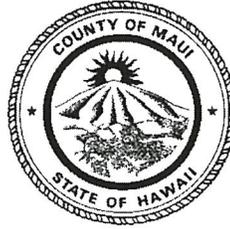


MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Acting Corporation Counsel

EDWARD S. KUSHI, JR.
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761



RECEIVED

2019 AUG 27 PM 2:51

OFFICE OF THE
COUNTY COUNCIL

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

August 27, 2019

MEMO TO: Michael J. Molina, Chair
Governance, Ethics and Transparency Committee

FROM: Caleb P. Rowe, Deputy Corporation Counsel 

SUBJECT: Litigation Matters
Settlement of Claim: Bacon Universal
Claim No. 30192754170-0001

Pursuant to Section 3.16.020B of the Maui County Code, our department hereby requests authorization to discuss settlement of the aforementioned claim. It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. There is no immediate deadline to this matter.

Copies of the claim and proposed resolution are enclosed. We request that a representative from the Department of Environmental Management be in attendance during discussion of this matter. If you have any questions, or concerns, please do not hesitate to contact me.

CPR:cs
Enclosures

cc: Eric Nakagawa, Director
Department of Environmental Management

Resolution

No. _____

AUTHORIZING SETTLEMENT OF CLAIM NO. 30192754170-0001 OF
BACON UNIVERSAL CO., INC.

WHEREAS, BACON UNIVERSAL CO., INC. filed Claim No. 30192754170-0001 on May 31, 2019, against the County of Maui for damage to their property that was being rented by the County and being used at the Central Maui Landfill on December 24, 2018; and

WHEREAS, the County of Maui and Bacon Universal, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, have reached a proposed resolution of this claim by way of negotiated settlement; and

WHEREAS, having reviewed the facts and circumstances regarding this claim and being advised of attempts to reach resolution of this claim by way of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

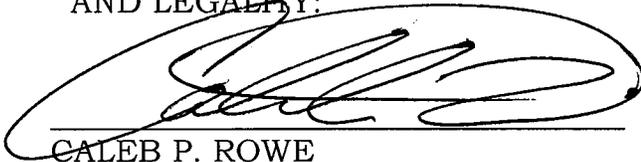
1. That it hereby approves settlement of Claim No. 30192754170-0001 in the amount of \$121,181.88; and

Resolution No. _____

2. That payment is authorized to satisfy settlement of this claim following the execution of the Release of Property Damage Claim by a representative of Bacon Universal; and

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

APPROVED AS TO FORM
AND LEGALTY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

CALEB P. ROWE
Deputy Corporation Counsel
County of Maui
RISK 2019-0134

COUNTY OF MAUI

RECEIVED

CLAIM FOR DAMAGE OR INJURY

2019 MAY 31 AM 11:02

PLEASE PRINT CLEARLY

1. Claimant: Mr. Mrs. Ms. BACON WIZVERSON OFFICE OF THE COUNTY CLERK

2. Address: 800 AWA STREET

3. Telephone No.: Business 808-244-9158 Residence _____

4. Date of Accident: Dec 24, 2018

5. Location of Accident: CENTRAL MAUI LODGE

6. Amount of Claim: Property Damage \$ 114,266⁰⁴ ESTIMATE Personal Injury \$ _____

7. Describe the accident in detail. Indicate all the facts, causes, persons involved, witnesses, extent of damage, etc., and why you think the County is responsible. You may write on the back if needed.

WET WAS ON RENTAL TO COUNTY OF MAUI CENTRAL LODGE. DURING RENTAL WORK WAS ROLLED OVER

8. If you carry insurance applicable to this claim, please provide the name and address of the insurance company and your policy number.

_____ Policy No. _____

A. Did you file a claim with your insurance company? NO

If yes, amount claimed \$ _____ Deductible amount \$ _____

B. If a claim was filed with your insurance company, what action do they intend to take?

I HEREBY DECLARE THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

[Signature]
(Signature of Claimant)

May 20, 2019
(Date)

(Rev. 05/11/95)

BACON UNIVERSAL CO. INC.

MAUI - QUOTE

SOLD TO
 111237 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 ATT: CLAIMS
 200 S. HIGH ST
 WAILUKU, HI 96793

SHIP TO
 CENTRAL MAUI LANDFILL
 D39EX-24

Sold By: 1134 PO #: D39EX-24 LANDFILL Date: 5/03/19 QUOTE M009805
 Ship By: Tax # PRT: * Open

| Tax | D | Qty | Description | Price | Amount |
|--------------------------|---|-----|--------------------|----------------------|-----------------------|
| Group: 01 | | | | | |
| FILTER SALES | | | | | |
| M | | 1 | KOM 600-185-3100 | ASV, AIR ELE 402 | 74.30 |
| M | | 1 | KOM 600-211-2111 | CARTRIDGE E 306 | 12.08 |
| M | | 1 | KOM 600-319-3881 | CARTRIDGE TOP11A | 39.43 |
| M | | 1 | KOM 421-60-35170 | ELEMENT, BRE 406 | 8.91 |
| M | | 1 | KOM 12Y-979-1174 | FILTER 406 | 116.07 |
| | | | | | ** TOTAL FILTER SALES |
| | | | | | 250.79 |
| FREIGHT ESTIMATE FREIGHT | | | | | |
| M | | | | | 10000.00 |
| OIL SALES | | | | | |
| M | | 1 | KOM 1401101H2 | 15W40-CK4 5 CONTAINL | 58.96 |
| M | | 4 | KOM 1400134H92 | 10W30-DH 5 | 57.20 |
| | | | | | ** TOTAL OIL SALES |
| | | | | | 287.76 |
| PARTS COUNTER | | | | | |
| M | | 1 | KOM 6276-BB-0010T4 | XENGINE ASS | 35818.80 |
| M | | 1 | KOM 720-2M-00130 | XPUMP ASS'Y | 16764.80 |
| M | | 1 | KOM 708-1T-00670 | XPUMP ASS'Y | 4468.10 |
| M | | 1 | KOM 705-22-31230 | XPUMP ASS'Y | 1308.10 |
| M | | 2 | KOM 07000-A2100 | O-RING 06B05 | 10.20 |
| M | | 1 | KOM 07000-12075 | O-RING 05A02 | 3.22 |
| M | | 1 | KOM 07000-13042 | O-RING 06C02 | 2.78 |
| M | | 1 | KOM 6533-11-2020 | GASKET | 15.17 |
| M | | 1 | KOM 6533-01-0020 | CATALYZER | 2977.80 |
| M | | 1 | KOM 6534-91-1120 | CLAMP | 43.96 |
| M | | 1 | KOM 6534-91-1130 | GASKET | 34.54 |
| M | | 1 | KOM 6276-81-8790 | COVER | 226.30 |
| M | | 1 | KOM 6543-01-0020 | CATALYZER | 8335.70 |
| M | | 1 | KOM 6533-11-2030 | CLAMP | 63.87 |
| M | | 1 | KOM 6533-11-2020 | GASKET | 15.17 |
| M | | 1 | KOM 6276-11-5210 | TUBE | 500.81 |
| M | | 1 | KOM 6276-11-5840 | ELBOW | 288.65 |
| M | | 1 | KOM 6535-91-1120 | CLAMP | 65.80 |
| M | | 1 | KOM 6535-91-1130 | GASKET | 32.20 |
| M | | 1 | KOM 6540-71-1110 | INJECTOR | 543.66 |
| M | | 2 | KOM 6166-13-5990 | BOLT | 53.48 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | 41.82 |
| M | | 1 | KOM 6217-71-1170 | SPACER | 5.44 |
| M | | 1 | KOM 6253-11-5170 | GASKET | 9.28 |
| M | | 1 | KOM 600-816-2610 | SENSOR | 997.44 |
| M | | 2 | KOM 01010-80616 | BOLT 05A02 | .73 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 |

