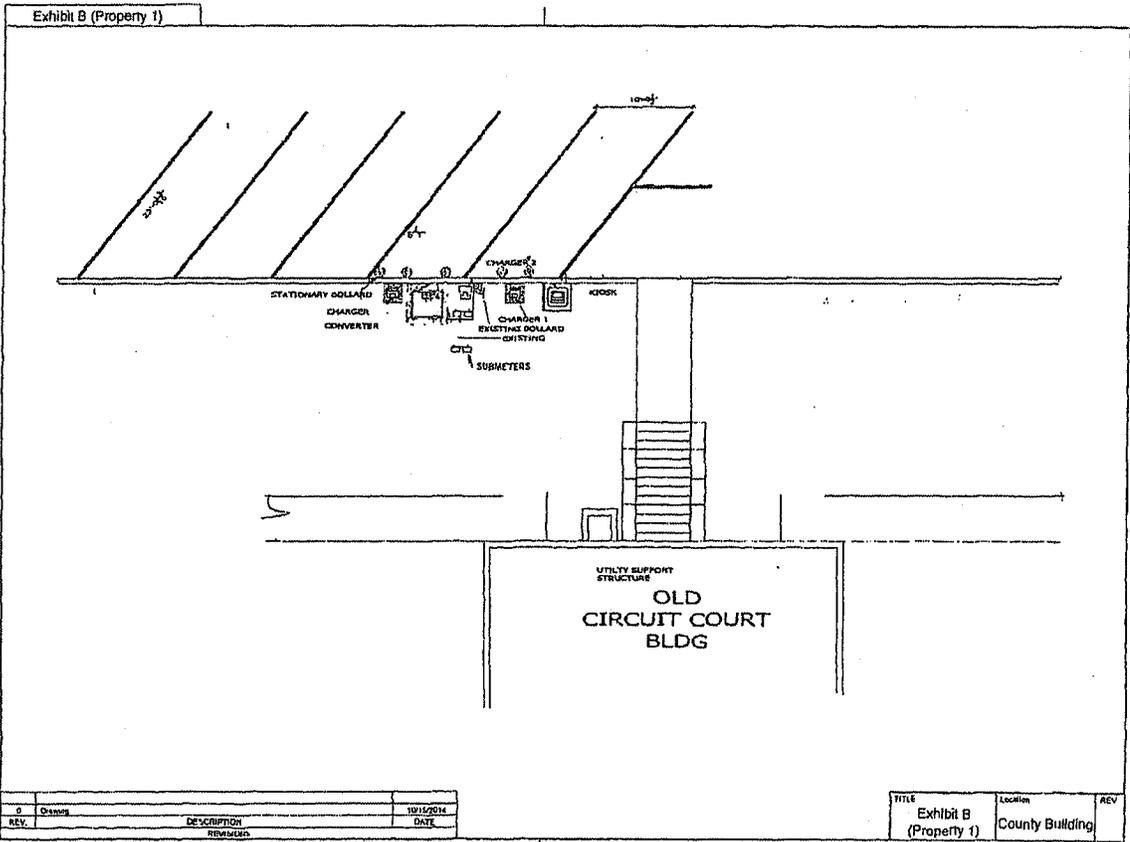
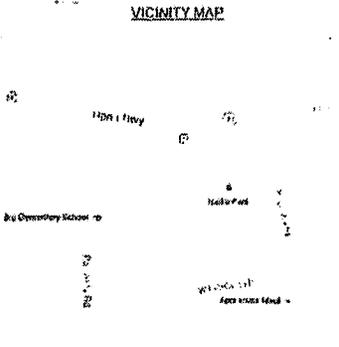
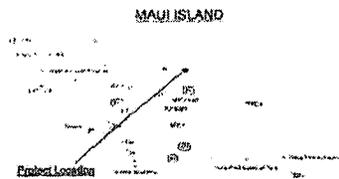
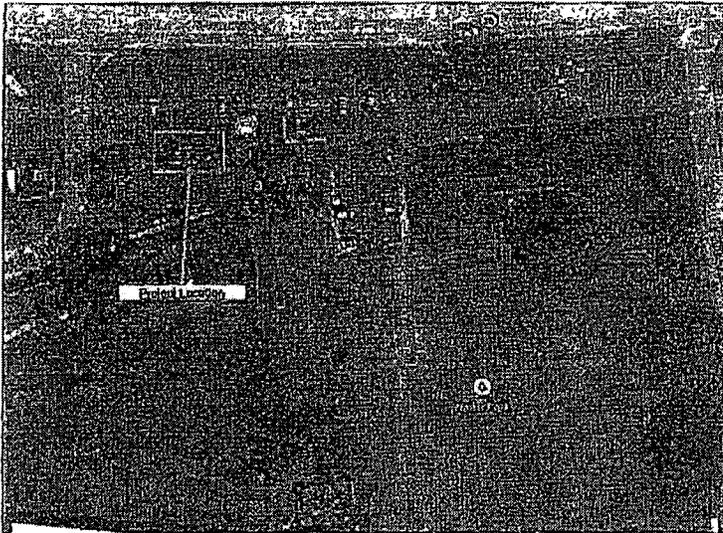


