

REQUEST FOR LEGAL SERVICES

Date: April 22, 2019
From: Keani Rawlins-Fernandez
Councilmember

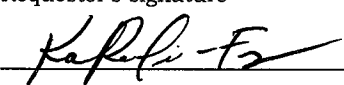
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Edward S. Kushi, Jr., Esq.

Subject: FISCAL AND PERFORMANCE REVIEW OF ANAERGIA SERVICES LLC-RELATED PROJECTS (EDB-31)

Background Data: Please review and, if appropriate, approve as to form and legality, the attached revised proposed resolution.

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

Requestor's signature  Keani Rawlins-Fernandez	Contact Person <u>Carla Nakata</u> (Telephone Extension: 7659)
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☐ 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): April 26, 2019
REASON: For committee consideration.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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 _____

By _____

(Rev. 7/03)

Resolution

No. _____

AUTHORIZING THE COUNCIL CHAIR TO CONDUCT A FISCAL AND PERFORMANCE REVIEW OF THE USE, MANAGEMENT, AND EXPENDITURE OF PUBLIC FUNDS FOR ANAERGIA SERVICES LLC-RELATED PROJECTS

WHEREAS, pursuant to Subsection 3-6(3) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), the Council has the following authority: "To conduct investigations of (a) the operation of any department or function of the County and (b) any subject upon which the Council may legislate."; and

WHEREAS, the County of Maui has entered into two contracts with subsidiaries of California-based Anaergia Services LLC ("Anaergia"): Maui Resource Recovery Facility, LLC ("MRRF"); and Maui All Natural Alternative, LLC; and

WHEREAS, in response to Request for Proposals 12-13/P32, the County selected Anaergia, which in turn formed MRRF to finance, plan, design, permit, construct, own, operate, and maintain an Integrated Waste Conversion and Energy Project, intended to be located on privately owned real property in the vicinity of the Central Maui Landfill at One Pulehu Road, Puunene, Hawaii; and

WHEREAS, according to the Maui County Integrated Waste Conversion and Energy Project Services Agreement dated January 8, 2014 (Contract M1016), MRRF's facility is intended to be a "Resource Recovery Facility" and "will receive and convert Acceptable Waste and Landfill Gas into Fuel, as defined in HRS §196-2, or Renewable Energy, as defined in HRS §196-11, or other marketable commodities, thereby diverting a significant percentage of waste from disposal in the Landfill"; and

WHEREAS, the Agreement sets forth various terms for compensation between the parties; and

WHEREAS, the Agreement identifies a term of twenty years from the "Commercial Operation Date," defined as the date upon which full

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commercial operation of MRRF's primary project components and processes commence; and

WHEREAS, the Council commissioned a study to assess and evaluate the Solid Waste Management Division, Department of Environmental Management, as an outgrowth of questions raised during the Fiscal Year 2015 budget process; and

WHEREAS, one stated line of inquiry during the budget process was: "Assess whether implementation of the Maui County Integrated Waste Conversion and Energy Project (Contract M1016) will result in a net cost savings to the County compared to current operating practices"; and

WHEREAS, the "Review & Assessment of the Solid Waste Division," prepared by CB&I Environmental and Infrastructure, Inc. and dated March 7, 2016, made two principal findings on the question: (1) the Department of Environmental Management's analysis projected the Waste-to-Energy project would result in cost savings of approximately \$916,500 per year (versus the current landfill); and (2) the projected cost savings were overstated, and the project will result in higher costs of \$835,000 per year; and

WHEREAS, *The Maui News* subsequently reported on the audit findings on March 10, 2016, and March 16, 2016, noting a concern voiced by a Councilmember that the waste-to-energy agreement had been proposed by the administration as a "no-cost" contract, thereby obviating the need for council approval; and

WHEREAS, the Agreement has been amended three times since its execution, in February 2017, November 2017, and December 2018, respectively, with the latest amendment providing a time extension until June 30, 2020, for performance under Section 9.01 of the contract, and an additional 18-month extension for performance under Section 3.07(d) of the contract; and

WHEREAS, at a meeting on June 19, 2018, the Council's Infrastructure and Environmental Management Committee was advised that there is a standard non-appropriations clause in the contract that would allow the contract to be canceled if the funds were not appropriated by the Council; and

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WHEREAS, in response to Request for Proposals 15-16/P98, the County entered into a Services Agreement for Electrical Energy Generation and Sludge Drying (Contract C6207) with Maui All Natural Alternative, LLC, dated February 14, 2017, for the design, construction, operation, and maintenance of a gas turbine system with sludge dryer for the Wailuku-Kahului Wastewater Reclamation Facility at 281 Amala Place, Kahului, Hawaii, under a power purchase agreement; and

WHEREAS, the term of the Services Agreement is twenty years from the "Operations Commencement Date," defined as the actual date of commencement of operations under the Services Agreement; and

WHEREAS, a fiscal and performance review of the use, management, and expenditure of public funds relating to the scope and purpose of these Anaergia-related projects would provide an understanding of the progress made toward their completion and the anticipated effectiveness of the projects, and a basis for the public and the Council to consider whether appropriating additional funds toward the projects is in the best interests of the County; now, therefore,

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

1. That it authorizes the Council Chair to contract for a fiscal and performance review of the use, management, and expenditure of public funds for Anaergia Services LLC-related projects; and
2. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Director of Environmental Management.

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maui

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