BACON UNIVERSAL CO. INC.

MAUI - QUOTE

SOLD TO
 111237 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 ATT: CLAIMS
 200 S. HIGH ST
 WAILUKU, HI 96793

SHIP TO
 CENTRAL MAUI LANDFILL
 D39EX-24

Sold By: 1134 PO #: D39EX-24 LANDFILL Date: 5/03/19 QUOTE MOD: 9805
 Ship By: Tax: PRT: Open:

| Tax | D | Qty | Description | | Price | Amount |
|-----|---|-----|------------------|--------------|---------|---------|
| M | | 6 | KOM 6544-91-1250 | CLIP | 7.12 | 42.72 |
| M | | 6 | KOM 01010-80616 | BOLT | .73 | 4.38 |
| M | | 6 | KOM 01643-30623 | WSHR 05A02 | .41 | 2.46 |
| M | | 1 | KOM 600-816-2440 | SENSOR 06B04 | 536.93 | 536.93 |
| M | | 2 | KOM 01010-80625 | BOLT | .84 | 1.68 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 | .82 |
| M | | 4 | KOM 6544-91-1240 | CLIP | 6.84 | 27.36 |
| M | | 3 | KOM 01010-80616 | BOLT 05A02 | .73 | 2.19 |
| M | | 3 | KOM 01643-30623 | WSHR 06B04 | .41 | 1.23 |
| M | | 3 | KOM 6544-91-1240 | CLIP | 6.84 | 20.52 |
| M | | 3 | KOM 01010-80612 | BOLT | .69 | 2.07 |
| M | | 3 | KOM 01643-30623 | WSHR 06B04 | .41 | 1.23 |
| M | | 1 | KOM 600-816-2720 | SENSOR | 887.28 | 887.28 |
| M | | 2 | KOM 01010-80616 | BOLT 05A02 | .73 | 1.46 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 | .82 |
| M | | 7 | KOM 6544-91-1250 | CLIP | 7.12 | 49.84 |
| M | | 4 | KOM 01010-80616 | BOLT 05A02 | .73 | 2.92 |
| M | | 4 | KOM 01643-30623 | WSHR 06B04 | .41 | 1.64 |
| M | | 1 | KOM 01010-80620 | BOLT P60 | .70 | .70 |
| M | | 1 | KOM 01643-30623 | WSHR 06B04 | .41 | .41 |
| M | | 1 | KOM 600-816-2410 | SENSOR | 604.56 | 604.56 |
| M | | 2 | KOM 01010-80625 | BOLT | .84 | 1.68 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 | .82 |
| M | | 9 | KOM 6544-91-1240 | CLIP | 6.84 | 61.56 |
| M | | 2 | KOM 01010-80616 | BOLT 05A02 | .73 | 1.46 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 | .82 |
| M | | 2 | KOM 01010-80640 | BOLT P60 | 1.67 | 3.34 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 | .82 |
| M | | 1 | KOM 600-816-2812 | SENSOR MODU | 604.92 | 604.92 |
| M | | 2 | KOM 01010-80620 | BOLT P60 | .70 | 1.40 |
| M | | 2 | KOM 01643-30623 | WSHR 06B04 | .41 | .82 |
| M | | 1 | KOM 600-816-2830 | SENSOR | 1127.38 | 1127.38 |
| M | | 4 | KOM 6544-91-1230 | CLIP | 7.26 | 29.04 |
| M | | 3 | KOM 01010-80616 | BOLT 05A02 | .73 | 2.19 |
| M | | 3 | KOM 01643-30623 | WSHR 06B04 | .41 | 1.23 |
| M | | 1 | KOM 11Y-01-52380 | BOLT | 30.96 | 30.96 |
| M | | 2 | KOM 01594-01008 | NUT 05C01 | 4.05 | 8.10 |
| M | | 1 | KOM 11Y-01-52390 | BOLT | 30.96 | 30.96 |
| M | | 2 | KOM 01594-01008 | NUT 05C01 | 4.05 | 8.10 |
| M | | 2 | KOM 11Y-01-52370 | BOLT | 33.13 | 66.26 |
| M | | 4 | KOM 01594-01008 | NUT 05C01 | 4.05 | 16.20 |
| M | | 1 | KOM 11Y-01-52410 | BOLT | 25.59 | 25.59 |



BACON UNIVERSAL CO. INC.