Exhibit A (Property 2)

Electric Vehicle Charging Station Project for : Haiku Community Center

2830 HANA HWY, HAIKU, HI 96708
T.M.K. : (2) 2 - 7 - 004 : 029



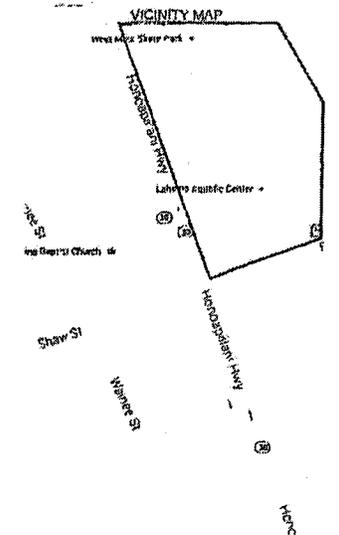
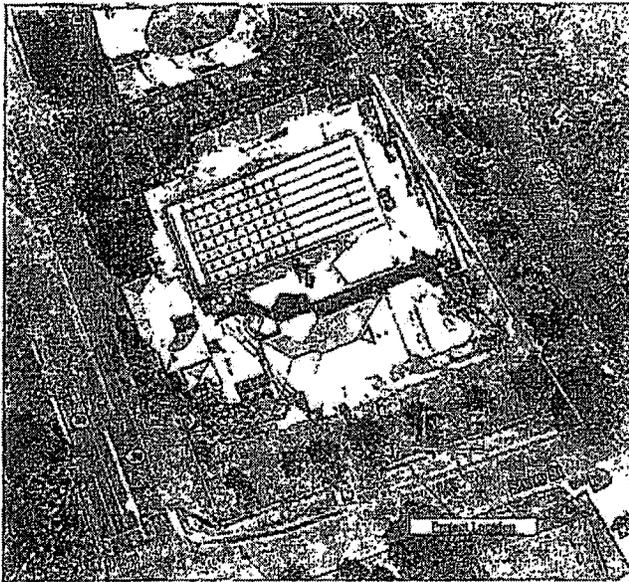
REV	DESCRIPTION	DATE
0	CREATED	09/15/2014
1	REVISIONS	

TITLE	LOCATION	REV
Exhibit A (Property 2)	Haiku Community Center	

Exhibit A (Property 3)

Electric Vehicle Charging Station Project for : Lahaina Aquatic Center

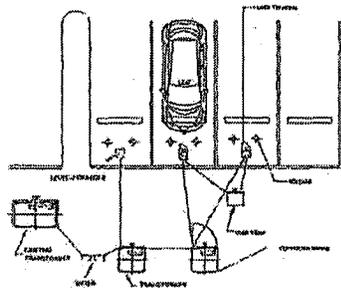
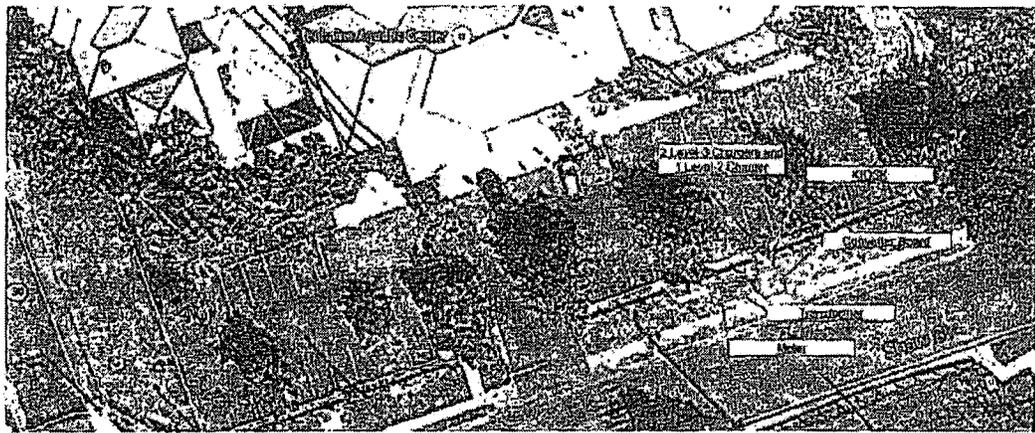
245 SHAW STREET, LAHAINA HI 96761
T.M.K. : (2) 4 - 6 - 012 : 005