MAUI - QUOTE

SOLD TO
 111237 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 ATT: CLAIMS
 200 S. HIGH ST
 WAILUKU, HI 96793

SHIP TO
 CENTRAL MAUI LANDFILL
 D39EX-24

Sold By: 1134 PO #: D39EX-24 LANDFILL Date: 5/03/19 QUOTE PRT: M009805
 Ship By: Tax #:

| Tax | D | Qty | Description | Price | Amount |
|--------------------------|---|-----|---------------------------------|---------|----------|
| M | | 2 | KOM 01594-01008 NUT 05C01 | 4.05 | 8.10 |
| M | | 1 | KOM 11Y-01-52510 HOSE | 10.49 | 10.49 |
| M | | 2 | KOM 11Y-09-11140 CLIP 06B04 | 3.24 | 6.48 |
| M | | 2 | KOM 600-052-3100 CLIP | 21.82 | 43.64 |
| M | | 2 | KOM 01010-81025 BOLT P60 05A02 | 1.88 | 3.76 |
| M | | 2 | KOM 01643-31032 WASHER 05A02 | .60 | 1.20 |
| M | | 1 | KOM 6540-71-2510 PUMP | 1336.13 | 1336.13 |
| M | | 1 | KOM 1400166H1 COOLANT5 GA | 75.83 | 75.83 |
| M | | 1 | KOM 1400164H1 COOLANT-1GA 02C04 | 13.99 | 13.99 |
| M | | 1 | KOM 12Y-979-6610 COVER | 825.83 | 825.83 |
| M | | 1 | KOM 12Y-979-6621 COVER | 1266.97 | 1266.97 |
| M | | 1 | KOM 12Y-979-6640 COVER | 138.60 | 138.60 |
| M | | 1 | KOM 09690-F0710 MARK | 53.26 | 53.26 |
| ** TOTAL PARTS COUNTER | | | | | 80653.20 |
| PARTS SHOP | | | | | |
| M | | 1 | KOM 11Y-60-51310 CARTRIDGE | 33.54 | 33.54 |
| M | | 1 | KOM 11Y-60-48711 CARTRIDGE | 110.81 | 110.81 |
| ** TOTAL PARTS SHOP | | | | | 144.35 |
| QUOTE SVC LABOR | | | Total Hours: | 120.00 | |
| ** TOTAL QUOTE SVC LABOR | | | | | 18360.00 |

2017 D39EX-24 SN: 95660 SAA4D95LE-7 SN: 80243

ENGINE B/O EST 180 DAYS DEF PUMP 20 DAYS

THIS QUOTE IS FOR PARTS ONLY
 QUOTE BY ERIC K PH: 856-4016

** SUBTOTAL 109696.10

** SALES TAX 4569.94

X _____ Charge Sale

Phone: (808) 270-7727
 Page 3 Last Page

PAY THIS AMOUNT

\$114266.04

BACON UNIVERSAL CO. INC.

MAUI - QUOTE

SOLD TO
111237 COUNTY OF MAUI FINANCE

SHIP TO

OFFICE COPY

Date 5/03/19 QUOTE MO09805

| Tax | D | Qty | Description -----* | Price | Open Amount |
|-----|---|--------|-----------------------|--------|-------------|
| M | | 120.00 | Date 3/20/19 Employee | 153.00 | 18360.00 |

OFFICE COPY

PAY THIS AMOUNT 

BACON UNIVERSAL CO. INC.

MAUI - QUOTE

SOLD TO
 111237 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 ATT: CLAIMS
 200 S. HIGH ST
 WAILUKU, HI 96793

SHIP TO
 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 200 S HIGH ST
 HENRY 264-0004
 WAILUKU, HI 96793

KOMATSU D39EX-24 17 SN: 95660 HR 0 W:00
 Sold By: 1218 PO #: ROLL OVER Date: 5/03/19 QUOTE PRT: M00985
 Ship By: Tax #:

| Tax | D | Qty | Description | Price | Amount |
|-----|---|-----|--|--------|--------|
| | | | Group: 01 | | |
| | | | SERVICE DOES NOT INCLUDE ANY UNFORSEED OR UNRELATED REPAIRS. REPAIR RT REAR ROOF PANEL. | | |
| M | | | SHOP MISC CHG | | |
| | | | MISC SHOP SUPPLIE PAINT MATERIAL | | 35.00 |
| M | | | SHOP SERVICE | | |
| | | 1 | REPAIR RT REAR ROOF PANEL | 420.00 | 420.00 |
| | | | ** SUBTOTAL | | 455.00 |
| | | | ** SALES TAX | | 18.96 |
| X | | | Charge Sale | | |

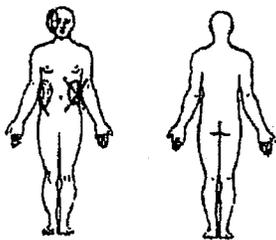
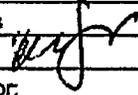
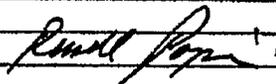
Phone: (808) 270-7727 PAY THIS AMOUNT  \$473.96



County of Maui
 Dept. of the Corporation Counsel
 Risk Management Division
 Phone: (808) 270-7535 Fax: (808) 270-1761

EMPLOYEE'S REPORT OF ILLNESS/INJURY/NEAR MISS

Instructions: Employee shall use this form to report all work related events that result in illness/disease, injury, or a "near miss" (an event that could have caused an illness or injury) – no matter how minor. This helps management identify and correct hazards before they cause serious injuries. This form shall be completed by Employee as soon as possible and submitted to Supervisor with a copy to the Risk Management Division.

| | | |
|--|---|--------------------------|
| I am reporting the following: <input type="checkbox"/> Illness/Disease <input checked="" type="checkbox"/> Injury <input type="checkbox"/> Near Miss | | Today's Date: 12/24/2018 |
| Your Name: RUSSELL POA/PUNI | | |
| Job Title: LANDFILL EQUIPMENT OPERATOR I | Department: DEM | Division: SW CML |
| Your Supervisor's Name: KEVIN YOSHIMOTO | | |
| Have you told your supervisor about this Event? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. If no, pls. state reason. | | |
| Date of Event: 12/24/2018 | Time of Event: 1430 pm | |
| Name of witnesses (if any): JUSTIN WATANABE | | |
| Exact location Event occurred: CML STATION #3 EAST FACE | | |
| What were you doing at the time? TRACKING RUBBISH ALONG THE EAST FACE TOP | | |
| Describe step by step what led up to the Event. (Continue on the back if necessary): WORKING ON THE KOMATSU, TRACKING ALONG THE EAST FACE TOP OF STATION #3, PUSHING RUBBISH WHEN RIGHT SIDE REAR STARTED TO SLIDE. | | |
| What could have been done to prevent this? HAVE BETTER COMPACTION ON TRASH. | | |
| What parts of your body were affected?  | If a Near Miss, how could you have been hurt? | |
| Did you see a doctor about this illness/injury? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes | | |
| If yes, whom did you see? DR. HENZLER (KULA HOSPITAL) | Doctor's phone number: (808) 878-4415 | |
| Date of Doctor Visit: 12/24/2018 | Time of Doctor Visit: N/A | |
| Has this part of your body been injured before? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | | |
| If yes, when? | Supervisor Signature:  | |
| Your signature:  | Date Rec'd by Supervisor: | |

Original: Dept.
 Copy: Risk Management Division



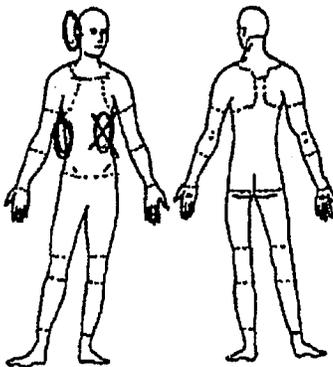
County of Maui
 Department of the Corporation Counsel
 Risk Management Division
 Phone: (808) 270-7535 Fax: (808) 270-1761
 (rev 8/2013)

Supervisor's Incident Investigation Report

Instructions: Complete this form within 48 hours after an accident that results in injury or illness, and submit it along with the WC-1. (This form may also be used to investigate non-work comp related incidents involving minor injuries requiring First Aid only or Near Misses that could have resulted in a serious injury or illness.)

| | |
|--|--|
| This is a report of a: <input type="checkbox"/> Death <input checked="" type="checkbox"/> Lost Time <input checked="" type="checkbox"/> Dr. Visit – Dr.'s Name: <u>DR. HENZLER</u> /Hospital: <u>KULA HOSPITAL</u> <input type="checkbox"/> First Aid Only <input type="checkbox"/> Near Miss | |
| Date of Incident: <u>12/24/2018</u> | This report is made by: <input checked="" type="checkbox"/> Supervisor <input type="checkbox"/> Manager <input type="checkbox"/> Other / Name: _____ |

Step 1: Injured employee (complete this part for each injured employee)

| | | |
|---|--|---|
| Name: RUSSELL POAIPUNI | Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female | Age: 43 |
| Department: DEM SW CML | Job title at time of incident: Landfill Equipment Operator I | |
| Part of body affected: (shade all that apply)  | Nature of injury: (most serious one) <input type="checkbox"/> Abrasion, scrapes <input type="checkbox"/> Amputation <input type="checkbox"/> Broken bone <input type="checkbox"/> Bruise <input type="checkbox"/> Burn (heat) <input type="checkbox"/> Burn (chemical) <input type="checkbox"/> Concussion (to the head) <input type="checkbox"/> Crushing Injury <input checked="" type="checkbox"/> Cut, laceration, puncture <input type="checkbox"/> Hemia <input type="checkbox"/> Illness <input type="checkbox"/> Sprain, strain <input type="checkbox"/> Damage to a body system: <input type="checkbox"/> Other _____ | This employee works: <input checked="" type="checkbox"/> Regular full time <input type="checkbox"/> Regular part time <input type="checkbox"/> Seasonal <input type="checkbox"/> Temporary Months with this employer: 1 yr. 6 mo. Months doing this job: 1 yr. 6 mo. employee did see doctor after the incident and reported having injured his ribs |

Step 2: Describe the incident

| | |
|---|----------------------------|
| Exact location of the incident: CML Station #3 EAST FACE | Exact time: 1430 pm |
| What part of employee's workday? <input type="checkbox"/> Entering or leaving work <input checked="" type="checkbox"/> Doing normal work activities <input type="checkbox"/> During meal period <input type="checkbox"/> During break <input type="checkbox"/> Working overtime <input type="checkbox"/> Other _____ | |
| Names of witnesses (if any): Justin Watanabe | |

| | | | |
|------------------------|--|-----------------------|------------------|
| Number of attachments: | Written witness statements: ONE (1) | Photographs: 3 | Maps / drawings: |
|------------------------|--|-----------------------|------------------|

| |
|---|
| <p>What personal protective equipment was being used (if any)? Safety toe shoes, vest, seatbelt</p> |
| <p>Describe, step-by-step the events that led up to the injury. Include names of any machines, parts, objects, tools, materials and other important details.</p> <p>Tracking along the outside east face top, pushing rubbish when the right side rear tracks started to slide. Ground area was soft. East face ground gave way from the weight of the machine. Komatsu toppled to rest on its right side.</p> <p style="text-align: right;">Description continued on attached sheets: <input type="checkbox"/></p> |

| Step 3: Why did the incident happen? | |
|--|---|
| <p>Unsafe workplace conditions: (Check all that apply)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Inadequate guard <input type="checkbox"/> Unguarded hazard <input type="checkbox"/> Safety device is defective <input type="checkbox"/> Tool or equipment defective <input type="checkbox"/> Workstation layout is hazardous <input type="checkbox"/> Unsafe lighting <input type="checkbox"/> Unsafe ventilation <input type="checkbox"/> Lack of needed personal protective equipment <input type="checkbox"/> Lack of appropriate equipment / tools <input type="checkbox"/> Unsafe clothing <input type="checkbox"/> No training or insufficient training <input checked="" type="checkbox"/> Other: <u>Soft ground below machine</u> | <p>Unsafe acts by people: (Check all that apply)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Operating without permission <input type="checkbox"/> Operating at unsafe speed <input type="checkbox"/> Servicing equipment that has power to it <input type="checkbox"/> Making a safety device inoperative <input type="checkbox"/> Using defective equipment <input type="checkbox"/> Using equipment in an unapproved way <input type="checkbox"/> Unsafe lifting <input type="checkbox"/> Taking an unsafe position or posture <input type="checkbox"/> Distraction, teasing, horseplay <input type="checkbox"/> Failure to wear personal protective equipment <input type="checkbox"/> Failure to use the available equipment / tools <input type="checkbox"/> Other: _____ |
| <p>Why did the unsafe conditions exist?</p> <p>Compaction was not sufficient on the outside slope.</p> | |
| <p>Why did the unsafe acts occur?</p> <p>Due to the large number of wet loads, we were not able to reach the maximum compaction.</p> | |
| <p>Is there a reward (such as "the job can be done more quickly", or "the product is less likely to be damaged") that may have encouraged the unsafe conditions or acts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, describe:</p> | |

| | |
|---|---|
| Were the unsafe acts or conditions reported prior to the incident? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Have there been similar incidents or near misses prior to this one? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Step 4: How can future incidents be prevented?