#	REVISION	DATE
1	Initial	10/12/2014
2	DESCRIPTION	10/16
3	REVISIONS	

TITLE	LOCATION	REV
Exhibit A (Property 3)	Lahaina Aquatic Center	

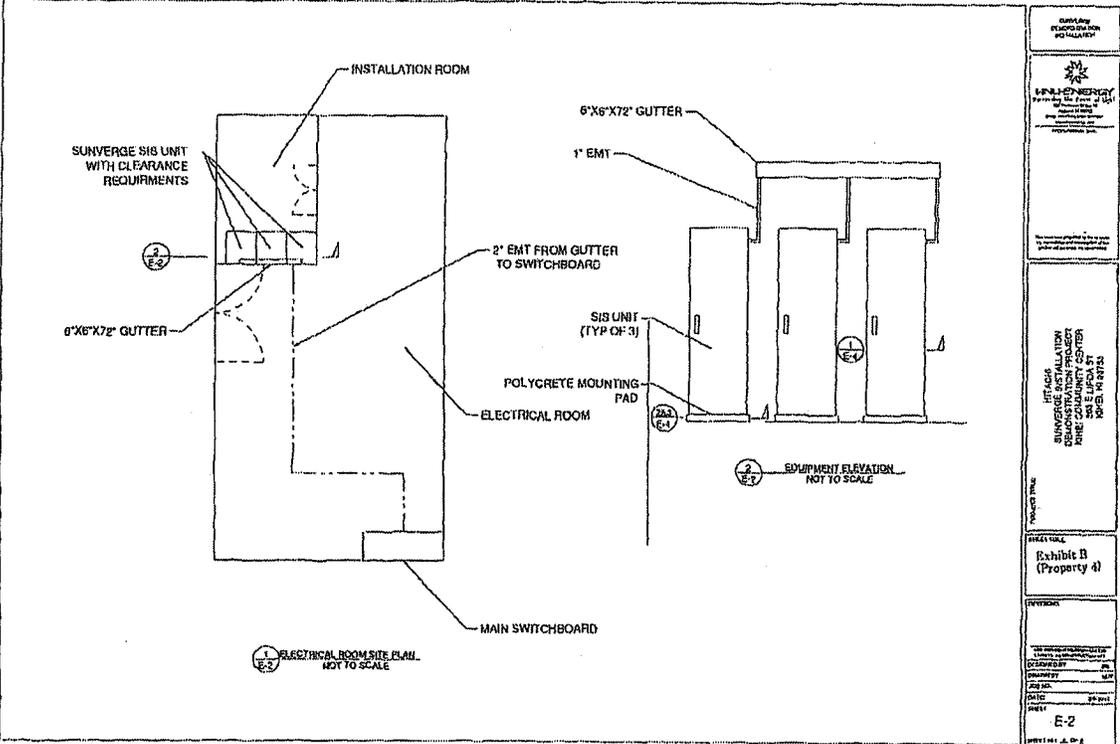
Exhibit B (Property 3)



REV	DESCRIPTION	REVISION DATE
1	REVISION	
2	REVISION	
3	REVISION	

FILE	EXHIBIT B (PROPERTY 3)	LOCATION	LAHAINA AQUATIC CENTER	REV
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Exhibit B (Property 4)



<p>GENERAL INFORMATION</p> <p>UNIVERSITY ENERGY</p> <p>UNIVERSITY ENERGY</p>
<p>ATTACH</p> <p>SUNVERGE INSTALLATION</p> <p>DESIGNATION PROCEED</p> <p>THE INSTALLATION PROVISION</p> <p>FOR THE PROVISIONS</p>
<p>EXHIBIT B</p> <p>(Property 4)</p>
<p>DATE</p> <p>BY</p> <p>REVISION</p> <p>E-2</p>

FIRST AMENDMENT TO ELECTRIC VEHICLE QUICK CHARGER AND
LOCAL BATTERY LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT, effective the
17 day of July, 2016, by and between HITACHI
ADVANCED CLEAN ENERGY CORPORATION, a Hawaii corporation
("LICENSEE"), whose address is 285 West Kaahumanu Avenue, Suite
102, Kahului, Hawaii 96732, and the COUNTY OF MAUI, a political
subdivision of the State of Hawaii, whose principal place of
business is 200 South High Street, Wailuku, Maui, Hawaii 96793,
hereinafter called the "LICENSOR" and collectively called the
"PARTIES".

W I T N E S S E T H:

WHEREAS, the PARTIES entered into that certain Electric
Vehicle Quick Charger and Local Battery License Agreement (the
"License Agreement"), dated December 17, 2014, on file with the
Director of Finance and incorporated herein by reference,
providing four property sites to be used by Licensee for electric
vehicle quick charge stations available for public use; local
battery units, and installation, operation and maintenance of
Licensee's facilities and related activities, at (1) the parking
lot in front of Kalana O Maui, 200 South High Street, Wailuku; (2)
the parking lot at the Haiku Community Center; (3) the parking lot

EXHIBIT " 2 "

at the Lahaina Aquatic Center; and (4) the machine room at the
Kihei Aquatic Center; and

WHEREAS, the parties desire to amend the License Agreement
to provide for an extension of the Term of the License Agreement.

NOW, THEREFORE, for and in consideration of the mutual
promises set forth herein, the parties hereby agree to amend
Paragraph 3. Term, of the License Agreement in its entirety to
read as follows:

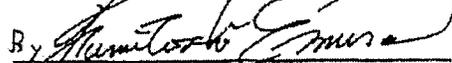
"3. Term. The term of this Agreement shall
commence on the Effective Date and end on March 31,
2018."

All other terms and conditions as provided in the License
Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this
Agreement the day, month and year first above written.

LICENSEE:

HITACHI ADVANCED CLEAN ENERGY
CORPORATION

By 

BY FUMITOSHI EMURA
(Signature)

Print Name:

Its President

Title:

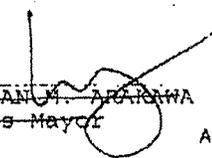
July 21, 2016

By _____
(Signature)

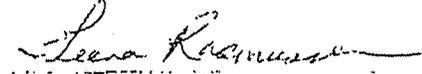
Print Name: _____

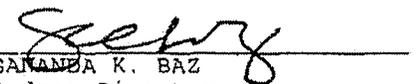
Its _____
(Title)

COUNTY OF MAUI:

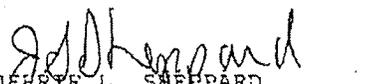
By  _____
~~ALANUI AOPUA~~ KEITH A. REGAN
~~Its Mayor~~ ACTING MAYOR, COUNTY OF MAUI

APPROVAL RECOMMENDED:


TEENA RASMUSSEN
Director, Office of
Economic Development


SAMANTA K. BAZ
Budget Director

APPROVED AS TO FORM
AND LEGALITY:


JERRY L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2016 0312

NOTARIAL CERTIFICATE

This is to certify that FUMITOSHI EMURA, who is President of HITACHI ADVANCED CLEAN ENERGY CORPORATION, affixed his signature in my very presence to the attached document.

Dated this 21st day of July, 2016.



N. Watanabe

Noriaki Watanabe

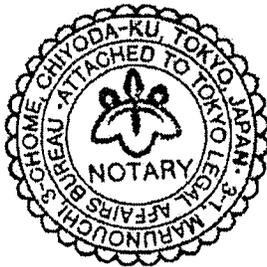
NOTARY

3-1, Marunouchi 3-chome,

Chiyoda-ku, Tokyo, Japan

ATTACHED TO

TOKYO LEGAL AFFAIRS BUREAU



平成28年登録第 1679 号

認 証

HITACHI ADVANCED CLEAN ENERGY CORPORATIONのPresident(江村文敏(FUMITOSHI EMURA))は、当廳の面前で、添付書面に自ら署名した。以下余白