What changes do you suggest to prevent this incident/near miss from happening again?

Stop this activity
 Guard the hazard
 Train the employee(s)
 Train the supervisor(s)
 Redesign task steps
 Redesign work station
 Write a new policy/rule
 Enforce existing policy
 Routinely inspect for the hazard
 Personal Protective Equipment
 Other: _____

What should be (or has been) done to carry out the suggestion(s) checked above?

Remind employees about how important compaction is to daily operations.

Description continued on attached sheets:

Step 5: Who completed and reviewed this form? (Please Print)

| | |
|--|---|
| Written by: Kevin Yoshimoto Department: DEM | Title: Equipment operator/ TA working supervisor Date: 1/11/2019 |
| Names of investigation team members: | |
| Reviewed by: | Title: Director Date: |

Original: Department
 Copy: Sedgwick with WC-1 (by email: 6395countyofofmaul@sedgwickcms.com or Fax: 844-820-2516)
 Risk Management Division by fax (270-1761) or email (bridget.nakama@co.maul.hi.us)



County of Maui
 Department of the Corporation Counsel
 Risk Management Division
 200 S High Street Phone (808)270-7535
 Wailuku, HI 96793 Fax (808) 270-1781

VEHICLE ACCIDENT REPORT

Complete this form to report any VEHICLE related accident resulting in potential bodily injury, property damage, and/or loss of County property. Send the completed form within 48 hours of the accident to the Managing Director and a copy to Risk Management either by email, fax, or interoffice mail.

Your Name RUSSELL POAIPUNI Department DEM SW CML Date 12/24/2018
 Address 301 PUUALA ST. KULA, HI 96790 Phone (808) 870-9654
 Date of Accident 12/24/2018 Day of the Week MONDAY Time 2:30 p.m.
 Location of Accident CENTRAL MAUI LANDFILL STATION #3, EAST FACE

Did Police respond? Yes No. If yes, please obtain report and forward a copy of the report as soon as possible.

COUNTY CAR:

Year _____ Make KOMATSU RENTAL Model _____ License# (BACON UNIVERSAL KOMATSU RENTAL)
 Driven for what purpose? LANDFILL USE; PUSHING RUBBISH, SHAPING OUTSIDE EAST FACE.
 Describe damage RIGHT SIDE REAR TOP OF ROOF Estimated repair cost _____

PERSONS INJURED: Yes No If yes, please complete the following:

Name RUSSELL POAIPUNI Age 43
 Address 301 PUUALA ST. KULA, HI 96790 Phone (808) 870-9654
 Describe Injuries 2" CUT BEHIND (R) EAR AND 4"x2" BUMP ABOVE (R) EAR Medical Treatment Required? Yes No

Name N/A Age _____
 Address _____ Phone _____
 Describe Injuries _____ Medical Treatment Required? Yes No

OCCUPANTS OF YOUR AUTOMOBILE:

Name SELF Age _____ Address 301 PUUALA ST. KULA, HI 96790
 Name _____ Age _____ Address _____

DESCRIPTION OF OTHER AUTOMOBILE:

Year N/A Make _____ Model _____ License# & State _____
 Other Driver Name N/A Address _____

Describe damage _____
Were there any occupants other than driver Yes No If yes, how many? _____

WITNESSES OTHER THAN OCCUPANTS OF VEHICLES ALREADY LISTED:

Name JUSTIN WATANABE
Address _____ Phone _____
Name _____
Address _____ Phone _____

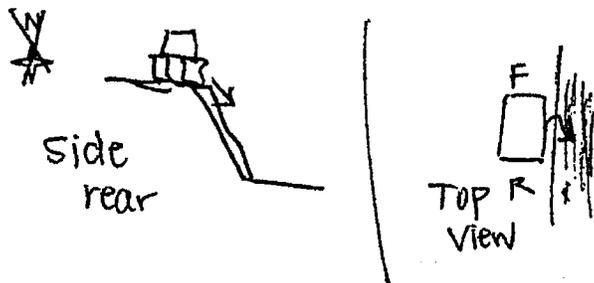
THE ACCIDENT:

Explain how accident occurred TRACKING ALONG THE OUTSIDE EAST FACE TOP, PUSHING RUBBISH WHEN RIGHT SIDE REAR TRACKS STARTED TO SLIDE. GROUND AREA WAS SOFT. EAST FACE GROUND GAVE WAY FROM THE WEIGHT OF THE MACHINE. MACHINE TOPPLED TO REST UPON IT'S RIGHT SIDE.

Were you wearing a seatbelt? YES Were all passengers in your vehicle wearing seatbelts? N/A
What statements were made by you or other party about accident after it occurred? _____

Please draw a diagram below showing position of your car (A) and other car (B) , etc., at the moment of impact.

Check type of road construction: ✓ rubbish concrete asphalt dirt gravel
Check condition of road: ✓ dry wet
Check condition of weather: ✓ clear fog rain dark



Direction your car was going reversing south Side of Street _____ Speed 1-2 mph
Direction other car was going N/A Side of Street _____ Speed _____
Did your driver give signal? N/A Kind _____ Were your lights on? _____
Did other driver give signal? N/A Kind _____ Were his/her lights on? _____

Did any temporary or permanent object (building, hedge, tree, car, etc.) obscure vision of either driver? Yes No
If yes, describe and show it on the diagram you have drawn above.