よつて、これを認証する

平成28年7月21日、本公証人役場において

東京都千代田区丸の内三丁目3番1号

東京法務局所属

公 証 人
Notary

渡邊 徳 昭

NORIAKI WATANABE

証 明

上記署名は、東京法務局所属公証人の署名に相違ないものであり、かつ、その押印は、
真実のものであることを証明する

平成28年7月21日

東京法務局長

佐藤 主税

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: JAPAN
This public document
2. has been signed by NORIAKI WATANABE
3. acting in the capacity of Notary of the Tokyo Legal Affairs Bureau
4. bears the seal/stamp of NORIAKI WATANABE, Notary

Certified

5. at Tokyo
6. Jul.21.2016
7. by the Ministry of Foreign Affairs
8. 16N2146/22
9. Seal/stamp
10. Signature

A. Ogawa

Ayako OGAWA

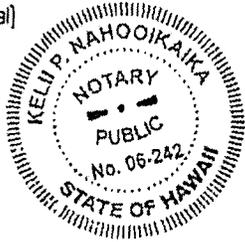
For the Minister for Foreign Affairs

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 25th day of January, 2017, before me appeared ~~ALAN M. ARAKAWA~~ ^{Kelii P. Nahookaika}, 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, 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 ~~ALAN M. ARAKAWA~~ ^{Kelii P. Nahookaika} 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.

[Stamp or Seal]

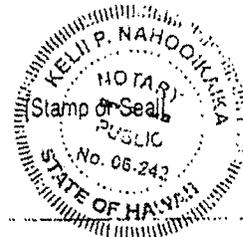


Kelii P. Nahookaika
Notary Public, State of Hawaii

Print Name: KELII P. NAHOOIKAIKA
My commission expires: 4.30.18

NOTARY PUBLIC CERTIFICATION

Doc Date: 7.19.16 # Pages: 6
Notary Name: KELII P. NAHOOIKAIKA Judicial Circuit: 2nd
Doc Description: amendment to electric vehicle
quick charge and local battery
licence agreement
Notary Signature: Kelii P. Nahookaika
Date: 1.25.17



**SECOND AMENDMENT TO ELECTRIC VEHICLE QUICK CHARGER AND
LOCAL BATTERY LICENSE AGREEMENT**

THIS SECOND AMENDMENT TO LICENSE AGREEMENT, effective the _____ day of _____, 20____, by and between HITACHI ADVANCED CLEAN ENERGY CORPORATION, a Hawaii corporation ("LICENSEE"), whose address is 275 West Kaahumanu Avenue, Suite 1003, Kahului, Hawaii 96732, and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called the "LICENSOR" and collectively called the "PARTIES".

W I T N E S S E T H:

WHEREAS, the PARTIES entered into that certain Electric Vehicle Quick Charger and Local Battery License Agreement (the "License Agreement"), dated December 17, 2014, as amended by the FIRST AMENDMENT thereto, dated July 19, 2016, on file with the Director of Finance and incorporated herein by reference, providing four property sites to be used by Licensee for electric vehicle quick charge stations available for public use, local battery units, and installation, operation, and maintenance of Licensee's facilities and related activities, at (1) the parking lot in front of Kalana O Maui, 200 South High Street, Wailuku; (2) the parking lot at the Haiku Community Center; (3) the parking lot at the Lahaina Aquatic Center; and

(4) the machine room at the Kihei Aquatic Center; and

WHEREAS, the PARTIES desire to amend the License Agreement to provide for an extension of the Term of the License Agreement, to remove property (4) located at the Kihei Aquatic Center machine room from the License Agreement for the remaining term of the License Agreement as that equipment is no longer used and has been removed, and to provide additional exhibits showing the as-built conditions for the remaining properties (1) through (3) described in Exhibit "A" of the original License Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties hereby agree to amend the License Agreement as follows:

1. Property (4), pertaining to the machine room at the Kihei Aquatic Center, as detailed in Paragraph 1. and Exhibit "A" of the License Agreement, is hereby deleted from the License Agreement because that equipment is no longer used and has been removed. No further obligations are owed by either party with respect to Property (4).

2. Paragraph 3. of the License Agreement is amended in its entirety to read as follows:

"3. Term. The term of this Agreement shall commence on the Effective Date and end on March 31, 2020."