Your signature [Signature] Date _____
Supervisor's signature _____ Date _____
Department Head signature _____

Original: Department
copy: Managing Director, Risk Management Division



RENTAL CONTRACT

215A Railroad Ave., Hilo, HI 96720 • Ph: (808) 835-8595 • Fax: (808) 935-1898
 800 Alua St., Wailuku, Maui, HI 96793 • Ph: (808) 244-8158 • Fax: (808) 242-5815
 1856 Haleukana St., Lihue, Kauai, HI 96766 • Ph: (808) 245-8472 • Fax: (808) 246-6156
 74-5039B Queen Kaahumanu Hwy., Kailua, Kona, HI 96740 • Ph: (808) 326-1212 • Fax: (808) 326-1822

Page: 1

REMIT TO: 918 Ahua Street, Honolulu, HI 96819 • Ph: (808) 839-7202 • Fax: (808) 839-9813 • PARTS Ph: (808) 839-7707
 www.baconuniversal.com

RENTAL CONTRACT 8/02/18 8:09
 Contract : M 007275 Date: 08/02/18 Active: Yes

Customer : 111237
 COUNTY OF MAUI FINANCE Phone Day : (808) 270-7727
 ATT: CLAIMS Night: (808) 243-7443
 200 S. HIGH ST Fax : (808) 270-7878
 WAILUKU, HI 96793

Job site : HARRY K. 264-0004
 CENTRAL MAUI LANDFILL
 Notes : RETURN UNIT CLEAN OR \$125.00/HR CLEANING FEE
 REFUEL FEE -\$6.50/GAL
 KEY REPLACEMENT FEE - \$25.00
 BACON ARRANGED HAUL
 PICTURES TAKEN

Sold By : 1211 SELINDA SIMPSON Damage Waiver: No

Unit : 34833 DOZER Make: KOMATSU Model: D39EX-24
 Class: D39 Serial: 95660
 Color: RENT Engine: RL5731 Year: 17
 Repl. \$: 165,000.00

On Rent : 08/02/18 8:00 Meter Out: 321.9
 Period : M Quantity: 1.00 Rate: 4,000.00

Rates : Day 450.00 Week 1,350.00
 Mo/4Wks 4,000.00
 Rates for: 56.25 /hr after allowed usage below
 Engine OT: 8.0 hrs - Day 40.0 hrs - Week
 160.0 hrs - Mo/4Wks

THAT ALL SUCH INFORMATION AND DATA ARE TRUE AND CORRECT.
 FINANCE CHARGE OF 1 1/2% PER MONTH WILL BE CHARGED ON OVERDUE ACCOUNTS. THE CUSTOMER AGREES TO PAY REASONABLE COLLECTION COST AND ATTORNEY'S FEES IN
 THE EVENT THE ACCOUNT IS PLACED IN THE HANDS OF A LICENSED COLLECTOR OR ATTORNEY.
 RENTAL CHARGES DO NOT APPLY TOWARDS PURCHASE. MINIMUM RENTAL - ONE DAY

SIGNED BY RENTEE OR AGENT



**BACON
UNIVERSAL**

Co., Inc.

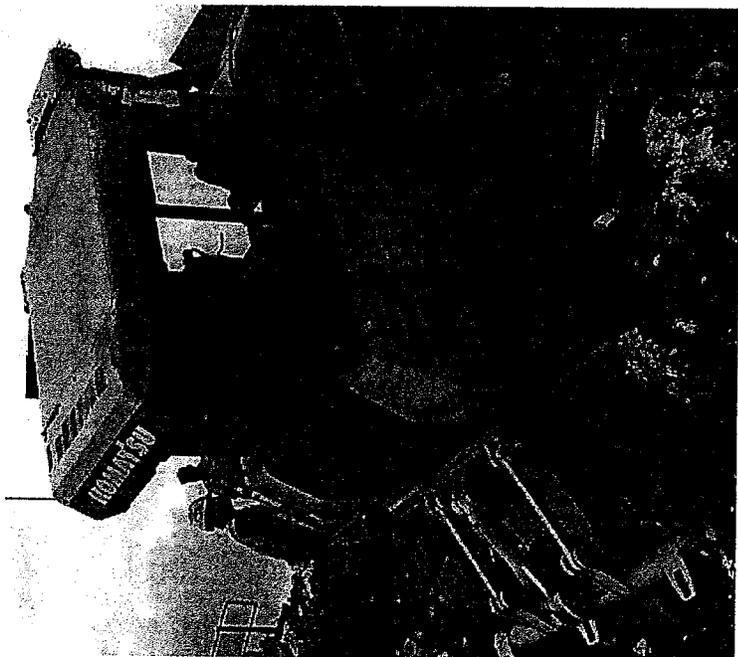
REMIT TO: 918 Ahua Street Honolulu, HI 96819 Ph: 808-839-7202 Fax: 808-839-9813 PARTS PH: 808-839-7707
www.baconuniversal.com

RENTAL CONTRACT

315A Railroad Ave. Hilo, HI 96720 Ph: 808-935-8595 Fax: 808-935-1698
808 Ahua St. Wailuku, Maui, HI 96793 Ph: 808-244-9188 Fax: 808-242-8815
74-5839B Queen Kaahumanu Hwy. Kailua Kona, HI 96740 Ph: 808-326-1212 Fax: 808-326-1822
1856 Halekani St. Lihua, Kauai HI 96766 Ph: 245-8472 Fax: 808-246-4156

BACON-UNIVERSAL COMPANY, INC. (and/or its Agents.) as "Renter" and "Rentee" are:

1. Renter is an independent contractor and is renting and using said equipment as an independent contractor. Renter agrees not to use nor permit said equipment to be used in any manner to contravene or violate any law and/or governmental regulation, including any and all permits or operations certificates.
2. Rentee has carefully examined and inspected each item of equipment rented hereunder, has full knowledge of the safety features of such equipment and hereby accepts each item as being in good order, condition and repair and satisfactory to Rentee in all respects except as specifically noted on the reverse side.
3. Rentee understands that Renter carries no insurance for the protection of Rentee not covering any liability of Rentee arising out of Rentee's use of the equipment covered herein. Rentee hereby assumes all responsibility for any and all damages or loss to said equipment and agrees to pay the full cost of all repairs. In case of loss or destruction of equipment or loss of possession thereof or inability to return same or any part thereof to Renter, said Rentee agrees to pay Renter the complete and full value of said equipment. Rentee agrees to return the equipment and all thereof to Renter at the end of the term of hire, in a good and clean condition, ordinary use and wear only excepted.
4. Renter shall not be liable for any personal injuries or other damages sustained by Rentee or Rentee's property for the condition or use of any item rented and Rentee agrees to keep Renter free and harmless from any loss or damage sustained by Rentee, or other persons, from the condition or use thereof, during such time as Rentee is in possession thereof under this rental contract. Renter shall not be liable for any loss, costs or damages caused by failure or breakdown of any item of equipment while Rentee is in possession under this rental contract and Rentee agrees to hold and save Renter and its Agents harmless from and against any and all such loss, cost or damage.
5. Rentee agrees to carry adequate insurance against personal injury, property damage and public liability, which may cause by Rentee's possession and operation of said equipment and Rentee agrees to keep Renter free and harmless from any loss or damage sustained by anyone by reason of said equipment or any part thereof. Renter hereby releases Renter from any responsibility or obligation whatsoever in the event of accident, regardless of causes or consequences, any and all costs, claims, court costs and attorney's fee, or other liability, on the part of Renter or any agent of Renter, resulting from the condition and/or the use of the described equipment, is hereby indemnified to the Renter by the Rentee regardless of against whom the claimant or claimants may make claim or institute action. However, in the event of any accident involving any of said equipment, Renter agrees to furnish Renter with complete report of same, including names and addresses of parties involved and witnesses.
6. Rentee agrees he will not take any item of equipment rented hereby, out of the State of Hawaii without express written permission of Renter. Renter agrees not to permit any repairs or liens to be placed upon any item of equipment rented hereby without the Renter's written consent and agrees to pay all charges in connection with the use of said equipment during the term of hiring.
7. Renter has reserved the right to cancel this contract at any time and to retake possession of said equipment. Renter releases and discharges the Renter from any and all liability and damage which might be caused by failure to deliver said equipment or any part thereof within the agreed time if such failure to deliver is caused by no act of fault, weather conditions, accident, breakdown, acts of third persons or any other circumstances or situations beyond the control of Renter.
8. Rentee agrees that he will not permit any other person or persons whatsoever to use operate or control said equipment or any part thereof.
9. It is understood that rental rates are charged upon a basis not to exceed eight hours per day and five days per week. Any greater use made of any equipment will increase the rates upon a pro rata basis covering increased use. Rentee represents and warrants that he will not permit any person to use any motor vehicle or motor equipment unless said person has a valid current, and unrevoked driver's license issued by the State of Hawaii, or other states in which equipment may be used.
10. Rentee agrees to hold Renter harmless of, from and against any and all loss, cost or damages caused by the failure or breakdown of any equipment.
11. Rentee represents to Renter that he is trained in the use of the equipment covered hereunder, is not a minor and shall hold Renter harmless from any and all claims actions and liability in connection with the use thereof.



Claim Number: 30192754170-0001 PDA Assignment Number: 961-906-0073-0



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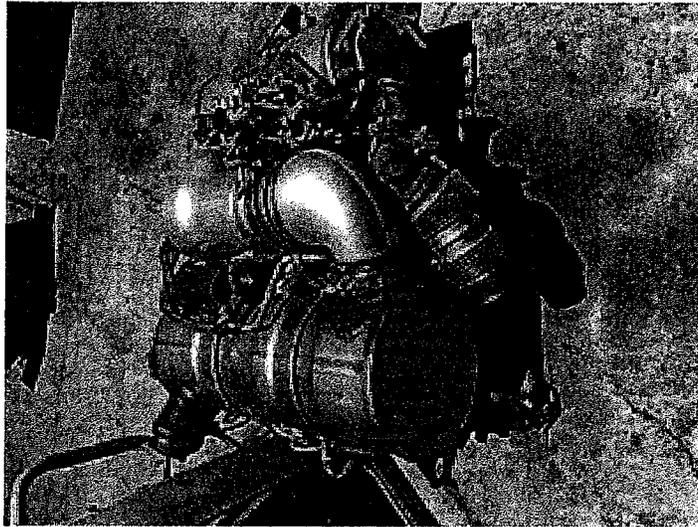
Remarks:



Document Name: IMG_0661.jpg

Remarks:

Claim Number: 30192754170-0001 PDA Assignment Number: 961-906-0073-0



Document Name: IMG_0662.jpg

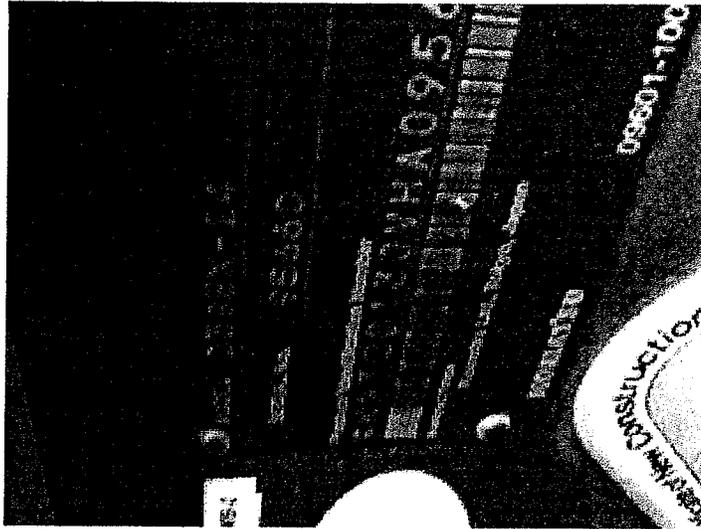
Remarks:



Document Name: IMG_0663.jpg

Remarks:

Claim Number: 30192754170-0001 PDA Assignment Number: 961-906-0073-0



Document Name: IMG_0665.jpg

Remarks:



ORIGINAL INVOICE

918 Ahua St., Honolulu, HI 96819 • Ph: (808) 839-7202 • Parts Ph: (808) 839-7707 Fax: (808) 839-9813
 800 Alua St., Wailuku, Maui, HI 96793 • Ph: (808) 244-9158 • Fax: (808) 242-5815
 1856 Haleukana St., Lihue, Kauai, HI 96765 • Ph: (808) 245-8472 • Fax: (808) 248-6156
 74-5039B Queen Kaahumanu Hwy., Kailua-Kona, HI 96740 • Ph: (808) 326-1212 • Fax: (808) 326-1822

REMIT TO: 215A RAILROAD AVENUE, HILO, HI 96720 PH: (808) 769-5851 or (808) 935-8595
www.baconuniversal.com

SOLD TO
 111237 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 ATT: CLAIMS
 200 S. HIGH ST
 WAILUKU, HI 96793