3. Paragraph 5. of the License Agreement, "Improvements; Utilities; Access," subsections (a) and (c) are amended in their entirety to read as follows:

"(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". Licensee shall have the right to replace or upgrade Licensee's Facilities at any time during the term of this Agreement so long as the "footprint" of the License Area does not expand. Licensee shall cause all construction to occur lien-free and in compliance with all the applicable laws and ordinances. Licensee's Facilities were donated to Maui Economic Development Board (MEDB) in 2017 and were leased by MEDB to Licensee for continued operations."

"(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."

4. Paragraph 5. of the License Agreement, "Improvements; Utilities; Access", is amended by adding the following new subsections (f) and (g), to read as follows:

"(f) In consideration of the terms set forth in this Second Amendment, Licensee shall pay to Licensor in readily available United States currency the amount of Ninety-eight thousand, six-hundred and fifty and no/100 Dollars, (\$98,650.00), hereinafter, the "Release Payment", within thirty days of final execution of this Second Amendment. In consideration of the Release Payment, Licensor hereby agrees to fully and forever release Licensee and MEDB (subject to subsection (g)) from any and all claims arising out of the License Agreement relating to the removal of the Facilities and/or the condition of Licensor's property (including, without limitation, the transferred Facilities) upon and after the termination of this License Agreement.

(g) Upon termination of this License Agreement, MEDB will transfer ownership of the Licensee's Facilities to Licensor. Should MEDB transfer or sell its interest in the Licensee's Facilities, MEDB will

ensure this License Agreement's provisions pertaining to MEDB are incorporated into such transfer or sale to the receiving entity."

5. A new Paragraph 17. is added to the License Agreement to describe the "as-built" details of the EV charging systems, and shall read as follows:

"17. Current Conditions. Exhibits "C", "D", and "E", attached hereto, are hereby incorporated into the License Agreement to reflect the "as-built" details of the Facilities, i.e., the EV charging systems, at the three remaining property sites, specifically, Exhibit "C" reflects property (1), the parking lot in front of Kalana O Maui, 200 South High Street, Wailuku; Exhibit "D" reflects property (2), the parking lot at the Haiku Community Center; and Exhibit "E" reflects property (3), the parking lot at the Lahaina Aquatic Center."

6. A new Paragraph 18. is added to the License Agreement to describe advertising on EV charging systems, and shall read as follows:

"18. Advertising. Advertising on EV charging systems, including converter boxes and electrical boxes, shall be allowed provided that the following types of advertising shall not be accepted:

- a. Advertising that contains political or campaign speech.
- b. Advertising that, by reason of design, format, or subject matter, promotes or appeals to racial, religious, or ethnic prejudice or violence.
- c. Advertising that contains pictures, words, or symbols of an obscene, illicit or pornographic character.
- d. Advertising that promotes illegal activities.
- e. Advertising of any product or service that is prohibited by law to be sold or offered for sale to minors.
- f. Advertising that contains profanity or depicts violence.
- g. Advertising that contains false or misleading information, copyright or trademark infringement, or is otherwise unlawful.
- h. Any material that implies or declares an endorsement by the County of any service,

product or point of view, without prior written authorization by the Mayor.

- i. Advertising that contains libelous speech.
- j. Advertising that is harmful to or disruptive to the charging systems, including converter boxes and electrical boxes.
- k. Advertising that emits lights, noise, or special effects."

All other terms and conditions as provided in the License Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day, month and year first above written.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]**

LICENSEE:

HITACHI ADVANCED CLEAN ENERGY
CORPORATION

By _____
(Signature)

Print Name: _____

Its _____
(Title)

By _____
(Signature)

Print Name: _____

Its _____
(Title)

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name

My commission expires: _____

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

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

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name

My commission expires: _____

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

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

MAUI ECONOMIC DEVELOPMENT BOARD

By _____
(Signature)

Print Name: _____

Its _____
(Title)

By _____
(Signature)

Print Name: _____

Its _____
(Title)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name

My commission expires: _____

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

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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.

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

COUNTY OF MAUI:

By

ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:

TEENA RASMUSSEN
Director, Office of
Economic Development

SANANDA K. BAZ
Budget Director

APPROVED AS TO FORM
AND LEGALITY:

JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2016-0312/2017-0098
PEA-70 2018-08-06 Second Amendment to License Agreement

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me 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, 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 **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.

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