SHIP TO
 COUNTY OF MAUI FINANCE
 DEPT OF FINANCE
 200 S HIGH ST
 HARRY 264-0004
 WAILUKU, HI 96793

KOMATSU D39EX-24 17 SN: 95660 HR 867.0 W:00
 Sold By: 1218 PO #: ROLL OVER Date 7/06/19 WORK ORDER MW09019
 Ship By: Tax #: PRT: 6 Open

| Tax D | Qty Description | Price | Amount |
|-------|--|--|---------|
| | Customer Unit: 34833 Group: 01 | | |
| | SERVICE CALL-UNIT ROLL OVER. NEED TO MAKE QUOTE. UNIT NO START. ENGINE HYDRO LOCK. | | |
| | SERVICE LABOR | Total Hours: 46.75 ** TOTAL SERVICE LABOR | 6639.25 |
| | 1228-GO TO JOBSITE LOCATE UNIT. TAKE PICTURES OF UNIT. DID NOT TURN ON TO GET HOURS. UNIT WAS FLIPPED. GO BACK TO SHOP. 1228-GO TO JOBSITE LOCATE UNIT. CHECK ALL OIL AND FLUIDS. GO THROUGH ON BOARD DIAGNOSTICS, NO CODES. TRY TO START UNIT. CRANK ONCE AND LOCKS UP. TRY AGAIN. DON'T WANT TO DO FURTHER DAMAGE, ENGINE IS HYDROLOCK. RESEARCH HOW TO REMOVE INJECTORS TO REMOVE FLUID FROM CYLIDERS. HOOD AND ENTIRE DPF SYSTEM MUST BE REMOVED. UNIT NEEDS TO BE BROUGHT BACK TO THE SHOP. CLEAN UP GO TO ANOTHER JOBSITE. GO BACK TO JOBSITE TO RAISE BALDE FOR UNIT TO BE HAULED ON TRAILER. CRACK OPEN CYLINDER LINES FOR BLADE. USE MULTIPUL CHAINS, COME ALONG AND FLOOR JACK TO RAISE BLADE WITH CHAINS. CAP OFF CYLINDERS. CLEAN UP AREA. GO BACK TO SHOP. ORGANISE SPOT FOR UNIT TO BE DROPPED OFF. 816-DROVE TO JOBSITE. DRAIN OIL ON BOTH SIDES OF FINAL DRIVE. REMOVE FINAL DRIVE COVER AND REMOVE SUN GEAR DRIVE ON PLANTARY. PUT BACK FINAL DRIVE COVERS. 1228-LOWER BLADE SLOWLY FROM COME ALONG. REMOVE ALL CHAINS FROM UNIT. RESEARCH PROCEDURES TO REMOVE HOOD AND TO ACCESS INJECTORS. 816-REMOVE HOOD BOLTS AND DISCONNECT WIRING. 816-REMOVE EXHAUST AND HOOD. DISCONNECT WIRING AND REMOVE BRACKET. TURN ENGINE BY HAND, LOCK UP. 816-REMOVE MOUNTING BOLTS ON THE KDOC OR DEF ASSEMBLY. DISCONNECT WIRING FROM DEF ASSEMBLY. REMOVE DEF ASSEMBLY FROM UNIT. ON TOP OF ENGINE REMOVE BRACKETS AND WIRING. 816-REMOVE WIRING AND WATER LINE BRACKETS. MOVE WIRING AND VALVE COVER. DISCONNECT FUEL LINE FROM INJECTORS. REMOVE FOUR INJECTORS. TURN ENGINE BY HAND TO REMOVE OIL OR FUEL IN CYLINDER. STILL ENGINE LOCK UP. WON'T TURN 360 DEG. DID A LEAK DOWN TEST ON NUMBER FOUR CYLINDER. WON'T HOLD PRESSURE IT LEAK OUT 100 PSI. WILL TEST OTHER CYLINDER. 816-LEAK DOWN TEST. NUMBER TWO AND THREE CYLINDER OK. | | |



ORIGINAL INVOICE

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SOLD TO
 111237 COUNTY OF MAUI FINANCE
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 ATT: CLAIMS
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SHIP TO
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 200 S HIGH ST
 HARRY 264-0004
 WAILUKU, HI 96793

KOMATSU D39EX-24 17 SN: 95660 HR 867.0 W:00
 Sold By: 1218 PO #: ROLL OVER Date 7/06/19 WORK ORDER MW09019
 Ship By: Tax #: PRT: 6 Open

| Tax D | Qty Description -----* | Price | Amount |
|-----------------------|--|----------------------------|---------|
| | CAN'T DO NUMBER ONE. CYLINDER LOCK UP. 816-LOOKING UP PARTS TO PUT TOGETHER A QUOTE FOR PARTS. 816-STILL WORKING ON THE PARTS LIST. 816-LOOKING UP ENGINE SERIAL NUMBER FOR PARTS DEPARTMENT. | | |
| | | ** SUBTOTAL | 6639.25 |
| | | ** SALES TAX | 276.59 |
| X | Charge Sale | | |
| Phone: (808) 270-7727 | | PAY THIS AMOUNT \$6915.84 | |
| Page 2 Last Page | | | |

RELEASE OF PROPERTY DAMAGE CLAIM

Bacon Universal, their heirs, assigns and successors, thereby release and forever discharge the County of Maui, its officers, employees and agents, from all causes of action, and agree to withdraw, dismiss or refrain from filing any claim, complaint, charge or appeal against the County of Maui with any court, government board, agency, department or entity concerning the incidents, occurrences or losses on December 24, 2018, involving a 2017 Komatsu D39EX-24 dozer, at Pulehu Road and Hansen Road, in Puunene, Maui, in the State of Hawaii.

In consideration of this release of property damage claim, County of Maui agrees to pay one hundred twenty one thousand one hundred eighty one and 88/100 dollars (\$121,181.88) as full and final release and satisfaction of the property damage claim brought by Bacon Universal against the County of Maui.

It is hereby expressly understood and agreed that the payment or granting of the consideration described above is not an admission of liability or fault of any kind, but compromises and settles all property damage disputes between the parties for the purpose of avoiding further litigation or expense. Said payment is the final consideration of this Property Damage Release, and no other payment or consideration has been promised or will be paid for this property damage claim. This release is for property damage only and does not waive or release claims for bodily injury. This release is non-binding pending County of Maui approval. Each party to this agreement agrees to bear their own costs and attorney's fees.

Signed this 2nd day of August 2019.


SIGNATURE
George Vila

PRINTED NAME OF SIGNER

